AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

Notice is hereby given that the Northern Beaches Planning Panel will be held via Teleconference on

WEDNESDAY 14 DECEMBER 2022

Beginning at 12.00pm for the purpose of considering and determining matters included in this agenda.

Peter Robinson
Executive Manager Development Assessment

Quorum

A quorum is three Panel members

Conflict of Interest

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

northern beaches council

Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 14 December 2022

1.0 APOLOGIES & DECLARATIONS OF INTEREST

2.0 MINUTES OF PREVIOUS MEETING

2.1 Minutes of Northern Beaches Local Planning Panel held 7 December 2022

3.0 CATEGORY 3 APPLICATIONS

4.0 PUBLIC MEETING ITEMS 5

4.1 PEX2022/0002 - 15 Mona Street, Mona Vale - Planning Proposal 5

4.2 PEX2022/0003 Planning Proposal at 6 Mitchell Road, Palm Beach 32

4.3 DA2022/1158 - 13 Iluka Road, Palm Beach - Demolition works and construction of a dwelling house including swimming pool. 157

4.4 REV2022/0016 - 53 Whistler Street, Manly - Review of Determination of Application of DA2021/1344 for Alterations and additions to two semi-detached dwellings including a hard stand parking area. 200

5.0 NON PUBLIC MEETING ITEMS 245

A statutory Direction by the Minister of Planning and Public Spaces states the panel is only required to hold a public meeting where the development application has attracted 10 or more unique submissions by way of objection. There applications do not satisfy that criterion.

5.1 DA2022/1200 - Manly Art Gallery & Museum West Esplanade, Manly - Installation of a new roof mounted building sign on the Art Gallery and Museum Building Manly. 245

5.2 DA2022/0530 - 18 Portions Lovett Bay, Lovett Bay - Alterations and additions to a dwelling house including a lift and retaining walls. 268

5.3 DA2022/1330 - 20/7 The Crescent, Manly - Alterations and additions to a unit within a residential flat building including a new spa. 325

5.4 DA2022/1131 - 5/7 Parkview Road, Fairlight - Alterations and additions to a residential flat building including the consolidation of Units 5 and 6 into a single dwelling. 375

ACKNOWLEDGEMENT OF COUNTRY

As a sign of respect, the Northern Beaches Local Planning Panel acknowledges the traditional custodians of these lands on which we gather and pays respect to Elders past and present.

1.0 APOLOGIES & DECLARATIONS OF INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 7 DECEMBER 2022

That the Panel note that the minutes of the Northern Beaches Local Planning Panel held 7 December 2022 were adopted by the Chairperson and have been posted on Council's website.

4.0 Public Meeting Items

ITEM 4.1	**PEX2022/0002 - 15 MONA STREET, MONA VALE - PLANNING PROPOSAL**
AUTHORISING MANAGER	**EXECUTIVE ASSISTANT TO EXECUTIVE MANAGER**
TRIM FILE REF	**2022/773286**
ATTACHMENTS	**1 ⇩NSW SES Preliminary Advice on PEX2022-0002 15 Mona St Mona Vale** **2 ⇩Submissions Summary - PEX2022/0002**

PURPOSE

To report the assessment of a Planning Proposal for land at 15-17 Mona Street, Mona Vale to the Northern Beaches Local Planning Panel (Panel) and to recommend that the Panel advise Council to reject and not progress the Planning Proposal to a Gateway Determination.

SUMMARY

A Planning Proposal for land at 15 Mona Street, Mona Vale (the subject site) has been submitted by Sydney Water Pty Ltd and seeks to amend *Pittwater Local Environmental Plan 2014* by rezoning the north-western portion of the subject site from SP2 Infrastructure Water Supply System to R2 Low Density Residential to enable a proposed five lot subdivision, creating four residential lots and one residue open space lot to remain zoned SP2 Infrastructure Water Supply System.

The Planning Proposal also seeks to apply a minimum lot size of 700 sqm to the four residential lots.

The Planning Proposal has been assessed and found to be inconsistent with the strategic planning framework and fails to demonstrate sufficient strategic and site-specific merit, particularly in relation to flooding, water management, biodiversity impacts, emergency evacuation, and overall public benefit.

RECOMMENDATION OF MANAGER STRATEGIC & PLACE PLANNING

That the Northern Beaches Local Planning Panel recommend that Council reject the Planning Proposal for 15 Mona Street, Mona Vale and not forward it to the NSW Department of Planning and Environment for a Gateway determination for the following reasons:

A. The NSW State Emergency Service (SES) has raised significant concerns in relation to flood risk and has indicated it does not support rezonings to enable development that will result in an increase in risk to life, health or property of people living on the floodplain with risk management strategies that rely on early evacuation, private alarm systems, and transfer of residual risk in terms of emergency response to the SES, thereby increasing demands on SES resourcing and capabilities and potentially increasing risk to life, health and property for both existing and future communities.

B. The Planning Proposal seeks to rezone land within the flood planning area and insufficient information has been provided to demonstrate that the proposed development will not:

    1. result in a net loss of flood storage in the floodplain;
    2. result in significant adverse impacts to other properties;
    3. result in an increased requirement for government spending on emergency management services, flood mitigation and emergency response measures; which

can include but are not limited to the provision of road infrastructure, flood mitigation infrastructure and utilities

4. adversely affect the safe occupation and efficient evacuation of people; and
5. place people and property at risk or in intolerable conditions in the event of a major flood.

C. The Planning Proposal is inconsistent with objectives of Clause 5.21 Flood Planning of Pittwater Local Environmental Plan 2014.

D. The Planning Proposal is inconsistent with the Local Planning Directions issued by the Minister under section 9.1(2) of the *Environmental Planning and Assessment Act 1979*, being Direction 4.1 Flooding subclause (2) - A planning proposal must not rezone land within the flood planning area from Recreation, Rural, Special Purpose or Conservation Zones to a Residential, Business, Industrial or Special Purpose Zones.

E. The Planning Proposal is likely to result in unacceptable impacts on biodiversity, particularly in respect of:

1. failure to site and design development to avoid and minimise impacts to biodiversity; including the Swamp Oak Floodplain Forest, which is listed as an Endangered Ecological Community under the *Biodiversity Conservation Act 2016,*
2. unacceptable impacts to the Threatened Ecological Communities, loss of fauna habitats and loss of native canopy tree cover including local wildlife connectivity,
3. uncertainty with regards to Biodiversity Certification and the likelihood of a net loss of local biodiversity,
4. inadequate groundwater investigation and water quality monitoring to demonstrate adequate management of impacts on the downstream environment.

F. The Planning Proposal has not demonstrated sufficient strategic merit or site-specific merit, and is inconsistent with the following elements of the strategic planning framework:

1. *Greater Sydney Region Plan*:
    i. Objective 27: Biodiversity is protected, urban bushland remnant vegetation is enhanced
    ii. Objective 36: People and places adapt to climate change and future shocks and stresses
    iii. Objective 37: Exposure to natural and urban hazards is reduced.
2. *North District Plan*:
    i. Planning Priority N16: Protecting and enhancing bushland and biodiversity
    ii. Planning Priority N22: Adapting to the impacts of urban and natural hazards and climate change
3. *Towards 2040 Local Strategic Planning Statement* for the Northern Beaches:
    i. Priority 1: Healthy and valued coast and waterways
    ii. Priority 2: Protected and enhanced bushland and biodiversity

iii. Priority 8: Adapted to the impacts of natural and urban hazards and climate change

iv. Priority 18 Protected, conserved and celebrated heritage

4. *Local Planning Directions* issued by the Minister for Planning:

Local Planning Direction 4.1: Flooding

Local Planning Direction 4.2 Coastal Management.

G. The Planning Proposal does not meet the requirements of Council's Affordable Housing Policy.

REPORT

BACKGROUND

Previous Planning Proposals

The site has been the subject of several rezoning applications and Planning Proposals spanning from 1987 to 2022, all of which have not proceeded due to a range of factors including community opposition, biodiversity, and flooding concerns.

The first rezoning request was lodged by the Land Commission of NSW in 1980 and sought to re-zone the subject land from zone 5(a) Special Uses "A" - "Taronga (sic) Zoo Park" to Residential, with inclusion on the Flat Map, to allow the development of three four-bedroom and ten three-bedroom family dwellings and 16 pensioner units. The rezoning proposal never progressed.

In 1987, the Department of Housing lodged a request with Warringah Shire Council to rezone the land for a mix of 29 housing units. The rezoning proposal was met with strong community opposition, with the community calls for the subject site to be a designated a "bushland park". Warringah Shire Council formed the opinion that the site was unsuitable for multi-unit housing. An amended proposal was lodged in1989 which reduced the quantity of multi- unit housing however following significant public objection, the rezoning request was deferred to allow traffic and drainage issues to be addressed.

In 1989 a rezoning proposal for Lot 100 Mona Street, Mona Vale was lodged seeking a rezoning of the site to permit development of public housing. The proposed development consisted of a mix of detached and semi -detached dwellings. After Council's assessment of the proposal, drainage was identified as a major issue and additional information was requested. Upon receipt of and review of the flood report Council raised concerns and sought a more detailed investigation about the possible flooding impacts on adjoining properties because of the mitigation works proposed in the consultants' flood report.

In 1998 a rezoning request was lodged by Property Services Group on behalf of Sydney Water Corporation to prepare a Draft LEP to amend the zoning of the subject properties. The rezoning request for 15, 17/19 Mona St, Mona Vale (known as Lot 100) from 5(a) Special Uses "A" (Taronga Zoo) to 2(a) Residential "A", to enable Council to consider a future Development Application for subdivision into eight residential lots and housing development.

None of these previous proposals have proceeded, given the flooding and biodiversity issues.

Pre-Lodgement Meeting

A pre-lodgement meeting (PLM) was held with Council officers on 2 September 2021 in relation to the current Planning Proposal, and formal PLM notes were issued to the applicant on 5 November 2021. Amongst other matters, the notes include specific requirements and considerations in relation to the strategic planning context, affordable housing, biodiversity, flooding, traffic, geotechnical, existing stormwater channel contamination, and the necessary components of justification for a Planning Proposal.

SITE DESCRIPTION

The site is known as 15 Mona Street, Mona Vale and is located at the corner of Mona and Bassett Streets (see Figure 1). The legal description of the site is Lot 100 in DP 1273408.

The site has a frontage of 78.05m to Mona Street, a depth of 125.65m, a rear boundary of 54.25m and a site area of approximately 8,286 sqm. Within the site along the boundary with Bassett Street runs a concrete lined drainage channel. Vehicular access to the site is gained from Mona Street. The site is otherwise free of built improvements but contains important vegetation.

Figure 1. Site location – Aerial Photograph -15 Mona Street, Mona Vale.

The subject site contains biodiversity values including Threatened Ecological Communities (TEC), records of threatened species and native trees which provide for local wildlife connectivity. In particular, the site contains Swamp Oak Floodplain Forest which is listed as an Endangered Ecological Community (EEC) under the *NSW Biodiversity Conservation Act 2016* (BC Act) and the Commonwealth's *Environmental Protection and Biodiversity Conservation Act 1999.*

The site is also within the Flood Planning Area. Council's Flood Hazard Map identifies High, Medium and Low Risk Precinct areas within the site (see Figure 2). The site is also identified in the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), as being impacted by estuarine wave action and tidal inundation coastal inundation.

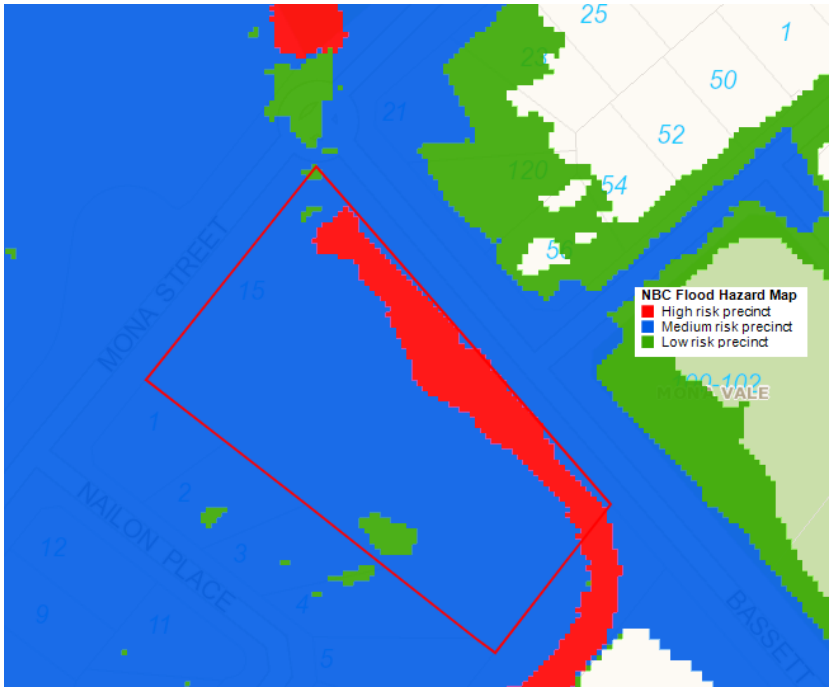

Figure 2 NBC Flood Hazard Map

Figure 3 Distribution of Estuarine Swamp Oak Forest, Source: ACE Environmental Pty Ltd (2018)

THE PROPOSAL

Sydney Water Pty Ltd lodged a Planning Proposal application via the NSW Government ePlanning Portal and it was assigned for review by Council on 28 June 2022, though payment was not received by Council until 26 September 2022.

Documents submitted with the application which are relied on for this assessment include:

- Planning Proposal by Planning Directions Pty Ltd, dated June 2022;
- Survey plan of lot consolidation, prepared by Steve James Davey, dated July 2021;
- Property Contamination Assessment Sign-off & Recommendations form, prepared by Sydney Water and dated February 2020;
- Site Audit Statement, dated February 2020;
- Flood Assessment Report by ZAIT Engineering Solutions Pty Ltd, dated October 2020;
- Addendum Ecological Assessment by Narla Environmental Pty Ltd, dated March 2020;
- Acid Sulfate Soils Investigation by Alliance Geotechnical Pty Ltd, dated April 2022;
- Geotechnical Investigation Report by Alliance Geotechnical Pty Ltd, dated April 2022;
- Preliminary Biodiversity Assessment by Alison Hunt and Associates Pty Ltd, date December 2020;
- Traffic Impact Assessment by Traffic Solutions Pty Ltd, dated May 2022

The Planning Proposal seeks to amend Pittwater Local Environmental Plan 2014 (LEP) for land at 15-17 Mona Street, Mona Vale, to rezone the north-western portion of the site from SP2 Infrastructure - Water Supply System to R2 Low Density Residential. The remainder of the site would retain the SP2 Infrastructure - Water Supply System zone. The rezoning would permit future residential development of four dwellings within the R2 portion of the site.

A conceptual 5 lot subdivision plan prepared by the applicant has been reproduced at Figure 4 below. A concept plan showing four freestanding houses and a retained vegetated lot with walkway prepared by the applicant has been reproduced at Figure 5. The concept plans include a large variable front setback to Mona Street and a 6m setback to adjoining properties in Nailon Place. This is due to the existing variable width easement for sewerage on the current title.

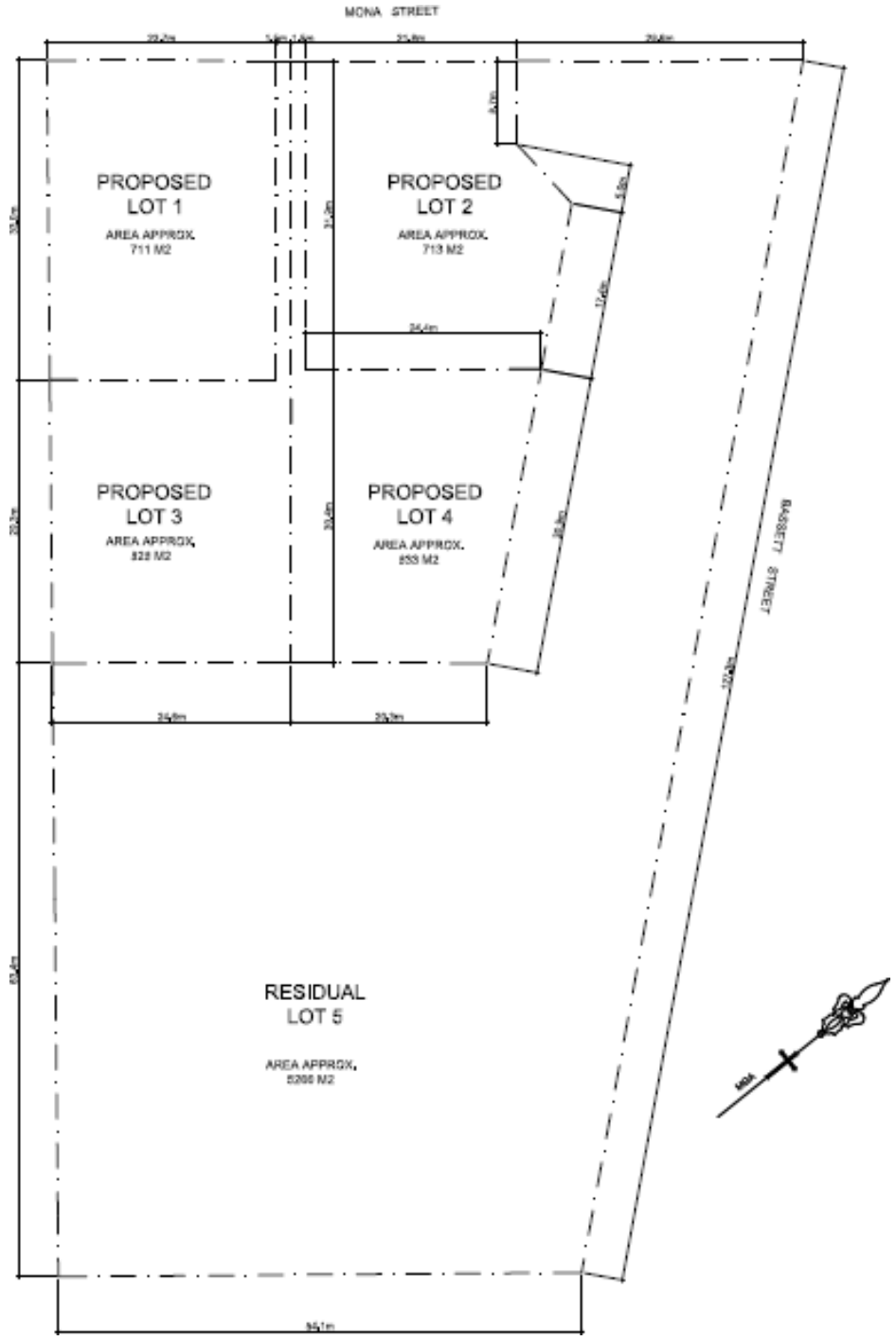

Figure 4 Proposed plan of subdivision

Figure 5 Proposed detached housing and residue lot concept plan

The applicant has not made an offer to enter into any Planning Agreement.

ASSESSMENT OF PLANNING PROPOSAL

The following assessment is undertaken in accordance with the NSW Government's Local Environmental Plan Making Guideline September 2022 (the Guideline).

Part 1 – Objectives or Intended Outcomes

The stated objectives and intended outcomes of the Planning Proposal are to:

- Facilitate the redevelopment of the north-western portion of the site for 4 residential dwellings;
- Create 1 residual lot as a parkland vegetation pocket which is to be retained.

Part 2 – Explanation of Provisions

The applicant's proposed LEP amendments seek to:

- Rezone part of the site from SP2 Water Supply System to R2 Low Density Residential (see Figures 7 and 8).

- Apply a minimum lot size of 700 sqm to the four residential lots (See Figure 9).

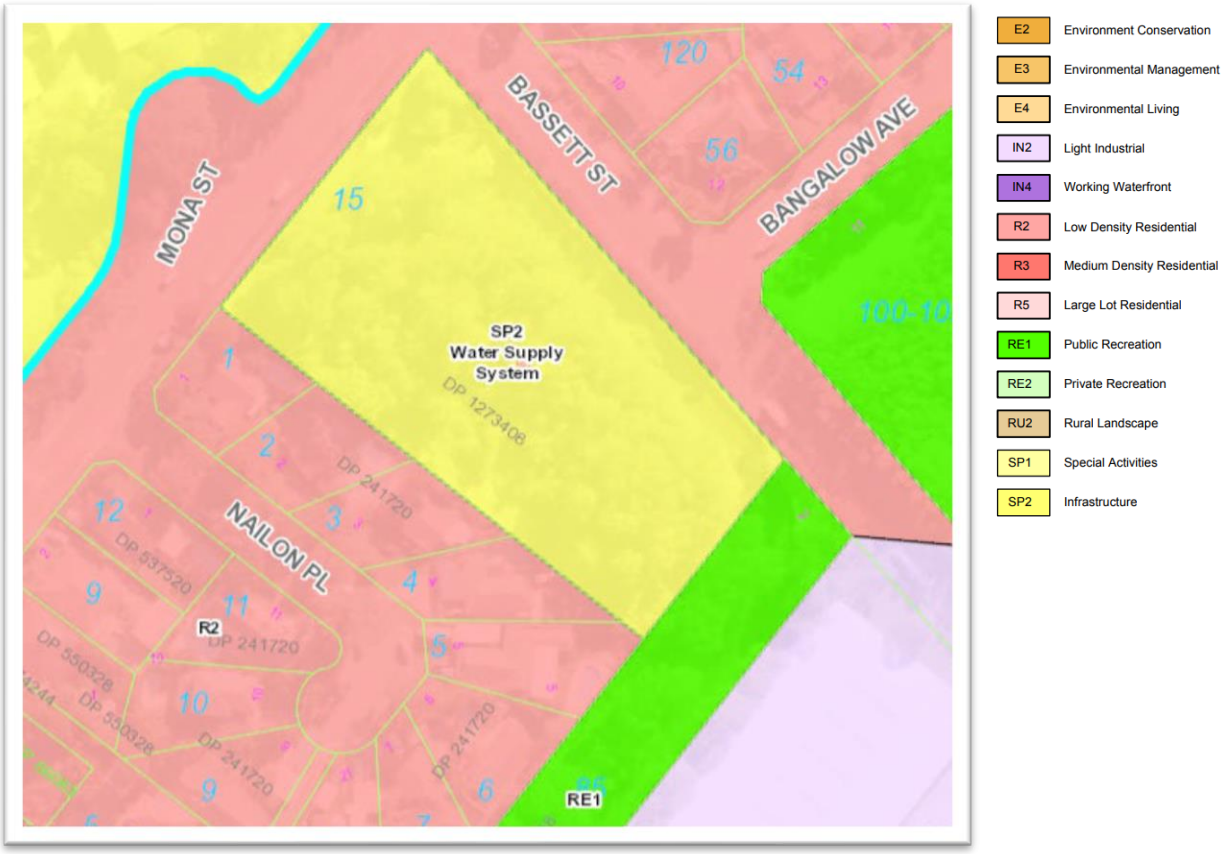

Figure 7 – Existing Zoning

Figure 8 – Proposed Zoning

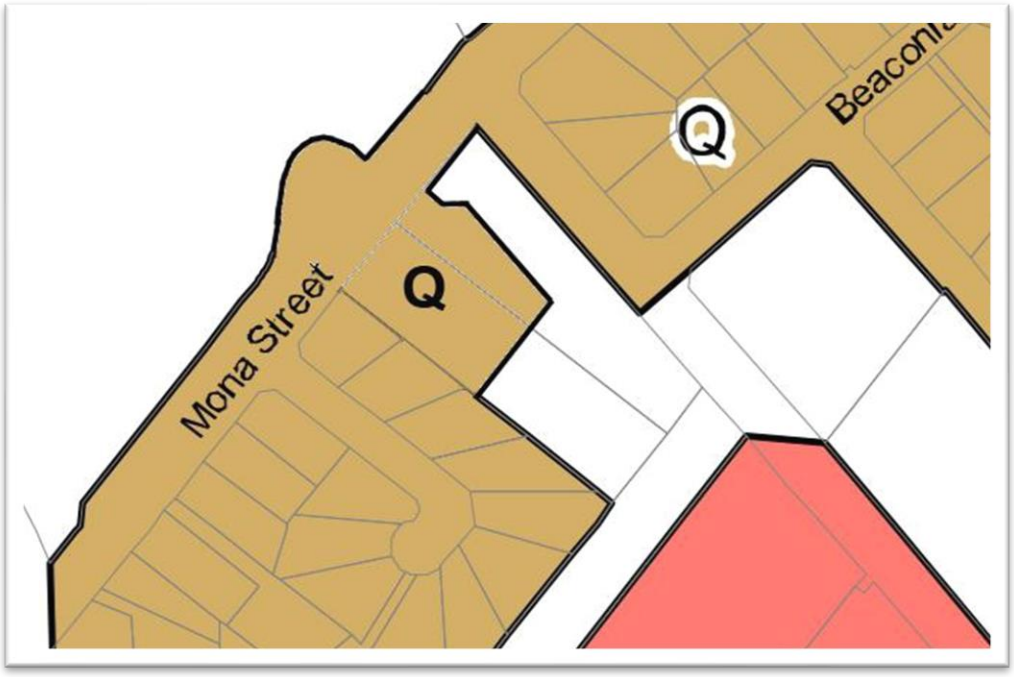

Figure 9 Proposed Lot Size Map

Response – Proposed Zoning

The proposed R2 Low Density Residential zoning may be a suitable zoning to accommodate the residential development that is proposed. However, the development is not appropriate having

regard to flooding, coastal inundation, and biodiversity impacts. These issues are discussed further in Part 3.

Response – Proposed Minimum Lot Size

The proposed 700sqm minimum lot size would appear to be an appropriate to permit low density residential development and would match the minimum lot size for adjoining land zoned R2 Low Density Residential. However as identified above, there are flooding, coastal inundation and biodiversity impacts that make the proposal unsupportable.

Part 3 – Justification

STRATEGIC MERIT

Section A – Need for the Planning Proposal

Q1. Is the planning proposal a result of an endorsed LSPS, strategic study or report?

The applicant's report states the Planning Proposal has been initiated by Sydney Water in its consideration of land holdings before indicating that the proposal aligns with Council's Local Housing Strategy.

Response

Sydney Water's consideration of its own land holdings is not by itself an appropriate justification for a rezoning, nor is it the result of an endorsed LSPS strategic study or report that would justify the development of the land for residential purposes.

The applicant's justification with regard to the Local Housing Strategy and need is not supported.

The LHS forecast housing demand to the year 2036 and identified a deficit in capacity under the current planning controls of 275 dwellings across the entire Northern Beaches local government area.

The LHS buildings on the strategy for housing identified in Council's *Towards 2040* Local Strategic Planning Statement (LSPS) of focusing new housing in and around centres with good transport. Centre Investigation areas are the cornerstone of Council's adopted approach to meeting housing targets and the LHS identifies Brookvale, Dee Why, Mona Vale, Manly Vale, and Narrabeen as priorities for urban renewal in the short-medium term. Medium density residential development is to be concentrated in strategic and selected town centres on the current and future B-Line routes, and these centres will the subject of detailed planning to identify opportunity for renewal and respond to the unique circumstances and character of each centre. This will also consider the various hazards and constrained sites within each centre and locate development outside of areas subject to hazards.

The LHS estimates of capacity to meet housing demand factored in 1,000 new dwellings in Ingleside. In response to the State Government's decision to not proceed with the Ingleside Place Strategy, Council's strategic planning team has been actively investigating alternative locations.

Planning for Brookvale to deliver on housing targets is well advanced. Brookvale strategic centre will meet the requirement for 1,000 dwellings no longer being planned in Ingleside. Forward planning for growth and development in Brookvale began in 2016 and a revised Draft Structure Plan is currently on public exhibition with a view to an endorsement of a final plan. This plan indicates how Council intends to deliver on its housing targets within Brookvale.

Planning for Mona Vale to deliver on its housing targets is also well advanced as part of the Mona Vale Place Plan. Planning for Mona Vale commenced in 2021 and a draft Place Plan is expected be reported to Council in early 2023 for public exhibition. This plan will identify where and how Council expects to meet its housing targets for Mona Vale.

The Planning Proposal is also incorrect to state that the area proposed for housing is within the 800m radius Centre Investigation Area for Mona Vale, or that the site has not been previously considered. The site is not within the Centre Investigation Area and has been specifically identified as being heavily constrained in the Local Housing Strategy as indicated in the following image from the Local Housing Strategy

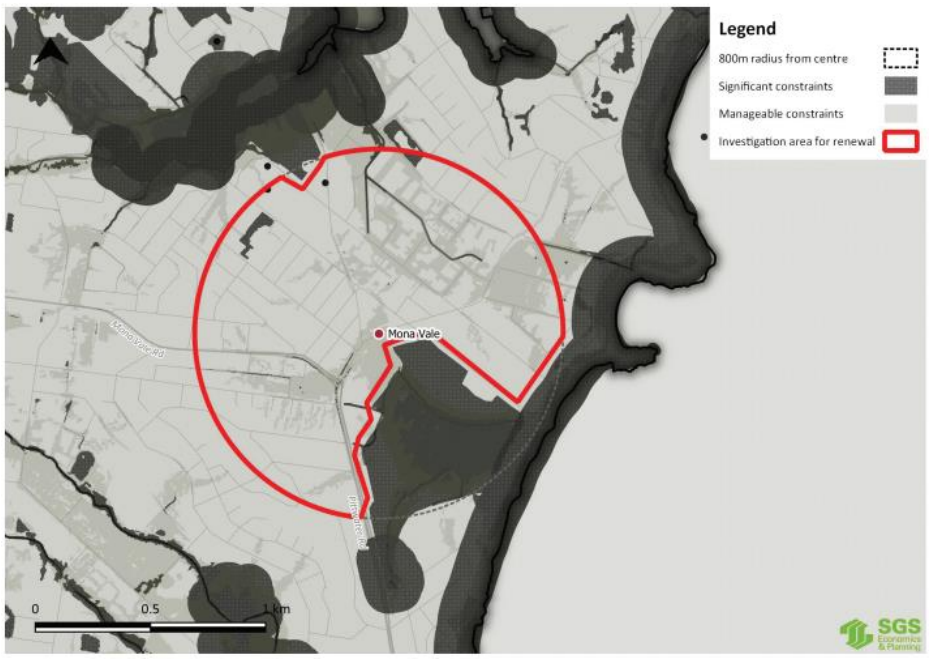

Figure 10 – 800m Centre Investigation Area and site constraints mapping (Source: Northern Beaches Local Housing Strategy)

Figure 11 – Site located outside of the 800m Centre Investigation Area as indicated by purple line

Given the progress made to date and the ability for Council to meet its housing targets through a methodical, strategic, principles-based approach to increasing housing capacity in and around its most accessible centres, there is no need for the subject Planning Proposal to rezone land in an

environmentally sensitive and flood prone area, especially given the site-specific constraints and potential environmental, social, and economic impacts which are discussed in the section on Site-Specific Merit later in this report.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The applicant's report states that the current zoning of the site prevents residential development and a rezoning is required.

Response

The site is not required to meet Council's housing targets and planning for Mona Vale is well advanced. Given the hazards and constraints on the site, there are other better located and unconstrained sites within Mona Vale that can meet housing targets.

Section B – Relationship to strategic planning framework

Q3. Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy?

The applicant's report states that the Planning Proposal is consistent with Greater Sydney Region Plan and the priorities and actions of the North District Plan.

Response

The proposed development involves significant issues associated with flood risk and the SES has raised significant concerns. Shelter in place is not an acceptable strategy to manage flood risk for future development of housing on land not currently zoned for housing. The site is also impacted by coastal inundation and the land proposed to be subdivided is significantly below the estuarine planning levels for 2050 and 2100, placing occupants and property at risk. Further, the proposed development will result in unacceptable impacts on biodiversity through impacts to the endangered ecological community on site, loss of fauna habitat and loss of tree cover. Insufficient information has also been submitted in relation to water quality management and impacts on the surrounding environment. For these reasons, the Planning Proposal is inconsistent with:

Greater Sydney Region Plan

- Objective 27: Biodiversity is protected, urban bushland and remnant vegetation is enhanced
- Objective 36: People and places adapt to climate change and future shocks and stresses
- Objective 37: Exposure to natural and urban hazards is reduced.

North District Plan:

- Planning Priority N16: Protecting and enhancing bushland and biodiversity
- Planning Priority N22: Adapting to the impacts of urban and natural hazards and climate change

Q4. Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?

The applicant's report states that the Planning Proposal is consistent with the endorsed LSPS as the site is well located, will contribute to housing supply and environmental and hazards matters can be resolved.

Response - Towards 2040 Local Strategic Planning Statement

The proposed development involves significant issues associated with flood risk and the SES has raised significant concerns. Shelter in place is not an acceptable strategy to manage flood risk for future development of housing on land not currently zoned for housing. The site also is impacted by coastal inundation and the land proposed to be subdivided is significantly below the estuarine planning levels for 2050 and 2100 placing occupants and property at risk. Further, the proposed development will result in unacceptable impacts on biodiversity through impacts to the endangered ecological community on site, loss of fauna habitat and loss of tree cover. Insufficient information has also been submitted in relation to water quality management and impacts on the surrounding environment. For these reasons, the Planning Proposal is inconsistent with:

For these reasons, the Planning Proposal is inconsistent with the following Priorities of the LSPS:

- Priority 1: Healthy and valued coast and waterways;
- Priority 2: Protected and enhanced bushland and biodiversity;
- Priority 5 Greener urban environments;
- Priority 8: Adapted to the impacts of natural and urban hazards and climate change;
- Priority 15: Housing supply, choice and affordability in the right locations;

The Planning Proposal is inconsistent with the following Housing Principle adopted in the LSPS:

- Limit development where there are unacceptable risks from natural and urban hazards, or impact on tree canopy.

As the Planning Proposal does not adequately address the site's environmental constraints, it is inconsistent with the LSPS.

Response – Northern Beaches Local Housing Strategy

The LHS building on the strategy for housing delivery identified in Council's *Towards 2040* Local Strategic Planning Statement (LSPS) of focusing new housing in and around centres with good transport. Centre Investigation areas are the cornerstone of Council's adopted approach to meeting housing targets and the LHS identifies Brookvale, Dee Why, Mona Vale, Manly Vale and Narrabeen as priorities for urban renewal in the short-medium term. Medium density residential development is to be concentrated in strategic and selected town centres on the current and future B-Line routes, and these centres will the subject of detailed planning to identify opportunity for renewal and respond to the unique circumstances and character of each centre. This will also consider the various hazards and constrained sites within each centre and locate development outside of these areas.

As outlined above, planning for Brookvale to deliver on housing targets is well advanced. Brookvale strategic centre will meet the requirement for 1000 dwellings no longer being planned in Ingleside. Forward planning for growth and development in Brookvale began in 2016 and a revised Draft Structure Plan is currently on public exhibition with a view to an endorsement of a final plan. This Plan indicates how Council intends to deliver on its housing targets within Brookvale.

Planning for Mona Vale to deliver on its housing targets is also well advanced as part of the Mona Vale Place Plan. Planning for Mona Vale commenced in 2021 and a draft Place Plan is expected be reported to Council in early 2023 for public exhibition. This plan will identify where and how Council expects to meet its housing targets for Mona Vale.

With good progress made to date and the ability for Council to meet its housing targets through a methodical, principles-based approach to increasing housing capacity and diversity in and around its most accessible centres such as the ongoing Mona Vale Place Plan, there is no need to rezone the subject site to allow housing, especially given the flooding constraints and environmental impacts.

The Planning Proposal is therefore inconsistent with the Local Housing Strategy.

Response Affordable Housing

Council's adopted Affordable Housing Policy identifies a requirement for the provision/ dedication of 10% affordable housing where "up-zoning" of land occurs. The requirements of this policy have not been addressed.

Q5. Is the planning proposal consistent with any other applicable State and regional studies or strategies?

See earlier comments under Question 3.

Q6. Is the planning proposal consistent with applicable SEPPs?

The applicant's report states that the Planning Proposal does not conflict with any of the SEPPs.

Response - SEPP (Resilience and Hazards)

The northern part of the site is mapped as being within the land application map of the SEPP (Resilience and Hazards) 2021, specifically within Chapter 2 Coastal Management. The northern part is then further mapped as Coastal Use Area and Coastal Environment Area.

Figure 11 – Extent of Coastal Management application

In accordance with Part 2.2 of the SEPP (R&H), Council must not grant consent for development within the coastal environmental area unless it has considered whether the proposed development is likely to cause an adverse impact on the following:

(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,

(b) coastal environmental values and natural coastal processes,

(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,

(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,

The Planning Proposal has not demonstrated that a future development application will be able to satisfy Council in accordance with these requirements. Part of the mapped Endangered Ecological Community (EEC) of Swamp Oak Floodplain Forest is within the proposed R2 Low Density Residential zoned area that is intended to be developed, including areas subject to proposed earthworks, parking and dwellings. Vegetation will necessarily be removed and altered stormwater flow regimes could have detrimental impacts on groundwater dependent ecosystems both within the site and the adjacent residue lots.

All of the site that is to be zoned R2 has the potential to be subject to major works to either raise the land or the resulting dwellings above the flood and estuarine planning levels which will significantly impact flows to and from the site. The applicant has not submitted information regarding the potential impact of the altered flow regimes on the site or surrounding sites or undertaken adequate groundwater investigation and water quality monitoring.

The Planning Proposal does not take adequate measures to protect or enhance the hydrological and ecological integrity of the mapped Endangered Ecological Communities or to minimise impact on the quantity and quality of surface and ground water flows to and from the site.

Q7. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

The applicant's report states the Planning Proposal would be consistent with all relevant Directions.

Response - Local Planning Direction 4.1 Flooding

The subject site has been identified as being impacted by Medium and High flooding hazards. The Planning Proposal is not consistent with clause 4.1(2) of Direction 4.1 as it seeks to rezone land within the flood planning area from a SP2 Infrastructure Water Supply System to a Residential zone.

The Planning Proposal is not consistent with clause 4.1(3) of Direction 4.1 as it will:

- permit development that will result in significant flood impacts to other properties,
- permit a significant increase in the development and/or dwelling density of that land; and
- is likely to result in a significantly increased requirement for government spending on emergency management services, flood mitigation and emergency response measures.

The Planning Proposal involves constructing dwellings on piers to raise them to a flood planning level of 2.36m AHD. This is a significant raising above the lowest noted level on site near the proposed development of 1.51m AHD. However, it does not indicate whether garages are also to be built on piers and where there is to be an impact to flood storage and flood flows through the site or adjoining sites. In addition, as the site is also impacted by a coastal inundation, the planning level will be set by which ever has a higher planning level, in this case a coastal inundation estuarine planning level (EPL) of 2.74m AHD would apply. The flood report does not mention the EPL level.

The NSW State Emergency Service (SES) has provided preliminary advice (Attachment 1) on the Planning Proposal. The SES advice makes reference to the Ministerial Direction for Flooding and the NSW Floodplain Development Manual and identifies the following issues with Planning Proposal:

- zoning should not enable development that will result in an increase in risk to life, health or property of people living on the floodplain
- the SES does not support early evacuation as a strategy for future development
- evacuation must not require people to drive or walk through flood water

- development strategies relying on deliberate isolation or sheltering in buildings surrounded by flood water are not equivalent, in risk management terms, to evacuation
- shelter in place is not a flood management strategy endorsed by the SES for future development, such an approach is only suitable to allow existing dwellings that are currently at risk to reduce their risk
- SES is opposed to imposition of development consent conditions requiring private flood evacuation plans rather than application of sound land use planning and flood risk management
- SES is opposed to development strategies that transfer residual risk, in terms of emergency response activities, to the SES and/or increase capability requirements of the SES
- consent authorities should consider the cumulative impacts any development will have on risk to life and the existing and future community and emergency service resources.

Council's Floodplain Planning unit does not support the Planning Proposal and has indicated the proposal is not compliant with Local Planning Direction 4.1, identifying the following issues:

- the applicant has not demonstrated that the proposed development will not result in significant adverse impacts to other properties;
- Failure to consider the higher Estuarine Planning Level
- Filling of land or pier construction resulting in a loss of flood storage
- it is not appropriate for Council to support future development (via rezoning) that uses shelter in place as a management strategy that will increase the flood risk and the number of people exposed to flooding
- the applicant has not demonstrated that the proposed development will not result in a significantly increase requirement for government spending on emergency management services, flood mitigation or emergency response measures.
- Evacuation will place pressure on a road system that is already restricted in major flood events.
- The land is flood prone and any building up of the site would have serious implications for the adjoining residential properties in Nailon Place.

The imperative for Council to carefully consider the risks associated with development on flood prone land has increased markedly in recent years on account of extreme weather and flood events on the Northern Beaches and elsewhere in NSW and Queensland. Council recently adopted the Northern Beaches Resilience Strategy. A key priority and associated action of the Resilience Strategy is:

Priority 1. Avoid intensification of development, inappropriate development and incompatible land uses in areas exposed to natural and urban hazards.

Action 1a. Establish planning controls that limit intensification, inappropriate development and incompatible land uses to reduce or avoid risks from natural hazards.

This is a logical shift in policy toward a more considered and cautious approach to managing the risk posed by natural hazards, particularly in the context of climate change.

<u>Response Local Planning Direction – 4.2 Coastal Management</u>

The Planning Proposal is not consistent with clause (2) of Direction 4.2 as it seeks to rezone land within an area identified in a study as being impacted by a coastal hazard to enable increased development and more intensive land use on the site. No report or study has been submitted either by the applicant to demonstrate that the site can safely accommodate development given this

hazard, or to justify an inconsistency with the direction. The Planning Proposal report itself is also silent on this direction.

In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), the site has been identified as being impacted by estuarine wave action and tidal inundation coastal inundation. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP), the relevant B3.10 Estuarine Hazard Subdivision and C4.1 Subdivision - Protection from Hazards will apply to any proposed development of the site.

In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 2.24m AHD in 2050 and EPL pf RL 2.74m AHD in 2100 would apply at the subject site. The information submitted with proposal notes that lowest ground level in the vicinity of the development IS 1.51m AHD. B3.10 and C4.1 of the Pittwater DCP require land to be subdivided to be higher than the EPL and be located free from hazards. This would mean that land to be subdivided would be located below the EPL for the site and would place future occupants and property at risk.

Council's Coast and Catchments team have indicated they do not support the proposal as:

- The site is impacted by coastal hazards and below is the Estuarine Planning Level.
- The site is unable to demonstrate how the subdivided land is to be above the EPL level in accordance with Section B3.10 of the Pittwater DCP.
- The resulting lots are not free from hazards in accordance with Section C4.1 of the Pittwater DCP

SITE-SPECIFIC MERIT

Section C – Environmental, social, and economic impact

Q8 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?

The applicant's response states that the proposal has been designed in a manner that minimises impacts to ecology within the subject property and the level of impact is below the threshold for the Biodiversity Offset Scheme, indicating that a significant impact is unlikely to occur.

Response

The site contains significant biodiversity values including Threatened Ecological Communities, mapped Coastal Wetland and Proximity Area for Coastal Wetland, records of threatened species, threatened species habitats and fauna connectivity. The identified Endangered Ecological Communities (EEC) on the site is Swamp Oak Floodplain Forest. The Swamp Oak Floodplain Forest (SOFF) would be directly impacted by the proposed development through the development of the site for housing and associated works, as well as pedestrian works within the residue lot.

Council's Biodiversity & Planning Team have indicated they are not supportive of the proposal as it will result in the clearing of the EEC with an impact on threatened species and tree canopy loss. The proposal has also incorrectly calculated the loss of vegetation on site and whether the offset requirement is triggered.

The referral response from Council's Biodiversity and Planning unit states:

"*…the Planning Proposal is not supported for the following reasons:*

In summary, the current Planning Proposal design and layout is not supported due to unacceptable impacts to the endangered ecological community, loss of fauna habitats and loss of native canopy tree cover as described below.

The subject lots contain biodiversity values including Threatened Ecological Communities (TEC), records of threatened species and native trees which provide for local wildlife connectivity. This is detailed within publicly available vegetation mapping and flora and fauna records (Bionet), documented in the Preliminary Biodiversity Report (Alison Hunt and Associates) and confirmed in the Narla Addendum Ecological Assessment. In particular, the site contains a patch of Swamp Oak Floodplain Forest which is listed as an Endangered Ecological Community (EEC) under the Biodiversity Conservation Act (BC Act).

The NSW Biodiversity Conservation Act 2016 (BC Act) provides a framework and tools to avoid, minimise and offset impacts on biodiversity through the planning and development assessment process. As per the accepted impact mitigation hierarchy, any proposal must first avoid, then minimise impacts to biodiversity, prior to assessing the offset requirements for the residual biodiversity impacts.

Narla have described vegetation on site as conforming to Swamp Oak Floodplain Forest EEC. An area of exotic vegetation occurs along the western boundary of the site, however Narla do not provide total areas of the native and exotic communities occurrence on the site.

While Narla rely on the assessment by Hunt & Associates to some degree, they have responded to the Council comments issued following a pre-lodgement meeting held in September 2021. Narla have surveyed Vegetation Integrity (VI) plots and calculated Vegetation Integrity scores in accordance with the NSW Biodiversity Assessment Method 2020, and also provided additional justification of the merits of the proposal, including whether the proposal will exceed the Biodiversity Offset Scheme clearing threshold as well as the steps taken to avoid and minimise impacts.

The assessment by Narla identifies that the EEC exists on site in two condition classes. The VI scores for Vegetation Zone 1 Estuarine Swamp Oak Forest and Vegetation Zone 2 Parkland Vegetation were calculated as 26.7 and 17.2 respectively. In accordance with the NSW Biodiversity Assessment Method, where the PCT is representative of an EEC, an offset needs to be calculated for all impacts of proposals on PCTs for a vegetation zone with a vegetation integrity score of ≥15. As the VI scores are greater than 15 for both vegetation zones, if the future subdivision development proposal exceeds a Biodiversity Offset Scheme threshold, a Biodiversity Development Assessment Report would be required, and a biodiversity credit obligation would result.

In relation to the Avoid and Minimise framework, Narla have concluded that a total of 0.15ha of native vegetation and 0.03ha of exotic vegetation would be directly impacted. The Area Clearing Threshold for the subject site is 0.25ha, and the direct impact calculated by Narla is below the threshold and therefore does not trigger entry into the Biodiversity Offset Scheme (BOS). This contrasts with the assessment from Hunt & Associates who calculated an impact of 0.3ha which, if correct, would trigger entry into the BOS.

In relation to this, Council considers that the area of direct impacts to native vegetation that would result from a future residential development should be calculated using the entirety of the proposed R2 zone, as well as any accessways, loop track and any services. It appears that Narla may have only used the impacts associated with the proposed dwelling footprints, accessways and pedestrian loop track, and if correct underestimates the impact of the future development. Council agrees with the area calculated in the preliminary report and believes that the current design will trigger the BOS.

The proposal will result in impacts to the EEC and fauna habitats that have not been justified with in the plans and supporting information supplied, and as the current design triggers the BOS, the avoid and minimise framework has not been applied satisfactorily. Alternate designs should be considered that will reduce the overall impacts of the proposal, with a reduced development footprint focused on the north-western portion of the site. A development of this nature would avoid impacts to the majority of EEC within Vegetation Zone 1: Estuarine Swamp Oak Forest, with development concentrated within Vegetation Zone 2: Parkland Vegetation and the area of disturbed exotic vegetation.

Q9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The proponent's report identifies potential impacts associated with flood and biodiversity impacts and makes reference to various aspects of the design and layout of the proposed development and studies undertaken for the Planning Proposal as evidence that these potential impacts can be minimised and are within acceptable levels.

Response

As discussed earlier, in relation to flood hazard, the SES has raised significant concerns and does not support shelter in place as a strategy to manage flood risk for future development on land not currently zoned for housing. Additionally Council's Floodplain team have raised concerns around flooding and insufficient information has been provided to demonstrate that the proposed development will not result in significant adverse impacts to other properties, place people and property at risk or in intolerable conditions in the event of a major flood, adversely affect the safe occupation and efficient evacuation of people, or significantly increase the requirement for government spending on emergency management, flood mitigation and emergency response measures.

Further, Council's Coast and Catchment teams have raised issues regarding the coastal hazard impacts, as has Council's Biodiversity and Planning teams regarding the EEC on site. These issues have not been resolved.

Response to Aboriginal Heritage

The proposal was provided to the Aboriginal Heritage Office for comment who provided the following response:

There are known Aboriginal sites in this area. No sites are recorded in the current development area, however, the area of the proposed development is considered as having high potential for unrecorded Aboriginal sites.

Given the high potential, the AHO recommends an Aboriginal Due Diligence heritage assessment be carried out for the land by a qualified Aboriginal heritage professional, including consideration for subsurface archaeological testing. This would provide an assessment of any unrecorded or potential Aboriginal sites within the allotment, and advice on potential (direct or indirect) impacts to any Aboriginal sites. Should any Aboriginal sites be uncovered during earthworks, works should cease and Council, Heritage NSW and the Metropolitan Local Aboriginal Land Council should be contacted.

This issue could be conditioned as part of the Gateway Determination, should the proposal proceed that far.

Q10. Has the planning proposal adequately addressed any social and economic effects?

The applicants report indicates that the proposal will provide a benefit through additional housing supply, local employment during the construction phase and development contributions which can be levied for local infrastructure.

Response

As previously indicated, the site is subject to flooding, coastal inundation and has an Ecological Endangered Community on site. These matters have not been appropriately addressed and the hazards would place both life and property at risk. The proposal has not adequately addressed how the site can be capable of development without negative social and economic impacts from these hazards and constraints.

Section D – Infrastructure (Local, State and Commonwealth)

Q11. Is there adequate public infrastructure for the planning proposal?

The applicant's response states that the site is already serviced by required infrastructure and services. The additional impact of 4 dwellings by themselves is unlikely to have a significant impact on local infrastructure provisions, or the local road and traffic network. However as indicated by the response from the SES the site is likely to place further demand on emergency services during an event requiring SES assistance.

Section E - State and Commonwealth interests

Q12. What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?

The NSW SES was the only agency consulted and their preliminary advice is not supportive of the Planning Proposal.

Part 4 – Mapping

The Planning Proposal includes a map indicating the proposed zones. If the Planning Proposal is to proceed, the precise boundaries of the new zones will need to be verified and other draft maps prepared to reflect the proposed amendments to the Pittwater LEP Height of Buildings and Minimum Lot Size maps

Part 5 – Community Consultation

A non-statutory (Pre-Gateway) public exhibition of the Planning Proposal was undertaken from 12 October 2022 to 26 October 2022.

A total of ten (10) submissions were received. The issues raised are summarised in Attachment 2.

The main issues raised relate to:

- Loss of green space;
- Impact on native fauna and Flora, wildlife corridors including EEC;
- Environmental assets – need protection, maintenance and regeneration of the site;
- Preserved and enhanced for the community to enjoy;
- Traffic and road safety;
- Flood risk of the site and nearby properties;
- Tidal flows, king tides, storm events;
- Inappropriate location for housing due to flooding;
- Emergency evacuation;
- Traffic – increased congestion
- Historical value

- Proposed zoning of C3 in the current review of conservation zones

Part 6 – Project Timeline

As the Planning Proposal is not recommended for endorsement to be submitted for Gateway Determination, a Project Timeline is not required. The following reporting dates are anticipated:

Local Planning Panel: 14 December 2022

Ordinary Council: 28 February 2023

The Planning Proposal was lodged via the NSW Government's ePlanning Portal. The applicant is able to request a rezoning review if Council has not indicated support for the proposal within 90 days of the proponent submitting the request. The proponent paid the application fees on 26 Sept 2022 and Council completed its initial check of the material submitted on 03 October 2022. Based on the completeness check date, the 90-day deadline would be 25 December

NSW STATE EMERGENCY SERVICE

Our Ref: ID 1778
Your Ref: PEX2022/0002

15 November 2022

Carla Davies
Northern Beaches Council
PO Box 82
Manly NSW 1655

email: Carla.Davies@northernbeaches.nsw.gov.au
CC: shelly.stingmore@ses.nsw.gov.au

Dear Carla,

Planning Proposal for 15 Mona Street Mona Vale

Thank you for the opportunity to provide comment on the Planning Proposal for 15 Mona Street Mona Vale. It is understood that the planning proposal seeks to:

- rezone part of the subject site from SP2 Infrastructure to R2 Low Density Residential, enabling a proposed 5 lot subdivision consisting of 4 residential lots and one open space lot.
- apply a minimum lot size of 700 sqm to the 4 residential lots.

The NSW State Emergency Service (NSW SES) is the agency responsible for dealing with floods, storms and tsunami in NSW. This role includes, planning for, responding to and coordinating the initial recovery from floods. As such, the NSW SES has an interest in the public safety aspects of the development of flood prone land, particularly the potential for changes to land use to either exacerbate existing flood risk or create new flood risk for communities in NSW.

The consent authority will need to ensure that the planning proposal is considered against the relevant Ministerial Section 9.1 Directions, including 4.3 – Flood Prone Land and is consistent with the NSW Flood Prone Land Policy as set out in the NSW Floodplain Development Manual, 2005 (the Manual). Attention is drawn to the following principles outlined in the Manual which are of importance to the NSW SES role as described above:

- **Zoning should not enable development that will result in an increase in risk to life, health or property of people living on the floodplain.** The site is entirely located within the 1% AEP flood extent, and partially within the 5% AEP (Mona Vale/Bayview Floodplain Risk Management Study and Plan 2008; McCarrs Creek, Mona Vale and Bayview Flood Study Review 2017). It is located below the Flood Planning Level, 100 year plus 500mm freeboard (Pittwater LEP), and subject to high and medium hazard

NSW GOVERNMENT

STATE HEADQUARTERS
93 - 99 Burelli Street, Wollongong 2500
PO Box 6126, Wollongong NSW 2500
P (02) 4251 6111
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www.ses.nsw.gov.au
ABN: 88 712 649 015

flooding (planning proposal page 22). Development at this site will not ensure safe occupation and efficient evacuation of people.

- **Risk assessment should consider the full range of flooding, including events up to the Probable Maximum Flood (PMF) and not focus only on the 1% AEP flood.** The flooding assessment needs to be updated to adequately include the assessment of flood risk up to the PMF, including depth, velocity and duration of flooding. It is noted that the flooding depths at the site are between 1 and 2 metres in a PMF (Flood Information Request). As it is affected by flooding below the 1% AEP, there will likely be significant depths of flooding between the 1% AEP and PMF. These depths are not safe for vehicles or people.

- **Risk assessment should have regard to flood warning and evacuation demand on existing and future access/egress routes.** Consideration should also be given to the impacts of localised flooding on evacuation routes.

- **In the context of future development, self-evacuation of the community should be achievable in a manner which is consistent with the NSW SES's principles for evacuation. Future development must not conflict with the NSW SES's flood response and evacuation strategy for the existing community. Evacuation must not require people to drive or walk through flood water.**

- **Development strategies relying on deliberate isolation or sheltering in buildings surrounded by flood water are not equivalent, in risk management terms, to evacuation**. 'Shelter in place' strategy, as suggested in the proposal, is not an endorsed flood management strategy by the NSW SES for future development. Such an approach is only considered suitable to allow existing dwellings that are currently at risk to reduce their risk, without increasing the number of people subject to such risk. The flood evacuation constraints in an area should not be used as a reason to justify new development by requiring the new development to have a suitable refuge above the PMF. Allowing such development will increase the number of people exposed to the effects of flooding. Other secondary emergencies such as fires and medical emergencies may occur in buildings isolated by floodwater. During flooding it is likely that there will be a reduced capacity for the relevant emergency service agency to respond in these times. Even relatively brief periods of isolation, in the order of a few hours, can lead to personal medical emergencies that have to be responded to.

  It is noted that page 6 of the Flooding Assessment that evacuation would be required for a PMF. While we agree with this, there is not likely to be warning that an event will be a "PMF". In addition, there is no official flood warning system for this area. If evacuation does not occur prior to a 5% AEP event, the occupants may become trapped by the adjacent road closures.

- **Development strategies relying on an assumption that mass rescue may be possible where evacuation either fails or is not implemented are not acceptable to the NSW SES.**

- **The NSW SES is opposed to the imposition of development consent conditions requiring private flood evacuation plans rather than the application of sound land use planning and flood risk management.** It should also be noted that the Manual specifically precludes the practice of consent conditions requiring a site plan if that plan is trying to overcome an underlying flood risk that would otherwise be considered too high to permit approval (see Manual Annex L-3).

  Although NSW SES encourages homes and businesses to be prepared and has developed a home FloodSafe toolkit and a Business FloodSafe toolkit, even well written plans are dependent on human application and often rely on technical support systems. Most plans will rely on the actions of one or more third parties and all plans require regular maintenance and review, and most importantly an ongoing commitment from all participants. These conditions are difficult enough to implement and monitor over the long term for a full-time emergency service and are unlikely to be achieved at all in a private ownership context where there is no external audit or monitoring.

- **NSW SES is opposed to development strategies that transfer residual risk, in terms of emergency response activities, to NSW SES and/or increase capability requirements of the NSW SES.**

- **Consent authorities should consider the cumulative impacts any development will have on risk to life and the existing and future community and emergency service resources in the future.**

In summary, given the high flood risks at this site outlined above, NSW SES advises that the development at this site should not proceed.

You may also find the following Guidelines, originally developed for the Hawkesbury Nepean Valley and available on the NSW SES website useful:

- Reducing Vulnerability of Buildings to Flood Damage
- Designing Safer Subdivisions
- Managing Flood Risk Through Planning Opportunities

Please feel free to contact Elspeth O'Shannessy via email at rra@ses.nsw.gov.au should you wish to discuss any of the matters raised in this correspondence. The NSW SES would also be interested in receiving future correspondence regarding the outcome of this referral via this email address.

Yours Sincerely

Peter Cinque
Senior Manager, Emergency Risk Management
NSW State Emergency Service

EXTERNAL SUBMISSIONS – PEX2022/0002 – 15 MONA STREET, MONA VALE

External Submissions	
Number	Comments Summary
1	Tree canopy objection to proposal
2	Biodiversity - Estuarine Swamp Oak Forest, a form of endangered ecological community (EEC) listed under the NSW State Biodiversity Conservation Act and Federal Environmental Protection and Biodiversity Conservation Act. Flooding - The major hazard affecting this site is low and medium flood risk Take into account the effects of climate change Retain the site and be properly maintained, in keeping with Sydney Water's commitment to "protecting, restoring and enhancing our natural and heritage assets" (Sydney Water Environmental Policy issued 28/10/2021)
3	Flooding - High-medium risk of flooding - 2 tidal events a year with king tides, add a major storm event and flooding is inevitable especially with more extreme weather becoming more prevalent. Groundwater & Topography change – Site would need major excavation to distribute the water to a suitable location with the low point running along the SW boundary line. Endangered Species – There are approximately 30-40 large established Sheoak and Gum trees in the proposed construction zone. Traffic pressure on Mona Street would only further impact the already congested area affecting
4	No clearing - EEC and green space
5	Endangered long nose bandicoot and occasionally used by flying foxes.
6	Biodiversity - loss of natural habitat of our native, the mature trees should be left well alone.
7	Restoration of the land as best as they can to its original state.
8	Historical Value - animals who used to eat the food they grew here for Taronga Zoo.
9	Biodiversity - Conservation, greening, flora, fauna and increasing need for habitat for native species.
10	Flooding - flood prone location, we do not allow people to build homes on flood prone lands. Proposed Conservation Zones - This land is also mapped as C3 land in the current review of conservation zones. Suggestion - Council take ownership of the site and the remnant swamp oak forest being remediated to allow it for the community to enjoy.

ITEM 4.2	**PEX2022/0003 PLANNING PROPOSAL AT 6 MITCHELL ROAD, PALM BEACH**
AUTHORISING MANAGER	**MANAGER, STRATEGIC & PLACE PLANNING**
TRIM FILE REF	**2022/716051**
ATTACHMENTS	**1 ⇩Heads of Agreement between Pittwater Council and Trustees Bible Garden signed 2004** **2 ⇩Planning Proposal as updated by Council for 6 Mitchell Road Palm Beach** **3 ⇩Summary of Submissions and Responses**

PURPOSE

To report the assessment of a Planning Proposal for land at 6 Mitchell Road, Palm Beach to the Northern Beaches Local Planning Panel (Panel) and to recommend that the Panel advise Council to progress the Planning Proposal to a Gateway Determination.

SUMMARY

The property at 6 Mitchell Road, Palm Beach is known locally as the 'Bible Garden'. The 'Bible Garden' is a garden containing plants mentioned in the bible that has been open to the public since it was established in the 1960s. The land had previously been settled in a charitable trust. In 2004, the trustees of the Bible Garden sought to subdivide the land to create separate lots for the existing Bible Garden at the front (southern portion) of the site and the residential use at the rear (northern portion) of the site such that:

- The Bible Garden area was to be vested in Council as community land and zoned as a public reserve.
- The balance of the land would continue to be used for residential purposes.

This land is naturally subdivided by a cliff. The rear of the land is traversed diagonally by a right of way and driveway. Over the cliff section, the right of way is provided by an elevated concrete driveway. The driveway provides residences to the east of the site with access to Mitchell Road. A cottage exists under the elevated section of driveway. A viewing platform exists above the existing house/parking space for the house.

The steep topography and the overhanging viewing platform created challenges in relation to a two dimensional subdivision. When the land was subdivided, the viewing platform for the Bible Garden (that overhangs the existing house/parking space for the house) was included in the front lot and the house and parking space underneath the viewing platform was included in the rear lot (now 6 Mitchell Road and the subject of the Planning Proposal) via stratum subdivision.

On 30 March 2007, 6A Mitchell Road was rezoned under the Pittwater Local Environmental Plan 1993, from Zone No. 2 (a) (Residential "A") to Zone No 6 (a) (Existing Recreation "A"). This included the land above 74.5AHD.

The lower allotment containing the dwelling house, 6 Mitchell Road, remained Zone No. 2 (a) (Residential "A"). This includes the portion of 6 Mitchell Road below 74.5 AHD.

On 26 June 2014, Pittwater Local Environmental Plan 2014 (Pittwater LEP 2014), prepared under the Standard LEP Template, came into effect, repealing Pittwater LEP 1993.

The provisions in the Standard Instrument LEP didn't allow for as much flexibility in the zoning of this unique site. This resulted in the properties being zoned as follows:

- 6 Mitchell Road, Palm Beach (the subject of this Planning Proposal application) – The land was rezoned from Zone No. 2 (a) (Residential "A") as follows:
    - majority of the site zoned C4 Environmental Living; and
    - the portion of the site below 74.5AHD, directly underneath the Bible Garden's viewing platform, became zoned RE1 Public Recreation.

    Under the RE1 Zone, 'dwelling house' is prohibited.
- 6a Mitchell Road, Palm Beach was rezoned from Zone No 6 (a) (Existing Recreation "A") to RE1 Public Recreation.

On 25 January 2021, a Development Application (DA2020/1596) was lodged to construct a dwelling house, including a swimming pool, driveway, and garage on 6 Mitchell Road. Components of the dwelling house, primarily the garage and lift were proposed to be sited on that portion of land zoned RE1 Public Recreation.

On 18 August 2022, the DA2020/1596 was refused. The primary reason for refusal was that the residential development proposed to be built on that portion of the site zoned RE1 Public Recreation is prohibited under the zone.

On 12 September 2022, Planning Hub submitted Planning Proposal application (PEX2022/0003) for 6 Mitchell Road Palm Beach. The application seeks to amend the Pittwater Local Environmental Plan 2014 (PLEP 2014) to include as an additional permitted use, "dwelling house" on that portion of the site zoned RE1 Public Recreation and to restrict any future residential development on 6 Mitchell Road to a height of 74.5AHD.

Allowing a "dwelling house", as an additional permitted use, on a minor portion of the site that is zoned RE1 Public Recreation due to it being underneath the Bible Garden's overhang will not result in any of the following:

- a practical reduction of land that is to be used for public open space or recreational purposes;
- endangering or weakening the natural environment for recreational purposes; or
- diminishing public use of, or access to, public open space resources.

The Planning Proposal was placed on non-statutory exhibition for three weeks, from 28 September 2022 to 21 October 2022 inclusive. Six valid submissions were received.

An assessment of the Planning Proposal against the Department of Planning & Environment's (the 'Department') '*Planning Proposals: A Guide to Preparing Planning Proposals'* confirms that the proposal provides sufficient strategic merit and overall demonstrates site-specific merit.

RECOMMENDATION OF MANAGER STRATEGIC AND PLACE PLANNING

A. That the Northern Beaches Local Planning Panel recommend that Council support the Planning Proposal to permit a dwelling house limited to a building height of 74.5AHD as an additional permitted use on 6 Mitchell Road Palm Beach, as presented in the attached Planning Proposal.

BACKGROUND

6 Mitchell Road (the subject of the Planning Proposal) and 6A Mitchell Road were previously one residential allotment (known as 6 Mitchell Road, Lot 2 DP 213975) with a total site area of 1,196m^2.

The land is naturally subdivided by a cliff with a garden on the upper level and a dwelling house on the lower half of the property. This garden, known as the Bible Garden, was established in 1962 and was so named as the garden contains plants mentioned in the bible. It has been open to the public for weddings, baptisms, and informal visits since it was established in the 1960s. The land had previously been settled in a charitable trust.

From 1972 to 1994, Deaconess Beatrice Violet Robinson, as curator of the garden and Trustee of the Bible Garden Memorial Trust, maintained the Bible Garden for the public's enjoyment.

Heads of Agreement

Following the death of Beatrice Robinson in 1994, the Trustees of the Bible Garden approached the then Pittwater Council seeking advice regarding the retention of the 'Bible Garden' curtilage whilst excising the remaining portion of land containing the dwelling house.

As a result, a Heads of Agreement (Attachment 1) was signed by Council and the Trustees of the Bible Garden on 9 February 2004 to investigate opportunity to subdivide the property as follows:

- Excise the portion of land containing the existing dwelling from the lot containing the Bible Garden curtilage.
- The new lot containing the existing dwelling being sold as a residential allotment.
- Retain the lot containing the Bible Garden curtilage.

Development consent for subdivision of land

On 11 November 2004, a Development Application (N0824/04) to subdivide the land into two allotments was lodged with Council, consistent with the signed Heads of Agreement. On 4 April 2005, Council consented to the subdivision into two lots subject to conditions.

The steep topography and the overhanging viewing platform created challenges in relation to a two-dimensional subdivision, resulting in the creation of the two properties as follows:

- Lot 1 DP1086858, now known as 6 Mitchell Road, contains the existing dwelling house and parking space underneath the viewing platform included in the rear lot via stratum subdivision.
- Lot 2 DP1086858, now known as 6A Mitchell Road, containing the 'Bible Garden'. The viewing platform for the Bible Garden (that overhangs the existing house/parking space for the house) was included in this lot.

  This lot was transferred into Council ownership on 7 February 2006, classified as community land under Council's Land Register in accordance with the Local Government Act. Although Council owns this land, it is managed by the 'Friends of the Bible Garden Memorial' via a Management Deed signed by Council, The Trustees of the Bible Garden and then owner of 6 Mitchell Road (the subject site) on 23 March 2006.

  On 18 December 2006, Council adopted the Bible Garden - Palm Beach Plan of Management, which lists what land uses are permissible (as exempt or with consent) under this adopted plan. A copy of the signed Management Deed is also appended to the adopted Plan of Management.

An aerial map showing the location of 6 Mitchell Road (the subject site) and 6A Mitchell Road (the Bible Garden) is shown on Figure 1.

Figure 1: Location of 6 and 6A Mitchell Road Palm Beach

Pittwater Local Environmental Plan 1993

On 30 March 2007, 6A Mitchell Road was rezoned under the Pittwater Local Environmental Plan 1993, from Zone No. 2 (a) (Residential "A") to Zone No 6 (a) (Existing Recreation "A"). This included the land above 74.5AHD.

The lower allotment containing the dwelling house, 6 Mitchell Road, remained Zone No. 2 (a) (Residential "A"). This includes the portion of 6 Mitchell Road below 74.5 AHD.

An extract of the zoning map, obtained from the adopted Bible Garden Plan of Management, is below.

Figure 2 – Zoning under Pittwater LEP1993 of 6 and 6A Mitchell Road

Pittwater Local Environmental Plan 2014

On 26 June 2014, Pittwater Local Environmental Plan 2014 (Pittwater LEP 2014), prepared under the Standard LEP Template, came into effect, repealing Pittwater LEP 1993.

This resulted in the properties being zoned as follows:

- 6 Mitchell Road, Palm Beach (the subject of this Planning Proposal application) – The land was rezoned from Zone No. 2 (a) (Residential "A") as follows:
    - majority of the site zoned C4 Environmental Living; and
    - the portion of the site below 74.5AHD, directly underneath the Bible Garden's viewing platform, became zoned RE1 Public Recreation.

    Under the RE1 Zone, 'dwelling house' is prohibited.
- 6a Mitchell Road, Palm Beach was rezoned from Zone No 6 (a) (Existing Recreation "A") to RE1 Public Recreation.

Extract of the zoning map is in Figure 3.

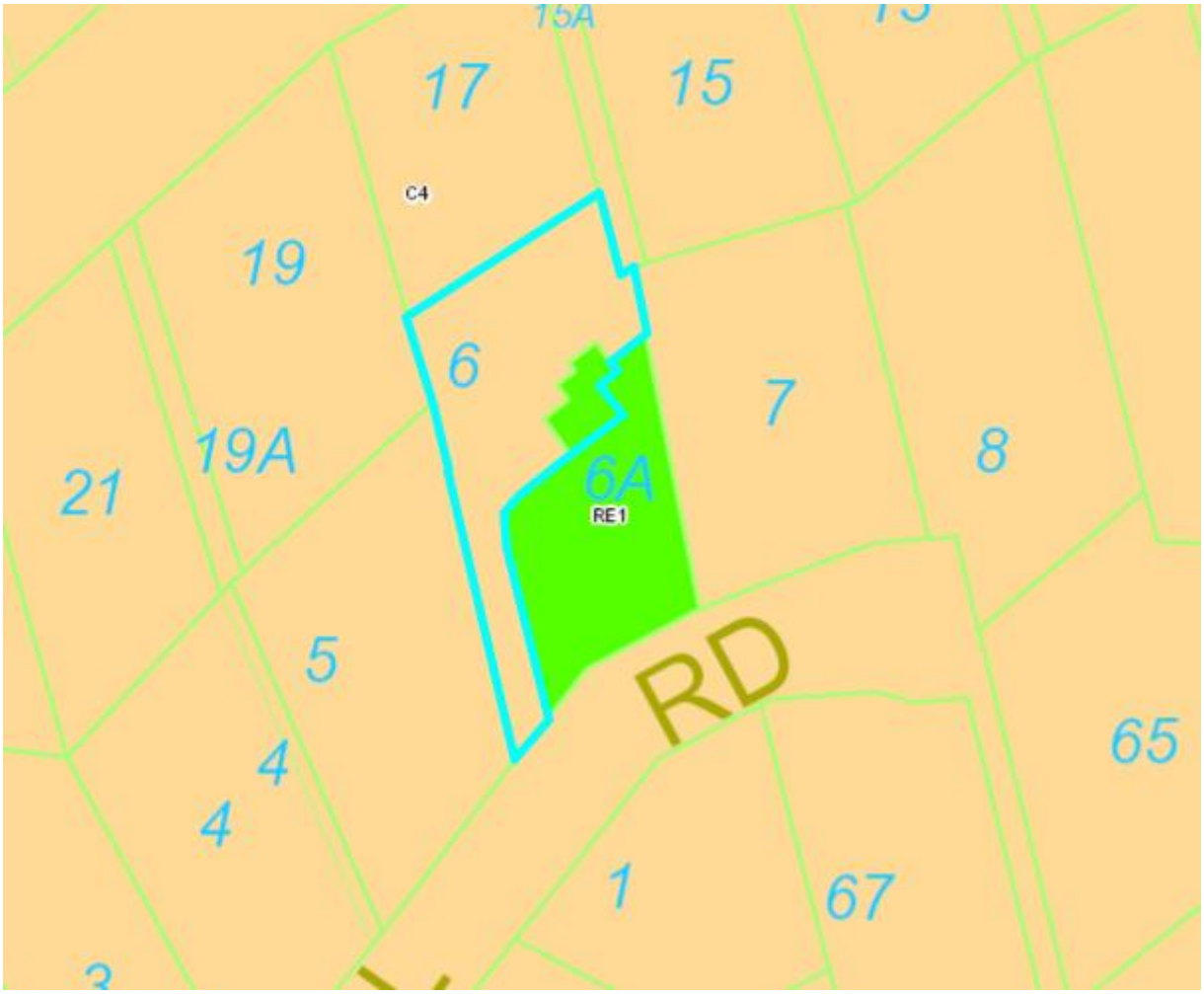

Figure 3: Extract of Zoning under Pittwater LEP 2014 for 6 and 6A Mitchell Road

Recent Development Application

On 25 January 2021, a Development Application (DA2020/1596) was lodged to construct a dwelling house, including a swimming pool, driveway and garage on 6 Mitchell Road. Components of the dwelling house, primarily the garage and lift were proposed to be sited on that portion of land zoned RE1 Public Recreation.

On 18 August 2022, the DA2020/1596 was refused. The primary reason for refusal was that the residential development proposed to be built on that portion of the site zoned RE1 Public Recreation is prohibited under the zone.

Pre-Lodgment Meeting

Following refusal of the DA2020/1596, pre-lodgement meetings were held between the landowner's legal representatives and Council on 19 August and 14 December 2021 to discuss the RE1 zoning on the portion of the land.

SITE DESCRIPTION

The subject site, known as 6 Mitchell Road, Palm Beach (Lot 1, DP 1086858), is a battle axe shaped lot located on the northern side of Mitchell Road. Access to this property is provided via an elevated driveway from Mitchell Road along the western (side) boundary. This elevated driveway also provides access to 15 Florida Road, located north-east of the subject site (see Figure 4).

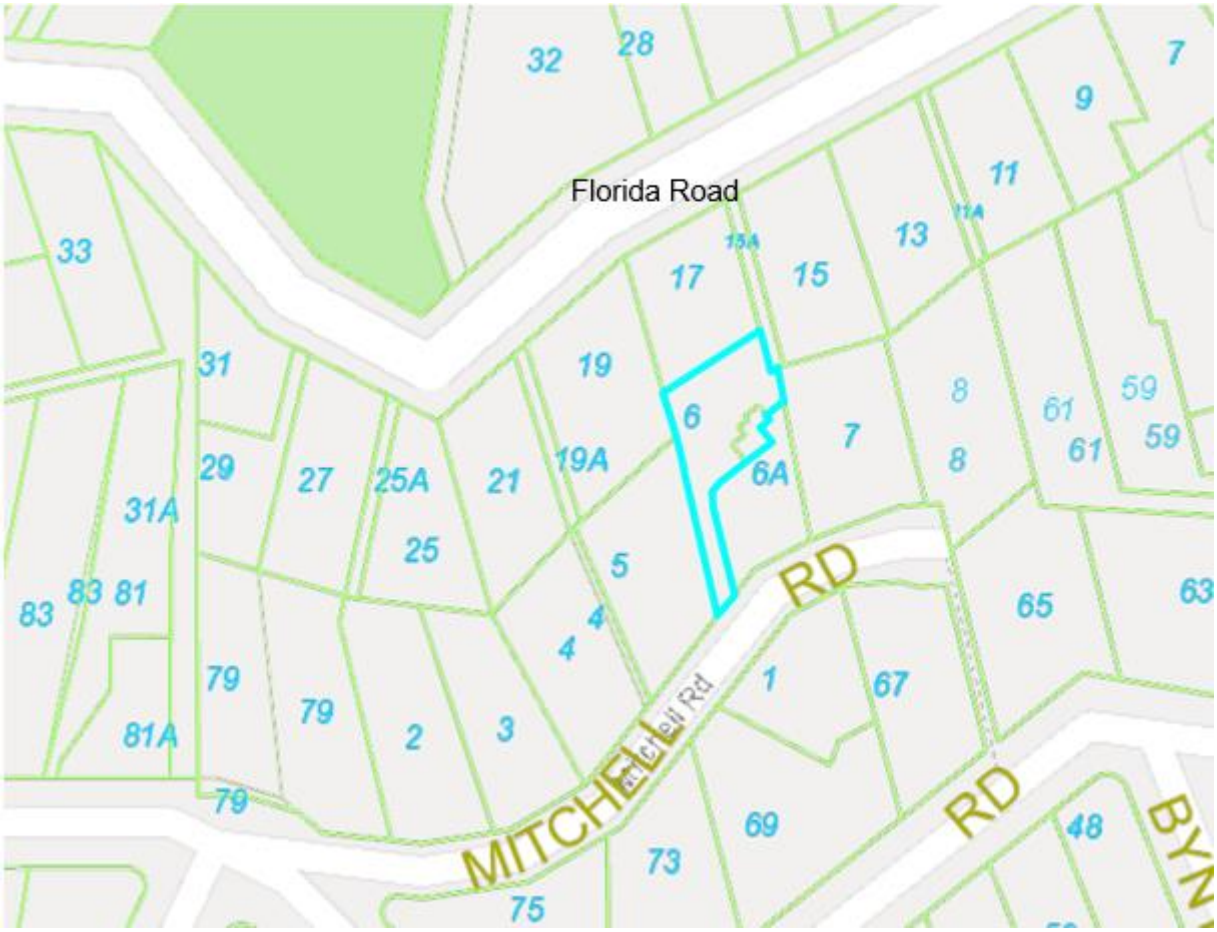

Figure 4: Locality Map - 6 and 6A Mitchell Road, and 15 Florida Road.

An existing dwelling is located on the lower portion of the subject site. Pedestrian access into the dwelling from Mitchell Road is via stairs sited beside the elevated driveway (See Figure 5).

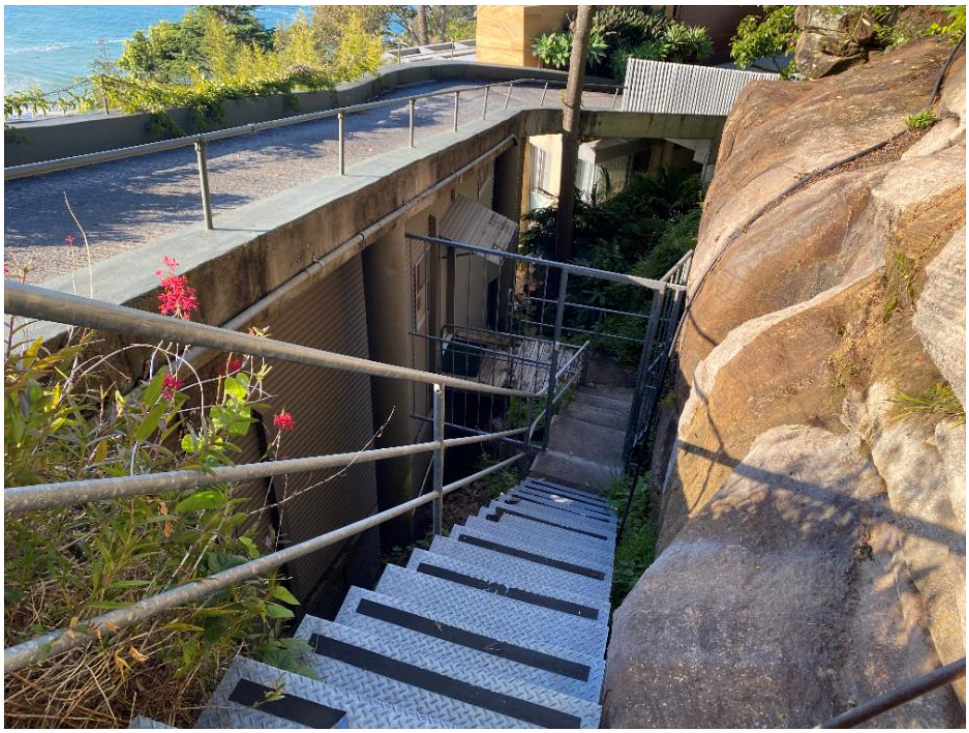

Figure 5: Photo – Pedestrian access from Mitchell Road to the existing dwelling on 6 Mitchell Road is via these stairs.

As mentioned above, “The Bible Garden” at 6A Mitchell Road not only abuts this land but overhangs directly above a portion of the subject site. The whole of 6A Mitchell Road (inclusive of the overhang) is a locally listed heritage item. Because of the stratum subdivision, the portion of the site underneath the Bible Garden overhang is also listed as a heritage item. A picture showing the relationship of the Bible Garden and the portion of the site underneath the Bible Garden overhang is Figure 6.

Figure 6: Photo of 6 Mitchell Road, the land directly above parking platform is 6A Mitchell Road.

The surrounding properties are a mix of established low density residential and environmental living area characterized by low density residential dwellings.

THE PROPOSAL

The intent of the proposal is to amend the PLEP 2014 to include the additional permitted uses of a dwelling on the portion of the subject site zoned RE1, to facilitate future residential development consistent with the Heads of Agreement signed 9 February 2004 between the Trustees of the Bible Garden and then Pittwater Council.

A provision is proposed restricting the building height of any future residential development on the site to 64.5AHD, ensuring that the views of Palm Beach from The Bible Gardens are preserved. This was further demonstrated by the height poles installed on site as shown on the photo below.

- Yellow string shows the existing level of the Bible Garden at 76.3AHD,
- Red string defines the 74.5AHD height on 6 Mitchell Road, being the maximum building height specified in the signed Heads of Agreement and registered covenant.

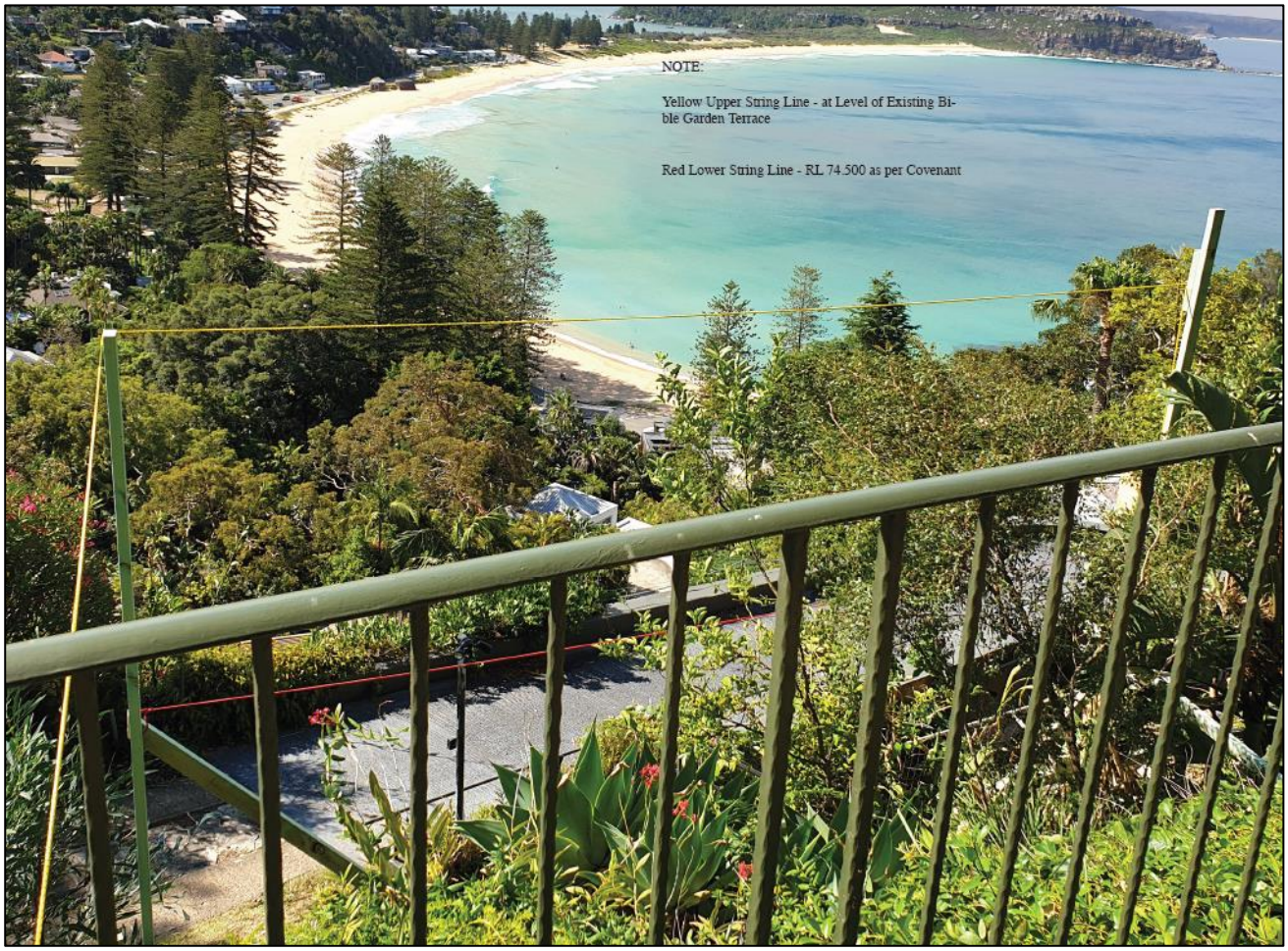

Figure 7: Photo shows the Height Poles installed on 6 Mitchell Road Palm Beach

ASSESSMENT OF THE PLANNING PROPOSAL

The following assessment is undertaken in accordance with the NSW Department of Planning, Industry and Environment's '*Planning Proposals: A Guide to Preparing Planning Proposals'*.

Part 1 – Objectives or Intended Outcomes

The applicant's stated objectives and intended outcomes of the Planning Proposal are to seek an amendment to PLEP 2014 to allow a section of the subject site zoned RE1 Public Recreation to permit development for the purposes of a dwelling; and to seek residential development on the site

cannot exceed a height of 74.5AHD, in line with the intended use of the site as outlined in the Heads of Agreement Contract.

Response

Applying the rules of the Standard LEP Template required that land, including land beneath 74.5 AHD under the Bible Garden overhang was zoned RE1 Public Recreation under Pittwater LEP 2014.

This change in zoning under Pittwater LEP 2014 resulted in the prohibition of a "dwelling house" to occur on that portion of site zoned RE1, contrary to the signed Heads of Agreement.

The proposal is to rectify this zoning prohibition, to permit a dwelling house on a small portion of the land. This is considered reasonable and in keeping with the signed Heads of Agreement upon which Council then received the Bible Garden land.

Imposing a building height of 74.5AHD for any future residential development on the subject site is also appropriate and is consistent with the signed Heads of Agreement.

The Planning Proposal is site-specific and can only be applied to 6 Mitchell Road, Palm Beach.

Part 2 – Explanation of Provisions

The applicant seeks to:

- *Amend the Pittwater LEP 2014 Additional Permitted Uses Map for the subject site (Sheet APU_015) to identify the portion of the site zoned RE1 Public Recreation for additional permitted uses referenced in Schedule 1 of LEP.*
- *Amend Schedule 1 of the Pittwater LEP 2014 to include a provision relating to the subject site that would permit development for the purposes of a dwelling house. Schedule 1 is to also detail that any future residential development on the site cannot exceed a height of 74.5 AHD.*

Response

The proposed amendments to Pittwater LEP 2014 support the creation of an APV to permit dwelling house on that portion of land currently zoned RE1. This is best served by amending the Additional Permitted Uses Map, as proposed by the applicant, and identify 6 Mitchell Road for additional permitted uses as referenced in Schedule 1 of Pittwater LEP 2014.

Currently, the Height of Building Map and Clause 4.3 Height of Buildings under Pittwater LEP 2014 applies to the land. The applicant's proposal to detail that any future residential development on the site cannot exceed a height of 74.5AHD by way of Schedule 1 is appropriate. It should be clear in this future provision, that it applies to all of 6 Mitchell Road and not just the portion of the site zoned RE1 to provide greater certainty that the maximum building height for this land is 74.5AHD. The measurement of 74.5AHD ensures that any future development is below the level of the Bible Garden and thus retains significant and important views out from the garden to the ocean, Pittwater and beyond.

Accordingly, it is proposed to amend the Explanation of Provisions to read as follows:

a) Amend the Pittwater LEP 2014 Additional Permitted Uses Map for the subject site 6 Mitchell Road, Palm Beach (Sheet APU_015) to identify the site for additional permitted uses referenced in Schedule 1 of Pittwater LEP 2014.
b) Amend Schedule 1 of the Pittwater LEP 2014 to include a provision for 6 Mitchell Road Palm Beach:

- Despite any other provision in this Plan, any future residential development on 6 Mitchell Road Palm Beach cannot exceed a height of 74.5 AHD.
- Permit development for the purposes of a dwelling house on that portion of the land zoned RE1 Public Recreation.

As a result of these changes, an amended Planning Proposal is in Attachment 2.

Part 3 – JUSTIFICATION

Strategic Merit

Section A – Need for the Planning Proposal

1. Is the Planning Proposal a result of an endorsed Local Strategic Planning Statement, Strategic Study or report?

The applicant's report states the site has strategic merit for the following reasons:

- It will facilitate the future intended residential development of the site as envisaged by Council and the Trustees of the Bible Garden;
- It will enable appropriate residential development that recognises the heritage significance of the site and surrounding area; and
- It will not adversely impact on the ecological, cultural or scenic significance of the site and surrounding area.

Response

The above mentioned reasons are supported. This Planning Proposal is not the direct result of the endorsed Northern Beaches Local Strategic Planning Statement, strategic study or report. However, the proposal is consistent with the Heads of Agreement signed in 2004 by Council and the then owners of the land, as well as a number of the objectives and priorities within Northern Beaches Local Strategic Planning Statement - Towards 2040 (detailed against question 3 below).

2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The applicant states that there were three options regarding potential development on site:

- Option 1: Do nothing

  Does not promote social and economic potential or resolve issues with split zoning on site.
- Option 2: Lodge Development Application

  Not viable as the current zoning does not allow for the development envisaged.
- Option 3: Planning Proposal

  Objectives and intended outcomes can only be achieved through the amendment of the Pittwater Local Environmental Plan 2014.

Response

Yes, a Planning Proposal is the only way of achieving the objectives and intended outcomes for this site that is also consistent with the signed Heads of Agreement.

The signed Heads of Agreement included a condition that any future residential development cannot exceed 74.5AHD.

Allowing a "dwelling house", as an additional permitted use, on a minor portion of the site that is zoned RE1 Public Recreation due to it being underneath the Bible Garden's overhang will not result in any of the following:

- a practical reduction of land that is to be used for public open space or recreational purposes;
- endangering and weaken the natural environment for recreational purposes; and
- diminishing public use of, or access to, public open space resources.

Section B - Relationship to Strategic Planning Framework

3. Will the Planning Proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?

The applicant's report states that the Planning Proposal is consistent with both the Greater Sydney Region Plan and the North District Plan.

The proposal will not require additional utility services or social infrastructure. The property is in an existing residential area and is adequately serviced and already connected to an existing transport network.

The applicant's heritage consultant Weir Phillips (21/07/22) provided recommendations in ensuring the locally listed Bible Garden is not impacted by future development on the site.

Response

It is agreed that the proposal is consistent with both the Greater Sydney Region Plan and the North District Plan.

The Planning Proposal will also achieve the following objectives under the Greater Sydney Region Plan:

- Objective 7: Communities are healthy, resilient and socially connected.
- Objective 13: Environmental Heritage is identified, conserved and enhanced.
- Objective 28: Scenic and cultural landscapes are protected.
- Objective 31: Public Open Space is accessible, protected and enhanced.

4. Is the planning proposal consistent with a council's local Strategy or other local strategic plans?

The applicant's report states that the Planning Proposal is consistent with the endorsed Northern Beaches Local Strategic Planning Statement (LSPS).

The applicant has stated that the proposal will promote sustainable residential development on the site with a clear connection and relationship with the surrounding natural environment.

Response

It is agreed that the proposal is consistent with the LSPS. As discussed above, it is proposed to include a building height provision to ensure that views to Palm Beach from the Bible Garden are preserved and there is minimal impact on the heritage significance of the Bible Garden.

The Planning Proposal is most consistent with the following priorities under Council's LSPS:

- Priority 6 - High Quality open space for recreation
- Priority 11 - Community Facilities and services that meet the changing community needs
- Priority 18 - Protected, conserve and celebrated heritage.
- Priority 29 - A thriving, sustainable tourism economy

5. Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPPs)?

The applicant has outlined that the Planning Proposal is most consistent with the following SEPPs:

- SEPP (Biodiversity and Conservation) 2021-
  - Chapter 2 - Vegetation in Non-Rural Area
  - Chapter 6 - Bushland in Urban Areas

  The proposal had been designed to minimize impacts on the surrounding landscape as outlined in the Flora and Fauna assessment report and Arborist Report.
- SEPP (Resilience and Hazards) 2021
  - Chapter 3 Hazardous and Offensive Development

  The submitted Geotechnical report found that there were no matters that affect consideration of the Planning Proposal.

The applicant also states that other SEPPs are to be addressed during a Development Application.

Response

The Planning Proposal is not inconsistent with the State Environmental Planning Policies (SEPPs) as listed in the Table below:

SEPPs (as at March 2022)			
Focus Areas	**State Environmental Planning Proposal**	**Applicable**	**Is the Planning Proposal consistent with SEPP?**
Housing	Housing SEPP	N/A	N/A
Transport and Infrastructure	Transport and Infrastructure SEPP	N/A	N/A
Primary Production	Primary Production SEPP	N/A	N/A
Biodiversity and Conservation	Biodiversity and Conservation SEPP	YES	YES

Resilience and Hazards	Resilience and Hazards SEPP	YES	YES
Industry and Employment	Industry and Employment SEPP	N/A	N/A
Resources and Energy	Resources and Energy SEPP	N/A	N/A
Planning Systems	Design Quality of Residential Apartment Development	N/A	N/A
	Precinct SEPPs		
	• Eastern Harbour City SEPP	N/A	N/A
	• Western Parkland City SEPP	N/A	N/A
	• Central River City SEPP	N/A	N/A
	• Regional SEPP	N/A	N/A
	Codes SEPP	N/A	N/A
No.65	Design Quality of Residential Apartment Development	N/A	N/A
	State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	YES	YES
	(State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	YES	YES

Table 1: Compliance with State Environmental Planning Policies

6. Is the Planning Proposal Consistent with Applicable Ministerial Directions (Section 9.1 Directions)?

The applicant's report lists the following Ministerial Directions:

- Implementation of Regional Plans: Consistent
- 1.4 Site Specific Provisions: Inconsistent
- 3.1 Conservation Zones: Consistent
- 3.2 Heritage Conservation: Consistent
- 4.4 Remediation of Contaminated Land: Consistent
- 4.5 Acid Sulfate Soils: Consistent
- 4.6 Mine Subsidence and Unstable Land: Consistent
- 5.1 Integrating Land use and Transport: Consistent
- 5.2 Reserving Land for public: Consistent
- 6.1 Residential Zones: Consistent

Response

With the exception of the Ministerial Direction 1.4 Site Specific Provisions, this Planning Proposal is consistent with the remaining Minister Directions. Direction 1.4 Site Specific Provisions reads as follows:

> *"(1) A planning proposal that will amend another environmental planning instrument in order to allow particular development to be carried out must either:*
>
> *(a) allow that land use to be carried out in the zone the land is situated on, or*
>
> *(b) rezone the site to an existing zone already in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or*
>
> *(c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.*
>
> *A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Planning Secretary (or an officer of the Department nominated by the Secretary) that the provisions of the planning proposal that are inconsistent are of minor significance."*

In this case, the inconsistency with this Ministerial Direction is minor and limited to this specific property.

Site-Specific Merit

Section C- Environmental, Social and Economic Impact

Q7. 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?

A Flora and Fauna Assessment report by EcoLogical Consultants Australia Pty Ltd, May 2022 (the 'EcoLogical Report') and an Arborist report by Arbosaw, June 2022 (the 'Arbosaw Report') accompanied the Planning Proposal application.

The EcoLogical Report undertook a threatened species 'test of significance' assessment incorporating the following:

- On ground surveys on 18 August and 3 September 2019, and 14 May 2022;
- Bionet searches for flora, fauna and endangered populations to identify if there were previous records of threatened species occurring within the local area using a 10km radius around the site; and
- A review of the planning proposal and the proposed development it seeks to enable was evaluated for potential environmental impacts

The results found:

- No threatened flora and fauna species recorded on site during the survey.
- Trees on site are a mix of exotic and native Eucalyptus and Corymbia spp.
- No significant habitat features, values or landscape corridors will be impact by any proposed development.

- The adjoining Bible Garden (public recreation area) will remain open to the public and unaffected by the proposal.
- The proposal will not significantly affect Large Forest Owls, Grey-headed Flying-foxes or microbats and will not result in the local populations being at risk of extinction.
- The proposal does not trigger the Biodiversity Offset Scheme (BOS) Threshold.

The report provides mitigation measures that would be more appropriately imposed on a future development consent on the land should this Planning Proposal be supported.

The Arbosaw Report undertook an assessment to identify impacts of the proposed development works on trees located within and adjacent to the subject site. It concluded that the Planning Proposal is suitable from a tree impact perspective provided the recommendations are implemented during the approval of a future Development Application.

Response

6 Mitchell Road Palm Beach is identified on the Pittwater LEP 2014 Biodiversity Map - Sheet BIO_015, and as a result calls up Clause 7.6 Biodiversity under the LEP.

Council's Senior Environment Officer - Biodiversity reviewed the application, advising as follows:

> *The Biodiversity Planning team do not raise any other issues or concerns in relation to the current Planning Proposal.*
>
> *I note the updated Flora & Fauna Assessment which has assessed the biodiversity values of the portion of the site zoned RE1 Public Recreation, and generally agree with the report findings, namely that a significant impact to the environment is unlikely and the NSW biodiversity Offset Scheme is not triggered. A range of suitable management and mitigation measures are also detailed within the Report that could be applied to any future development of the site.*

No threatened plant or animal species were found during the assessment as being on and within immediate vicinity of this property. The proposed additional permitted use on that portion of land zoned RE1 is not likely to adversely impact on critical habitat, threatened species, populations or ecological communities.

A range of suitable management and mitigation measures are also detailed within both the Flora and Fauna report and the Arborist report that are to be addressed during are to be further addressed if a Development Application is to result from the Planning Proposal.

Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

Geotechnical

As the subject site is identified as being a Geotechnical Hazard H1 on the Geotechnical Hazard Map and the applicant included a Geotechnical Report by Davies Geotechnical Consulting Engineers (July 2022). Davies Geological Consulting Engineers have updated the report to reflect the intention of the Planning Proposal. The Geotechnical Report has concluded that considering the geotechnical conditions of the site and associated development, there are no matters that affect consideration of the Planning Proposal.

Response

No concern was raised regarding the geotechnical conditions that may affect the Planning Proposal.

Heritage

The applicant provided a Heritage report by Weir Phillips (issued 21/07/22) where it was concluded that the proposed additional permitted use within the small portion of land from RE1- Public Recreation at 6 Mitchell Road will have no impact on the significance of the adjoining heritage item (Bible Garden) because of the following reasons:

- *The proposed additional permitted use is in character with the original concept scheme envisaged when the site was subdivided and sold as part of the Heads of Agreement between Pittwater Council and the Trustees of the Bible Garden.*
- *The steep topography of the northern portion of the subject site is unusable by patrons of the Bible Garden. An additional permitted use in this portion of the site allows for a construction of a dwelling with a flat top structure (potential garage).*
- *Additional permitted use within the RE1 zoning will not result in a built form that when viewed from the most significant points at Mitchell Road and from within the Bible Gardens the dwelling will be concealed by the existing topography. There will no visual impact from this perspective.*
- *The character of the Bible Garden, as a site enjoyed for quiet contemplation and appreciation of the magnificent outlook towards Palm Beach will be unaffected by the proposed additional permitted use within the RE1 zoning.*
- *The proposed additional permitted use within the RE1 zoning is unlikely to reduce the user's ability to interpret the cultural landscape of the Bible Garden within its context.*
- *From Palm Beach and surrounds, a new dwelling built as a result of the additional permitted use in RE1 would be visible as one of a number of residential developments within the escarpment behind Palm Beach as a result of the proposed additional permitted use. Any new dwelling constructed would be visible in the landscape from these viewpoints but will have a lessened visual impact due to the scale and constrained nature of the site in comparison to other nearby residential developments. The visual impact from this perspective is considered to be minor.*
- *No other heritage items in the vicinity will be affected by future built form constructed as part of the planning proposal owing to the separation of these items from the subject site*.

Response

Advice from Council's Heritage Officer reads as follows:

The Planning Proposal is able to be supported from a heritage perspective as it will:

- enable a dwelling to be constructed as envisaged by the Heads of Agreement Contract between Council and The Bible Garden Trust; and
- not impact upon the heritage significance of The Bible Garden; and
- not impact upon important significant views from the garden out to Pittwater, Palm Beach, the ocean and beyond.

View Loss

The applicant's proposal has also provided a detailed account of a study conducted under consultation with the Committee of the Friends of the Palm Beach Bible Garden. Height poles were installed to determine the potential impact of any future development on the RE1 zoned land. The study had concluded that no portion of future residential development will impede on the existing views from the Bible Garden based on topography of the site, existing covenant and the indicative location of the garage as outlined in the Heads of Agreement Contract.

Response

As the site-specific provision involves the inclusion of a 74.5 AHD building height limit for any future residential development on 6 Mitchell Road (this would be despite clause 4.3 still applying to the land), there is greater certainty that the views to Palm Beach, particularly when viewed from the Bible Garden terrace are preserved and consistent with the signed Heads of Agreement.

Q9. Has the Planning Proposal adequately addressed any social and economic effects?

The applicant states that the proposal will facilitate the development of the whole site for residential purposes as intended under the Heads of Agreement, and that the social and economic benefits include increasing residential accommodation in the area.

Response

If progressed, the Planning Proposal will facilitate the whole of 6 Mitchell Road to be used for a dwelling house, consistent with the signed Heads of Agreement. The proposal will not result in additional dwellings being permitted on the land but simply will facilitate a dwelling house to be permissible on that part of the land zoned RE1.

Limiting the future residential development to 74.5AHD ensures no obstruction of views to Palm Beach particularly from the Bible Garden terrace and impact on the heritage significance of the Bible Garden can be minimized. This allows the land to be used and enjoyed by the owners; whilst at the same time the use of the Bible Garden can continue to be enjoyed by the community.

Section D - State and Commonwealth Interests

Q10. Is there adequate public Infrastructure for the Planning Proposal?

The proposal states that the site contains services and utilities required to enable residential development as it is located in an established neighborhood. An additional permitted uses for the purposes of a dwelling on the portion of the subject site zoned RE1 Public Recreation will not negatively impact on the surrounding utilities and services in the immediate area and existing services can be utilise in any future development of the site.

Response

6 Mitchell Road is an existing serviced property within an established neighborhood.

Q11. What are the views of state and Commonwealth public authorities consulted in accordance with Gateway determination?

If the Planning Proposal is progressed and receives a Gateway Determination, the following public authorities will be consulted:

- Sydney Water;
- Ausgrid; and
- NSW Office of Environment and Heritage.

Part 4 Consultation

Community Engagement

The Planning Proposal was originally placed on non-statutory public exhibition for 14 days in accordance with the Northern Beaches Community Participation Plan from 28 September to 13 October 2022. Notification included:

- Notification letters to adjoining landowners and occupiers;
- Email to community members who have registered their interest;
- An updated Council Public Exhibition website ‘Your Say’ with relevant information; and

- Council's Community News.

On 12 October 2022, the notification period was extended to 21 October 2022.

The issues raised in the six (6) valid submissions included:

- Wanting garage on the concept plan to be lowered;
- Vegetation that will feature on garage roof as shown on garage height should be at maximum development height;
- New structure will obscure view;
- Unlawful public exhibition;
- Unclear amendment proposal;
- Garage roof vegetation upkeep issues;
- Extension of exhibition time; and
- Planning Proposal is unlawful.

A summary of the 6 valid submissions and responses to the issues raised is in Attachment 3 to this report.

Agency Referrals

If the amended Planning Proposal (Attachment 2) is supported, this will be the Planning Proposal presented to Council for its consideration.

If the Council agrees to progress the Planning Proposal, then it will be forwarded to the Department seeking a Gateway Determination.

Timing

It is anticipated that the timeframe for the completion of the Planning Proposal is approximately 10 to 12 months from the date of Council's approval to proceed to requesting Gateway Determination.

Following the issue of a Gateway Determination, Council will be required to formally exhibit the Planning Proposal for 28 days. The matter will be reported back to Council for final consideration following exhibition.

LINK TO COUNCIL STRATEGY

The Planning Proposal relates to the following goals of the Shape 2028 Northern Beaches Community Strategic Plan:

- Goal 7 - *'Our urban planning reflects the unique character of our villages and natural environment and is responsive to the evolving needs of our community'*;
- Goal 8 - *'Our neighbourhoods inspire social interaction, inclusion and support health and wellbeing'*; and
- Goal 11 - *'Our community feels safe and supported'*
- *Goal 12- 'Our community is friendly and supportive'*
- Goal 22- 'Our Council builds and maintains strong partnerships and advocates effectively on behalf of the community'

FINANCIAL CONSIDERATIONS

The Planning Proposal is a proponent-led application and has paid assessment fees set out in Council's Fees and Charges 2021/22.

If this Planning Proposal is progressed, it should not have an adverse impact on Council's budget.

SOCIAL CONSIDERATIONS

The proposal seeks to rectify an anomaly unique to this site.

If progressed, the Planning Proposal will facilitate the whole of 6 Mitchell Road to be used for a dwelling house, consistent with the signed Heads of Agreement.

ENVIRONMENTAL CONSIDERATIONS

The planning proposal has been assessed as unlikely to have any adverse environmental impacts as a result of the additional permitted land use on the portion of land zoned RE1 Public Recreation.

SIGNED
ORIGINAL

PITTWATER COUNCIL

AND

THE TRUSTEES OF THE "BIBLE GARDEN" MEMORIAL TRUST
6 MITCHELL ROAD, PALM BEACH

HEADS OF AGREEMENT

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Annexures

A. Aerial photograph 1997 and photographs 2001

B. 'Palm Beach from the Bible Garden' - photograph from 'Sydney's Northern Beaches 2001' Calendar (David Messent Photography – reproduced with permission)

C. Heritage Assessment and Heritage Impact Statement

D. Landscape Concept Plan

E. Draft Plan of Subdivision

F. Draft Plan of Management of the Bible Garden as Community Land (Local Government Act 1993, section 36)

G. Objects and Activities of Incorporated Association 'Friends of the Bible Garden Memorial'

H. Proposed Residence – Concept Sketches

I. Proposed Residence – Compliance with Council Requirements

J. Draft Statement of Environmental Effect

K. Proposed Planning Process for Subdivision of 6 Mitchell Road and Conservation of the Bible Garden Portion

L. Responsibilities for Ongoing Management and Improvement of the Bible Garden

THESE HEADS OF AGREEMENTS are made on 9th February 2004

2004

BETWEEN **PITTWATER COUNCIL** of Unit 11, 5 Vuko Place, Warriewood, New South Wales ("Council")

AND **THE TRUSTEES OF THE BIBLE GARDEN MEMORIAL TRUST** C/- 48 Nelson Street Gordon NSW 2072 ("Trustees")

1. Summary

These Heads of Agreement relate to the future land use of 6 Mitchell Road, Palm Beach. The improvements on the land comprise a 'Bible Garden' (on the southern half) and a cottage and access corridor (on the northern half).

The 'Bible Garden' is a garden containing a Bible and plants mentioned in the Bible. It offers a superb view of Palm Beach, Barrenjoey and Pittwater. The Bible Garden has been open to the public for weddings, baptisms and informal visits since GH Robinson established it in the1960s. Robinson settled the land in a charitable trust. Two of the founder's sons, GL and DL Robinson, are the current trustees.

The trustees of the Bible Garden propose to subdivide 6 Mitchell Road so as to create separate lots for the existing Bible Garden and residential uses of the land:

- The Bible Garden area (lot 2) would be vested in Pittwater Council as community land, being zoned 'Public Reserve (Bible Garden)', included as a heritage item in Pittwater Local Environmental Plan and managed by the incorporated association 'Friends of the Bible Garden Memorial'. Council would recognise the committee of the Friends as a committee of Council.
- The remainder of 6 Mitchell Road (lot 1) would continue to be used for residential purposes, and subject to development parameters consistent with protection of the view from the Bible Garden.

Subject to the proper exercise of its functions as a planning authority, Pittwater Council supports the proposals. The Bible Garden is a significant item of social and aesthetic heritage. The proposals would secure the long-term retention of the Bible Garden for public enjoyment.

Details of the proposed conservation and subdivision are contained in the Heads of Agreement and annexures.

2. Background

a. The 'Bible Garden' is situated on the southern half of Lot 2 DP 213975, being land at 6 Mitchell Road Palm Beach ('6 Mitchell Road') (see Annexure A: Aerial Photograph).
b. Gerald Lacey Robinson and Derek Lacey Robinson own 6 Mitchell Road as trustees of the Bible Garden Memorial Trust.
c. The land at 6 Mitchell Road is naturally subdivided by a cliff. The northern half is traversed diagonally by a right of way. Over the cliff section, the right of way is provided by an elevated concrete driveway. The driveway provides residences to the east with access to Mitchell Road. A cottage exists under the elevated section of driveway.
d. The Bible Garden was established by Gerald Hercules Robinson and officially opened on 23 June 1966.
e. In an interview with Australian Women's Weekly (10 May 1967), GH Robinson declared 'The Garden and the view behind it provide a perfect example of the glory of God's creation' (see Annexure B: 'Palm Beach from the Bible Garden').
f. By trust deed dated 5 April 1972 GH Robinson settled the Bible Garden in a charitable trust 'for the construction use and maintenance of Bible Gardens for all Christians particularly young Christians and for the teaching of and the creation of an expanding interest in the Holy Bible through the cultivation and study of all the plants mentioned in the Holy Bible and in any other way thereby practicable to support the teaching of the Holy Testament'.
g. In 1972 the founder's daughter and a trustee of the Bible Garden Memorial Trust, Deaconess Beatrice Violet Robinson, became the curator of the Bible Garden, living in the cottage under the driveway and maintaining the Bible Garden for public enjoyment.
h. In 1974 6 Mitchell Road was granted exemption from local council rates.
i. Since the death of Beatrice in 1994, the Trustees, other members of the family of GH Robinson and like-minded members of the community have continued to maintain the Bible Garden for public enjoyment.
j. In July 2000 6 Mitchell Road was assessed for land tax for $214,481.40. Upon appeal the assessment was withdrawn, however the Trustees consider that the possibility of future land tax liability, and the burden of maintaining the elevated driveway and cottage pose intolerable problems for the continuation of the dual Bible Garden and residential uses of 6 Mitchell Road.
k. The Trustees wish to subdivide the land and to fund other Trust projects from the proceeds of sale of the residential portion of 6 Mitchell Road.
l. In March 2001 Pittwater Council received a draft proposal for subdivision of 6 Mitchell Road to enable conservation of the Bible Garden. The proposal included a Heritage Assessment and Heritage Impact Statement (Annexure C).
m. On 30 April 2001 Pittwater Council resolved 'That Council authorise the General Manager to enter into negotiations with the owner/owner's representatives of 6 Mitchell Road, Palm Beach – 'Bible Garden' to develop a draft 'Heads of Agreement' document for the proposed subdivision and dedication of land to the Council and report back to Council with a draft Agreement once a document has been prepared.'
n. Since 30 April 2001 Pittwater Council has received and commented upon the following documents:
    (i) Landscape Concept Plan (Annexure D)
    (ii) Draft Plan of Subdivision (Annexure E)
    (iii) Draft Plan of Management for the Bible Garden as Community Land (Local Government Act 1993, section 36) (Annexure F)

(iv) Proposed Residence – Concept Sketches (Annexure H)
(v) Proposed Residence – Compliance with Council Requirements (Annexure I)
(vi) Draft Statement of Effect (Annexure J)
(vii) Proposed Procedure for Subdivision of 6 Mitchell Road and Conservation of the Bible Garden (Annexure K)
(viii) Responsibilities for Ongoing Maintenance and Improvement of the Bible Garden (Annexure L)

o. The Proposed Residence – Concept Sketches (Annexure H) illustrate a possible future residential development of proposed lot 1. They have been prepared for the purpose of identifying suitable development control parameters for incorporation in the Development Control Plan/Locality Plan at the time of subdivision. A development application to build any particular residence, in accordance with the Development Control Plan/Locality Plan (as amended), would be lodged subsequently.
   (i) The boundary between the two lots has been chosen so as to provide space for an eventual two-car garage on lot 1.
   (ii) A restrictive covenant would restrict the height of such garage and require the roof to be of load-bearing capacity suitable for use as a viewing platform from the Bible Garden area, to be finished in sandstone flagging, and to include a balustrade.
   (iii) A stratum easement would enable use of the garage roof by visitors to the Bible Garden as a viewing platform and for the placement of landscaping improvements such as interpretation signage, planter boxes and seating.

p. In September 2003 supporters of the Bible Garden lodged application for the incorporation of 'Friends of the Bible Garden Memorial'. The association was duly incorporated under the Associations Incorporation Act 1984 on 26 September 2003. The objects and activities of the Friends of the Bible Garden Memorial are set out in Annexure G.

3. Statement of Intent

Subject to Feasible Subdivision, as defined in the following paragraph, the Trustees propose to vest the Bible Garden in Pittwater Council, and Pittwater Council proposes to classify the Bible Garden as 'community land (area of cultural significance)' under the Local Government Act 1993 and to maintain the Bible Garden with assistance from the incorporated association 'Friends of the Bible Garden Memorial', as described in the proposed plan of management (Annexure F), the statement of objects and activities of the Friends (Annexure G), and the responsibilities for ongoing management and improvement of the Bible Garden (Annexure L).

'Feasible Subdivision' means the granting of development consent to subdivision of 6 Mitchell Road within a reasonable period as follows:

a) lot 1 to be approximately 706.5m^2, subject to final survey, as indicated in the draft plan of subdivision (Annexure E);
b) lot 1 to be subject to the development parameters which would enable the construction of a residence of the scale indicated in the concept sketches (Annexure H) and discussion of Council requirements (Annexure I);
c) lot 2, being an area of approximately 490.7 m^2, to be dedicated as a public reserve (Bible Garden) as community land and rezoned accordingly (including status as a heritage item) in Pittwater Local Environmental Plan (or given corresponding status under any subsequent plan); and

d) The Trustees will not have to fund any physical work upon 6 Mitchell Road apart from what may be required by Sydney Water in relation to a compliance certificate (Sydney Water Act 1994, section 73). (The undertaking of landscaping, car parking, retention wall or any other improvements will not be prerequisites for subdivision.)

4. Nothing to fetter Council's statutory functions

Nothing in these Heads of Agreement will be deemed to or construed so as to fetter the exercise of Councils statutory discretion as a consent authority under the Environmental Planning and Assessment Act 1979, prohibit Council from carrying out any of its statutory obligations or bind Council to perform an obligation in these Heads of Agreement. All rights and obligations of the Council in these Heads of Agreement are deemed to be expressed to be subject to this clause, and the Trust agrees that the Council is not liable to the Trust in respect of any loss of damage suffered by the Trust as a result.

5. Negotiations

The Parties acknowledge that these Heads of Agreement have been entered into after negotiations. The general principles upon which these Heads of Agreement have been negotiated include:

a) the transactions referred to in these Heads of Agreement will benefit residents of the Pittwater Council area, as well as Australian and overseas visitors, through the protection, conservation and securing into Pittwater Council ownership of the part of the land at 6 Mitchell Road Palm Beach known as the "Bible Garden";
b) the Parties will cooperate with each other in connection with the matters set out in these Heads of Agreement; and
c) the Council shall keep the Trust informed on the progress of all processes resulting from these Heads of Agreement.

6. Planning Process

In order to achieve Feasible Subdivision and conservation of the Bible Garden, the parties anticipate a planning process described in Annexure K. Council will use its reasonable endeavours to achieve the indicated time frames.

7. Applications

a) *Assessment of Applications.* Council must diligently progress the assessment of the applications and the preparation of the plans described in the Statement of Intent (clause 3).
b) *Trustees' Acknowledgment.* The Trustees acknowledge that nothing in clause 7(a) constitutes an approval or obliges the Council to approve the applications described in the Statement of Intent (clause 3).
c) *Cost of Applications*:
    i. The Trust will bear the cost of preparing the applications; and
    ii. Council will waive any lodgment and advertising fees and developer contribution in recognition of the intended gift of the Bible Garden to Council.

8. Abandoning Factors

a) 'Abandoning Factors' means any one or more circumstances arising after the date of this Agreement which in the reasonably held opinion of a Party would make the subdivision of 6 Mitchell Road and the conservation of the Bible Garden impractical, financially burdensome, onerous, unviable, imprudent or contrary to the public interest, and includes unreasonable delay in meeting the timeframes in the planning process (Annexure K).

b) At any time after the date of this Agreement until the granting of development consent for subdivision and the public reservation of the Bible Garden, either party may give written notice to the other party of Abandoning Factors.

c) On giving notice of Abandoning Factors, the party giving the notice must consult with the party receiving the notice, and both parties must use all reasonable endeavours to jointly identify any opportunities which exist for resolving the Abandoning Factors and to cause to be implemented any such resolution in a way which is reasonably acceptable to the party giving the notice.

If, after one month from the date of giving the notice of Abandoning Factors, the party giving the notice has acted in accordance with clause 7(c), and the Abandoning Factors have not been resolved, either Party may give a notice of rescission to the other party and these Heads of Agreement are deemed to be rescinded.

d) On rescission of these Heads of Agreement, neither of the parties has any claim against the other party in connection with the rescission of these Heads of Agreement or the existence of Abandoning Factors.

EXECUTED as an Agreement.

SIGNED BY PITTWATER COUNCIL)
Under delegated authority in accordance with)
a resolution of the Council on 9 February 2004:)

.....
Angus Gordon, General Manager

.....
S Rawe
Witness (Public Officer)

SIGNED BY THE TRUSTEES of)
THE BIBLE GARDEN MEMORIAL TRUST:)

.....
Derek Lacey Robinson

.....
Gerald Lacey Robinson

ANNEXURE A

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ANNEXURE B"PALM BEACH FROM THE BIBLE GARDEN"

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ANNEXURE B

ANNEXURE C

HERITAGE ASSESSMENT AND HERITAGE IMPACT STATEMENT

'THE BIBLE GARDEN', MITCHELL ROAD, PALM BEACH

PROPOSED SUBDIVISION

HERITAGE ASSESSMENT AND HERITAGE IMPACT STATEMENT

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for

Mr Gerald L Robinson, a Trustee of The Bible Garden Memorial Trust

March 2001

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1.0 INTRODUCTION

1.1 Background

This report has been commissioned by Mr Gerald L Robinson, a Trustee of the Bible Garden, 6 Mitchell Road, Palm Beach to provide an assessment of the heritage significance of the garden and an assessment of the likely impact on that significance of a proposed subdivision to separate the garden area from the residential development below it.

1.2 The Brief

The Brief agreed between the author and the client comprised the following:

- Review of existing documentary evidence relating to the 'The Bible Garden' and its landscape setting;
- Liaison with relevant stakeholders including Pittwater Council.
- Site investigations including assessment of the heritage values of the 'The Bible Garden'
- Assessment of the likely impact of the proposed subdivision on the heritage significance of the 'The Bible Garden' area in the form of a Statement of Heritage Impact (SOHI) prepared in accordance with the guidelines in the *NSW Heritage Manual* (DUAP/Heritage Council, 1996). The SOHI addresses the following:
  - why the item is of heritage significance
  - what impact the proposed works will have on that significance
  - what measures are proposed to mitigate negative impacts

1.3 Author Identification

This report has been prepared by Chris Betteridge BSc, MSc (Museum Studies), AMA, Director of Musecape Pty Ltd, Heritage Consultants. The author specialises in the identification, assessment and management of natural and cultural landscapes. He has more than 30 years experience in this field, including 10 years as environmental and landscape advisor to the Heritage Council of New South Wales and the former NSW Department of Environment and Planning and ten years in private practice as a heritage conservation practitioner. The author is a foundation member of the Australian Garden History Society, co-author of the publication *Historic Gardens: Guidelines for the preparation of conservation plans* and author of the study *Designed Landscapes in New South Wales.*

1.4 Methodology

This report has been prepared in accordance with the guidelines in the *NSW Heritage Manual* and its companion volume *Heritage Curtilages* (Heritage Council of NSW / Department of Urban Affairs and Planning, 1996).

Analysis of documentary evidence involved review of relevant literature reports on the the Bible Garden and development plans for the site previously prepared by others. Analysis of physical evidence involved a site inspection by the author on 5 January 2001.

Consultations were held with relevant stakeholders.

1.5 Acknowledgments

The assistance of the following organisations and individuals in the preparation of this report is gratefully acknowledged:
Bibleinfo.com;
Ms Sheridan Burke, Australia ICOMOS (International Council on Monuments and Sites);
Mr Gordon A Frase, USA;
Ms Carolyn Kades, Pittwater Council;
Mr David Robinson, on behalf of Mr Gerald L Robinson, a trustee of the charitable trust which owns the subject land.

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2.0 ANALYSIS OF DOCUMENTARY EVIDENCE

2.1 The Concept of Bible Gardens

In their book *Sacred Gardens* (Piatkus, 2000), authors Martin Palmer and David Manning categorise Christian gardens into three main types – symbolic, thematic and pragmatic. Symbolic gardens are exemplified by the monastic gardens developed by monks of the Benedictine and other religious orders in Britain from the 6th century AD onwards. These gardens for quiet reflection were created through a fusion of "space and place, plants and symbolism, usefulness and beauty, all caught up in a vision of nature, humanity and God as being in a unity of purpose and intention". Thematic Christian gardens tell a story and are exemplified by Easter gardens, celebrating the death and Resurrection of Christ and by Marian gardens, gardens of flowers associated with the Virgin Mary. Pragmatic Christian gardens are exemplified by the monastic gardens in which healing and economic plants were grown, and by churchyards in which the dead lie buried or are commemorated in what is often referred to as 'God's acre'. The recent popularity of gardens of Biblical plants or the creation of Biblically-themed gardens demonstrate the long and continuing relationship between Christianity and the garden. The Bible Garden at Palm Beach is both symbolic and thematic – its location and magnificent views symbolise the wonders of God's creation while the plantings illustrate many of the themes in the Bible.

2.2 Historical Summary of the Bible Garden at Palm Beach

The following summary history of the Bible Garden at Palm Beach has been derived from an article about its founder Gerald H Robinson published in *The Australian Women's Weekly* on 10 May 1967, from a brochure produced in February 1977 by his daughter, Church of England Deaconess Beatrice V Robinson, and from information provided by one of his sons, Gerald L Robinson.

Gerald H Robinson, the managing director of a car distributing firm, purchased a block of land in Mitchell Road, Palm Beach in about 1957. He read about a bible garden established by a Professor Tatum Whitehead in the grounds of Bangor Cathedral in North Wales. Robinson visited the Welsh bible garden and was impressed with what he saw. On his return to Sydney in 1963, he commenced work on developing a garden devoted to the plants in the Bible on his Palm Beach land. Already in his seventies, Gerald H Robinson did most of the work himself, laying out the garden in biblical chronological order, commencing with the plants mentioned in the book of Genesis and ending with a plant to represent immortality. Of the 148 plants mentioned in the Old and New Testaments, 143 were planted in the Bible Garden.

Plantings in the Bible Garden were based on research findings available at the time and on Mr Robinson's choice of plants similar to those mentioned in the Bible if the exact species were not available or were unlikely to survive in the humid coastal environment of Palm Beach. (The bible garden at Bangor Cathedral displays only those biblical plants that can cope with the harsh North Wales climate). Plant beds were laid out in similar fashion to those at Bangor and were given numbered markers, keyed to a 15-page brochure compiled by Mr Robinson.

The Bible Garden at Palm Beach was officially opened on Saturday 26 March 1966 by Mr Justice Richardson. Gerald Robinson declared "the garden and the view behind it [to] provide a perfect example of the glory of God's creation". The garden was open to the public free of charge, with a box at the entrance for "thank-offerings" which continue to be given to the Sunday School of St David's Church at Palm Beach.

Gerald H Robinson wished that the Bible Garden should continue after his death and he gave it to the Bible Garden Memorial Trust, an ecumenical trust established to continue the garden and/or others in the future, in such a way as to further the teachings of Jesus Christ in the Scriptures. The Trustees in February 1977 were the Right Reverend F O Hulme-Moir, a son Gerald L Robinson and daughter Beatrice V Robinson.

Between the date of the garden's opening and 1977, a house called "Tree Tops" was constructed under a concrete driveway which provided access from the Bible Garden to the adjoining properties to the east. This house was occupied until her death in 1994 by Beatrice Robinson. During Beatrice's occupation, the house included a display room in which visitors could study bible plant illustrations and books, material describing the Bible Garden and other items of Christian literature. In recent years the garden has been carefully maintained. Over the years some of the original plants have died and labels have disappeared.

Some visitors to the Garden and associations have indicated willingness to support some restoration of plantings and maintenance.

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3.0 ANALYSIS OF PHYSICAL EVIDENCE

3.1 Site Location and Description

3.1.1 Site Location

The subject land is located on Mitchell Road at Palm Beach, in Sydney's northern beaches, as shown on Maps 1 and 2 below.

Map 1 Location of the Bible Garden at Palm Beach in relation to surrounding areas.

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Map 2 Street location of the Bible Garden in Mitchell Road, Palm Beach.

3.1.2 Site Description

The subject land, 1195 square metres in area, is located on the upper level of the sandstone escarpment to the south of Cabbage Tree Boat Harbour, at the southern end of Palm Beach. The land has a frontage of approximately 28 metres to Mitchell Road, a cul-de-sac off Pacific Road. The site has a northwesterly aspect and slopes steeply down from the road, with a fall of approximately 22 metres from the highest point at the Mitchell Road frontage to the lowest level. Residential properties border the site to the east and west.

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To the right of the entrance is an interpretive sign and to the left is a commemorative bronze plaque and a donation box for 'thank offerings'. A driveway of two concrete tyre tracks with turf between extends down the

western side of the lot, then sweeps towards the north across a reinforced concrete elevated causeway, providing a right of way to the adjoining properties to the east. A single carport with metal deck roof is located to the south of the drive just west of the causeway.

The property is naturally subdivided by a cliff into an upper, Bible Garden section and a lower, residential section. The major lookout from the Garden is a terraced area at the top of the cliff. Located in this area is a plaque including biblical excerpts, seating and a copy of the Bible. The driveway accentuates the subdivision of the lower causeway and residential section.

The Bible Garden is located to the east and south of the driveway, with a series of lawn terraces between slopes and garden beds. Concrete block retaining walls have been constructed along the northern edges of the terraces. Major trees include a wild stone fruit tree, cypress and evergreen oak on the Mitchell Road boundary, two large pines, a mulberry and a carob on the flat northern area of the garden and a number of trees along the eastern boundary.

An ornamental pond is located on the flat area towards the centre of the flat northern area of the garden and there are two metal garden sheds along the eastern boundary.

To the southeast of the elevated driveway a flight of steel stairs provides pedestrian access to a two storey fibro cottage 'Tree Tops' which is located under the elevated driveway. From the elevated driveway is a sheer drop of about 8 metres to the lawn in front of the cottage.

A survey plan of the site is shown as Map 3 on the following page.

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4.0 ASSESSMENT OF SIGNIFICANCE

4.1 Principles and Definitions

The concept of 'cultural significance' or 'heritage value' embraces the value of a place or item that cannot be expressed solely in financial terms. Assessment of cultural significance endeavours to establish why a place or item is considered important and is valued by the community. Cultural significance is embodied in the fabric of the place (including its setting and relationship to other items), the records associated with the place and the response that the place evokes in the contemporary community.

The *NSW Heritage Manual* published by the Heritage Council of NSW and the Department of Urban Affairs and Planning, outlines broad criteria for assessing the nature of significance – historical, aesthetic, social and technical/research value. These criteria are considered in addition to two other criteria (rarity and representativeness) that relate to the comparative significance to be considered in assessing the significance of potential heritage items.

Curtilage is defined in the *Macquarie Dictionary* (2nd Edition, 1991) as 'the area of land occupied by a dwelling and its yard and outbuildings, actually enclosed or considered as enclosed.' This definition does not take into account the importance of the landscape setting of a building or building group, which may include a substantial garden and views and vistas to and from buildings. There have been numerous and varied legal determinations of curtilages for heritage buildings and heritage conservation practitioners have grappled with the problem for many years. Many of these opinions and attempts at solving the issue of curtilage are described in the publication *Heritage Curtilages* (Heritage Council/Department of Urban Affairs and Planning, 1996), a companion volume to the *NSW Heritage Manual*.

Essentially, the curtilage of a heritage item is that area of land necessary to enable its significance to be conserved in context and to enable its heritage value to be interpreted adequately. This area is usually but not always the lot or lots on which the item stands and, for statutory purposes, is usually but not always restricted to land in the same ownership as the item. The boundaries for an adequate curtilage may be the historic lot boundaries or a smaller area resulting from previous subdivision(s). They may also include adjoining lands critical to retention of views and vistas, although these values may be conserved through planning controls other than those used to protect the building and its immediate setting.

4.2 The Setting and Curtilage of The Bible Garden

The visual catchment of the Bible Garden extends well beyond the land in the ownership of the garden itself. It extends well to the north and northwest and includes areas of national park, Pittwater, Broken Bay and the Central Coast. For statutory purposes, the curtilage has been determined as that area bounded by Mitchell Road, the eastern boundary as far north as the northern edge of the elevated driveway, the northern edge of the driveway across to the western boundary, then along the western boundary to Mitchell Road. The final northern subdivision boundary location will depend on the nature and location of any future carport and/or lookout platform.

4.3 The Significance of The Bible Garden

Given the extraordinary quality of the view from the Bible Garden, its unusual nature and the comparative rarity of this type of designed landscape in an international context, the significance of the item has been assessed in accordance with the criteria adopted by the Heritage Council of New South Wales for listing on the State Heritage Register (SHR). To be assessed for listing on the SHR an item will, in the opinion of the Heritage Council, meet one or more of seven criteria relating to historical, aesthetic, associational or research/educational values and rarity, threat or interpretive potential.

It is considered that the Bible Garden at Palm Beach is important in demonstrating aesthetic characteristics and a high degree of creative achievement in NSW (Criterion c). The garden has strong association with a particular community ie Christians in NSW for spiritual reasons (Criterion d). The Bible Garden possesses uncommon and rare aspects of the cultural history of NSW (Criterion f). The garden is also important in demonstrating the principal characteristics of a class of cultural places in NSW ie special interest designed landscapes. It has potential to demonstrate the physical and aesthetic attributes of the natural environment of Palm Beach and Broken Bay (Criterion g).

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4.4 Statement of Significance

The Bible Garden at Mitchell Road, Palm Beach is an item of State heritage significance for New South Wales. It is the result of the creativity of Gerald Hercules Robinson, a devout Christian who was inspired to construct a garden of biblical plants in a magnificent natural setting. As a rare example of its type of designed landscape it has and continues to provide inspiration to visitors of all religions as a place for quiet contemplation of the wonders of creation. The garden has special associations with the Christian community for spiritual reasons and has considerable educational potential arising from its special plant collection and the natural environment in which it is located. The significance of the Bible Garden warrants appropriate statutory protection and active management to retain and enhance its value to the community.

5.0 THE PROPOSAL

In an effort to conserve the Bible Garden for the foreseeable future, the Bible Garden Memorial Trust is considering a proposal that the lot on which the garden has been constructed should be subdivided into two lots. An appropriate curtilage for the Bible Garden would be retained in one lot, while the lower lot would be used for residential purposes.

Architect Luke Playoust and Landscape Architect Judith Fritsche have prepared a Landscape Concept plan, dated February 2001 which provides for visitor car parking, improved access from Mitchell Road, new vehicle accommodation for the residence below the elevated driveway (with viewing platform above) and a new residence that extends further northwest and north than the existing cottage under the elevated driveway. Luke Playoust has prepared a Section through the Site.

If subdivision is approved, The Bible Garden Memorial Trust may wish to donate the Bible Garden to Pittwater Council as a community asset to be managed jointly by Council and the Trust, possibly assisted by 'Friends'.

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6.0 LANDSCAPE AND VISUAL IMPACT ASSESSMENT

6.1 Visibility

6.2.1 Viewing Places

The visual catchment of the subject land, conditioned by topography and vegetation, provides visual access to the site from public places primarily from Mitchell Road and from points extending in an arc from the northwest to the northeast. The land is visible also from nearby privately owned residential properties to its north, east, south and west. The public's visual experience of the subject land is primarily from Mitchell Road, and to a lesser extent from areas to the north, although a detailed visual assessment of the latter has not been carried out.

6.2.2 Views from Specific Locations

The following assessment of the Proposal is based on the assumption that there will be no mitigative measures taken to reduce likely impacts i.e what are the likely visual impacts of the proposed subdivision on the existing landscape, with its existing tree cover. The extent and effectiveness of proposed conditions on development are discussed in Section 6.5.

As viewed from Mitchell Road, the viewer will see no change to the site as result of subdivision per se. There will be minor changes arising from proposed landscaping works but these are not expected to have a negative effect on the heritage significance of the site or the visitor experience.

6.2.3 Position and Sequence of Views

Sequences of views may be possible from the north, interrupted by topographic changes and vegetation. The character of the land would not change from its present state. The site would be seen as one of a number of residential developments on the escarpment behind Palm Beach. Any new house will be visible in the landscape but the nature and scale of development will be such that its impact will be less than for some other recent developments nearby.

6.2.4 View Composition

Most public viewing locations of the Bible Garden will be level with the site (ie within the garden) or above the site (ie on Mitchell Road) in relative elevation. The visibility of elements to be added to the site subsequent to subdivision will vary with viewing position and relative elevation. The intrinsic capability of the site to visually absorb the density and type of development proposed is considered to be high but will be significantly increased by appropriate landscaping.

6.2.5 Change to the intrinsic character of the site

The character of the site is expected to remain essentially the same as at present.

6.3 Assessment of visual absorption capacity

The visual absorption capacity of the landscape for the development is judged to be high, even without mitigative measures, based on the following considerations:

The extent and density of the Proposal is comparable with that on the site at present.

The land has high intrinsic visual absorption capacity because of its topography and natural vegetation cover.

The Proposal will not be highly visible from significant viewing points in the Bible Garden, or from major public viewing points elsewhere.

Within the site itself, the subdivision lots have been designed to reduce visual impacts on the Bible Garden.

The development will seek to emulate better examples of recent residential development in the area, through careful siting, landscaping, building forms and recessive exterior finishes.

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6.4 Visual qualities of the proposed development

The proposed subdivision will merely formalise the present arrangement which is based on topographic separation between the Bible Garden and the residential development below. While any new structures will be permanent elements in the landscape, their visual impact will be reduced by careful siting, landscape screening and appropriate design qualities.

The visual evidence of the subdivision is likely to be low and is not considered likely to obscure or materially reduce the significant elements in the landscape of the Bible Garden. The subdivision is unlikely to reduce the viewer's ability to interpret the cultural landscape of the Bible Garden or its context.

The proposed landscape improvements to the garden are not considered likely to have an adverse impact on the design concept or significant elements within the garden. The visual quality of the proposed new house below the elevated driveway will depend on its final design and exterior finishes. It is essential that it should not intrude on the visitor experience of the garden or its views.

6.5 Specific visual impacts

6.5.1 Contrasts

Visual contrasts caused by the development through changes to the intrinsic character of the landscape of the site will be minimised through careful siting, landscaping, building forms and scale and recessive exterior finishes. There will be very little need for changes to landform.

6.5.2 Interruption

The proposed development is considered unlikely to interrupt any major views to or from the Bible Garden. Any new development will be located so that the Bible Garden can still be read as a discrete entity and appreciated for its original purpose.

6.5.3 Prominence

The prominence of the Proposal will be reduced by the lot design and careful controls over the scale, form, design and materials of any new development.

6.6 Extent of and significance of impacts

6.6.1 Extent of impacts

The initial extent of impacts will be ameliorated by the mitigative measures recommended and long term impacts will reduce as landscaping matures. Given the location of the Proposal, the present character of the landscape and the nature of the proposed development, the extent of impacts is judged to be low and acceptable.

6.6.2 Significance of impacts

The importance of the impact is judged to be low since subdivision of the lower part of the existing site from the Bible Garden and sensitive redevelopment of the lower lot will have a negligible impact on the garden's significance.

Considered together, the extent and significance of impacts are assessed to be low and acceptable. The recommended mitigative measures are considered likely to be effective.

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7.0 STATEMENT OF HERITAGE IMPACT

7.1 Need for reflecting existing land uses in appropriate zonings and subdivision

The residential use of the lower part of the subject land threatens possible land tax burdens on the Trustees, even though the upper part is undeveloped except for the Bible Garden. Subdivision of the lower part of the land for continuing residential use and conservation of the Bible Garden with appropriate zoning and statutory protection would give the garden protection commensurate with its significance. Subdivision would also allow the burden of maintenance of the elevated concrete driveway to lie with the owner of the lower residential allotment, rather than with the owners of the Bible Garden allotment. Active management of the Bible Garden to maintain its design intent and appropriate planning controls over the garden's visual catchment would also be necessary.

7.2 Need for Development adjacent to a Heritage Item

The proposed development is on the land owned by the Applicant. While it is adjacent to the heritage item ie the Bible Garden, it does not affect the original concept or design intent of the garden, nor does it significantly affect important views to or from the Bible Garden.

7.3 Likely Impact on The Bible Garden

The historical significance of the Bible Garden will be retained but can only be understood by the community by way of interpretive media such as signage, local histories, tourist brochures, self-guiding trails. The historic layout of the garden will be retained, but the plantings and hard landscape elements will need to be managed and enhanced if the original concept is to be respected.

The impact on aesthetic significance will be minimal. The major views to the north of the Bible Garden will be unaffected by the Proposal. The view towards the Bible Garden from the public road (Mitchell Road) will be slightly affected by the Proposal. These impacts are considered acceptable and manageable. They will be minimised by careful subdivision design, careful siting of new buildings, additional planting and by controls over the form, scale and exterior finishes of new buildings as recommended in Section 6.5 below.

7.4 Mitigative Measures

The impact of new development adjacent to a heritage item needs to be minimised by the implementation of appropriate mitigative measures. The suggested curtilage for the Bible Garden is recognition of its sphere of influence in the landscape. Many developers are now creating residential developments which include tighter controls over building footprints, setbacks, the design of dwellings, construction materials and landscaping. Impacts of the Proposal will be reduced by implementation of comprehensive and detailed controls over, height, scale, form and exterior finishes of any new structures.

If approved by Pittwater Council, these controls will ensure that new development on the site is of a high quality and that the impacts on the heritage significance of the Bible Garden are minimised. Recommended mitigative measures are listed below.

7.4.1 Subdivision Design

The subdivision boundary should be determined to allow for retention of the significant area of the Bible Garden and planning control over any new garage/carport, access stairs and other improvements to the lower lot.

7.4.2 Landscaping

A large specimen of *Angophora costata* previously grew on the lower section of the existing lot, providing a filtered view from the upper levels. It would be appropriate to replace this tree with a specimen of the same species propagated from local seed, so that the original landscape effect can be regained.

Other landscaping on the lower lot should be designed in such a way that it does not obscure the view from the Bible Garden. Preference on the lower lot should be given to local indigenous species. New plantings in the Bible Garden should include specimens of plants mentioned in the Bible. There is an opportunity to improve hard landscape elements by use of natural materials such as sandstone rather than the concrete blocks previously used.

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7.4.3 Building Envelope
The building envelope for any new dwelling under the elevated driveway should not allow any visual intrusion into the view from the Bible Garden, either from the existing viewing point near the Ten Commandments plaque or from points further to the south.

7.4.4 Entrance Drive
The existing entrance drive from Mitchell Road is two concrete vehicle tracks, with an elevated concrete causeway bridging the gap to the adjoining property downhill to the east. This type of surface should be retained for the driveway. Any new hard surfaces should be coloured to blend with the existing landscape.

7.4.5 Driveways
Any subsidiary driveways should be paved in material and colour chosen to blend with the existing landscape

7.4.6 Gates and Fences
There are no gates or fences to the street frontage of the site at present and this is considered desirable.

7.4.7 Power and Phone Lines
All power and phone lines should be undergrounded.

7.4.8 Water Supply and Storage Facilities
Any new water storage facilities such as rainwater tanks should be located and finished to minimise visual impact.

7.4.9 Residential Dwellings
Residential buildings should be designed to reduce their visual bulk and to blend with the existing landscape character. Building form, scale and exterior finishes will be compatible with the established character of the region and designed to reduce the impact on views towards the site from surrounding areas. Compatible contemporary design of a high standard is to be preferred to obvious historical reference and simple forms are to be preferred to complex designs.

Materials and exterior finishes which reproduce or complement the natural colours of the landscape will be preferred, such as restricted palettes of tertiary colours which blend naturally with the surrounding landscape. Highly reflective surfaces such as large areas of unshaded glass or untreated metal roofing should be avoided, as should materials which are stridently coloured or strongly contrasted with adjoining materials.

Traditional materials such as stone, earth coloured brickwork, bagged brickwork and painted or pigmented concrete blockwork should be considered for exterior walling. Painted corrugated steel or natural earth-coloured tile or shingle roofing is appropriate.

7.4.10 Ancillary Buildings
Ancillary buildings such as separate garages or carports should be sited to minimise visual impact and designed and coloured to complement residential dwellings.

7.4.11 Car Parking
The Proposal provides for a double carport for the proposed residential lot and for three car parking spaces for the Bible Garden. This is considered adequate for the nature of use of the Bible Garden. Additional parking demand for special events at the Bible Garden will continue to require visitors to park some distance from the Garden, as has been the case since the Garden was founded in 1966.

7.4.12 Effluent Disposal
Effluent disposal must be to Council's requirements and is unlikely to have a negative impact on the heritage significance of the item.

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8.0 CONCLUSION & RECOMMENDATIONS

8.1 Conclusion

It is considered that the Bible Garden at Mitchell Road, Palm Beach is an item of environmental heritage at a State level. It should be afforded statutory protection by listing on the State Heritage Register and in the Schedule of Items of the Environmental Heritage in Pittwater Local Environmental Plan 1993.

It is considered that the Proposal to subdivide the existing lot will have minor and acceptable impacts on the heritage significance of the Bible Garden and that these impacts can be reduced and managed by implementation of the Mitigative Measures recommended in Section 7.4 above.

8.2 Recommendations

It is recommended:

1. that the Bible Garden should be afforded statutory protection by listing on the State Heritage Register and in the Schedule of Items of the Environmental Heritage in Pittwater Local Environmental Plan 1993;
2. that Pittwater Council give favourable consideration to an application to subdivide the existing lot on which the Bible Garden is located into two lots, the lot boundary to be determined in such a way that the significant parts of The Bible Garden are retained;
3. that if subdivision is approved, it should be subject to the mitigative measures in Section 7.4 above and any other conditions imposed by Council to conserve heritage significance;
4. that Pittwater Council consider an appropriate zoning for the Bible Garden such as Special Uses (Bible Garden), with an appropriate residential zoning on the remaining lot;
5. that Pittwater Council give favourable consideration to any proposal by the Bible Garden Memorial Trust to donate the Bible Garden to Council as a rare community asset;
6. that, if Council should acquire the Bible garden by gift, that it be designated Community Land of Cultural Significance and that, in accordance with the requirements of the Local Government Act, a Plan of Management be prepared for the site;
7. that the Bible Garden be managed by a joint body including representation of the existing Trust, Council and relevant community groups with expertise in management of cultural landscapes of heritage significance. (Such expertise may be available from groups such as the Palm Beach Association, the Australian Garden History Society, an eventual 'Friends of the Bible Garden', the Friends of the Royal Botanic Gardens Sydney and the Friends of Rookwood).

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9.0 SOURCES CONSULTED

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11.0 APPENDICES

11.1 Article from *The Australian Women's Weekly* 10 May 1967
11.2 Interpretive brochure by Beatrice V Robinson, February 1977
11.3 Information leaflet on The Bible Garden

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E OF KNOWLEDGE of good and evil, with whose Eve was tempted, is thought to have probably the apricot ("apple is a mistranslation").

HE GRAPEVINE. "I am the true vine, and my ather is the husbandman. Every branch in me that eareth not fruit he taketh away . . ." (John 15; 1, 2.)

LILIES OF THE FIELD ("consider . . . how they grow; they toil not, neither do they spin") are thought by some scholars to be the chamomile (anthemis).

Page 24

On a hill with a view, a Sydney man has devotedly planted out his land

BIBLE GARDEN

ONE of Australia's most unusual gardens nestles gently on a hillside at Palm Beach, overlooking Pittwater, Barrenjoey Head, and the Pacific Ocean.

At first glance the bright patches of color intermingled with the vivid green of grass and shady trees are just part of an ordinary garden. But walk into it, and you will find that it is a Bible Garden.

In it 143 of the 148 plants, trees, and shrubs mentioned in the Old and New Testaments have been lovingly planted in the last three and a half years by its owner, Mr. Gerald H. Robinson, a Sydney businessman.

With twinkling brown eyes and a salt-and-pepper beard, Mr. Robinson, who looks a little like Santa Claus out of uniform, had the idea of planting a Bible Garden when he read about a similar one next to the Cathedral at Bangor, Wales.

He bought a block of land at Palm Beach about ten years ago, but didn't want to build on it because he already had a home at St. Ives and an apartment in town.

"I couldn't decide what to do," he said.

"Then I read about the garden in Wales planted by Professor Tatum Whitehead, and I thought this would be ideal for my land.

"I went to Wales to see it. I was most impressed and on my return in 1963 I started work on my land."

Married, with two sons and a daughter, Mr. Robinson does most of the gardening himself.

"My sons have their families to look after, and my daughter, a Church of England deaconess, is busy with her parish. I have a man come in now and then to mow the lawns. I'm over 70, you know, but I do prefer to do the gardening myself. Somebody else might pull out one of my special plants thinking it's a weed," he said.

Despite his three and a half years' work on the garden, Mr. Robinson is not satisfied.

"My ambition is to get more plants from the Holy Land. I have already imported some, but they aren't all flourishing as they would in their natural environment," he said.

"At first I wasn't too sure what to name the garden. I was toying with the idea of calling it an 'Ecumenical Garden,' but decided that that was too much of a mouthful, and that 'Bible Garden' was much simpler."

On the day of our visit he was busy making new red plastic markers, which carry the names of the plants and biblical references.

"At first, I used all different colored markers, then I discovered that the birds carried them away — I don't know what they do with them. But they won't have anything to do with the red ones, fortunately," he said.

Laid out in chronological order, the garden starts with the plants of Genesis and winds around to Helichrysum oriental, which Mr. Robinson has planted to represent immortality.

As one walks in the gate, the bed on the right contains wheat, oats, and grasses, the plants of the Creation.

"*And the earth brought forth grass, and herb yielding seed after his kind, and the tree yielding fruit, whose seed was in itself, after his kind.*" (Genesis 1; 12.)

In the same bed grows the conjectured tree of knowledge of good and evil, the apricot—not the apple as one might expect.

"The original Hebrew specified no particular fruit, only one 'sweet of smell and taste.' Before the 17th century, almost all fruit was known as an apple.

GARDENER Gerald H. Robinson is managing-director of a large car-distributing firm.

Scholars today believe that the apricot was the only fruit existing at that time which fulfilled the Hebrew description," explained Mr. Robinson.

In the garden is the Mediterranean cypress, believed to be the gopherwood Noah used for his boat.

Beside it is the olive, from Genesis 8; 11, "*And the dove came in to him in the evening; and, lo, in her mouth was an olive leaf plucked off: so Noah knew that the waters were abated from off the earth.*"

After the Flood, Noah became a husbandman and planted a vineyard. So Mr. Robinson has grown a grapevine.

Passing by the oak, under which Abraham built the first recorded altar to God, the visitor comes to the bramble, in which a ram caught its horns and was offered up as a sacrifice instead of Isaac.

"*And Abraham lifted up his eyes, and looked, and behold behind him a ram caught in a thicket by his horns: and Abraham went and took the ram, and offered him up for a burnt offering in the stead of his son.*" (Genesis 22; 13.)

Isaac later had a son, Esau, who sold his birthright to his brother Jacob for "mess of pottage," probably a soup made of lentils. Lentils are planted next to the bramble.

The corn of Pharaoh's dream, the rushes which sheltered Moses as a baby, the withes of the willow that bound Samson, the holly oak, whose branches caught Absalom, and the Cedars of Lebanon of Solomon's Temple — all these are represented, and many more.

Mr. Robinson has read widely on his subject. Scholars aren't unanimous about the identity of every biblical plant, so the choice is sometimes conjectural.

The herb marjoram is said to be the hyssop which the Israelites dipped in the blood of the Passover Lamb and then painted on their lintels and doorposts to deliver them from the tenth plague, which killed the first-born son in every family.

After their exodus from Egypt, the Israelites would have starved in the wilderness if God had not sent manna from Heaven.

Scholars believe that there are at least four possible sources of manna. One of them is the tamarisk tree, host to a tiny insect which pricks the leaves and branches, causing a sugary juice to ooze out. This dries and settles on the ground.

"The lilies of the field" (Matthew 6; 28) are believed to be either the multi-colored anemone or the chamomile (anthemis). To be on the safe side Mr. Robinson grows both.

Many of Jesus' parables mentioned plants — the mustard seed, tares (a form of rye-grass), and the sycamine (mulberry tree). All these grow freely in the garden.

There are, too, the palm whose branches were strewn before Christ as he made his entry into Jerusalem, the Cercis siliquastrum, on which Judas is said to have hanged himself, and the myrrh and aloes used to anoint Christ's body.

Mr. Robinson has compiled a 15-page brochure which explains the Bible Garden to its many visitors.

Church groups often bring parties and arrange outings there on weekends.

Officially opened in March, 1966, by Mr. Justice Richardson ("I cannot remember the exact date, only that it was the wettest Saturday in March," said Mr. Robinson), the garden is open to the public free of charge. There is a box at the gate for "thank-offerings," which are given to St. David's Church, Palm Beach.

Although a house could be built on the land, Mr. Robinson does not believe that it is wanted. He says, "The garden and the view behind it provide a perfect example of the glory of God's creation."

JENNY BOYAN

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THE AUSTRALIAN WOMEN'S WEEKLY—May 10, 1967

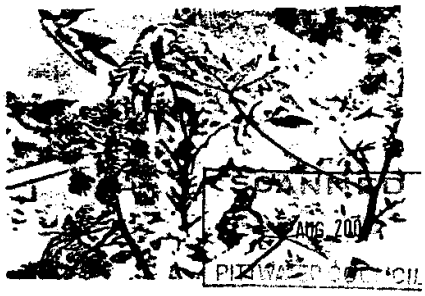
Appendix 11.1 Article from *The Australian Women's Weekly* 10 May 1967

"And God called the dry land Earth; and the gathering together of the waters called he Seas: and God saw it was good." (Genesis 1: 10.)

AT WORK in the garden, with its 143 labelled varieties of biblical plants. Mr. Robinson does most of the gardening himself.

PICTURES BY STAFF PHOTOGRAPHER RON BERG

AL'ALTA, in appearance the nearest available to the Middle East acacia which provided the wood Moses used to house the Commandments.

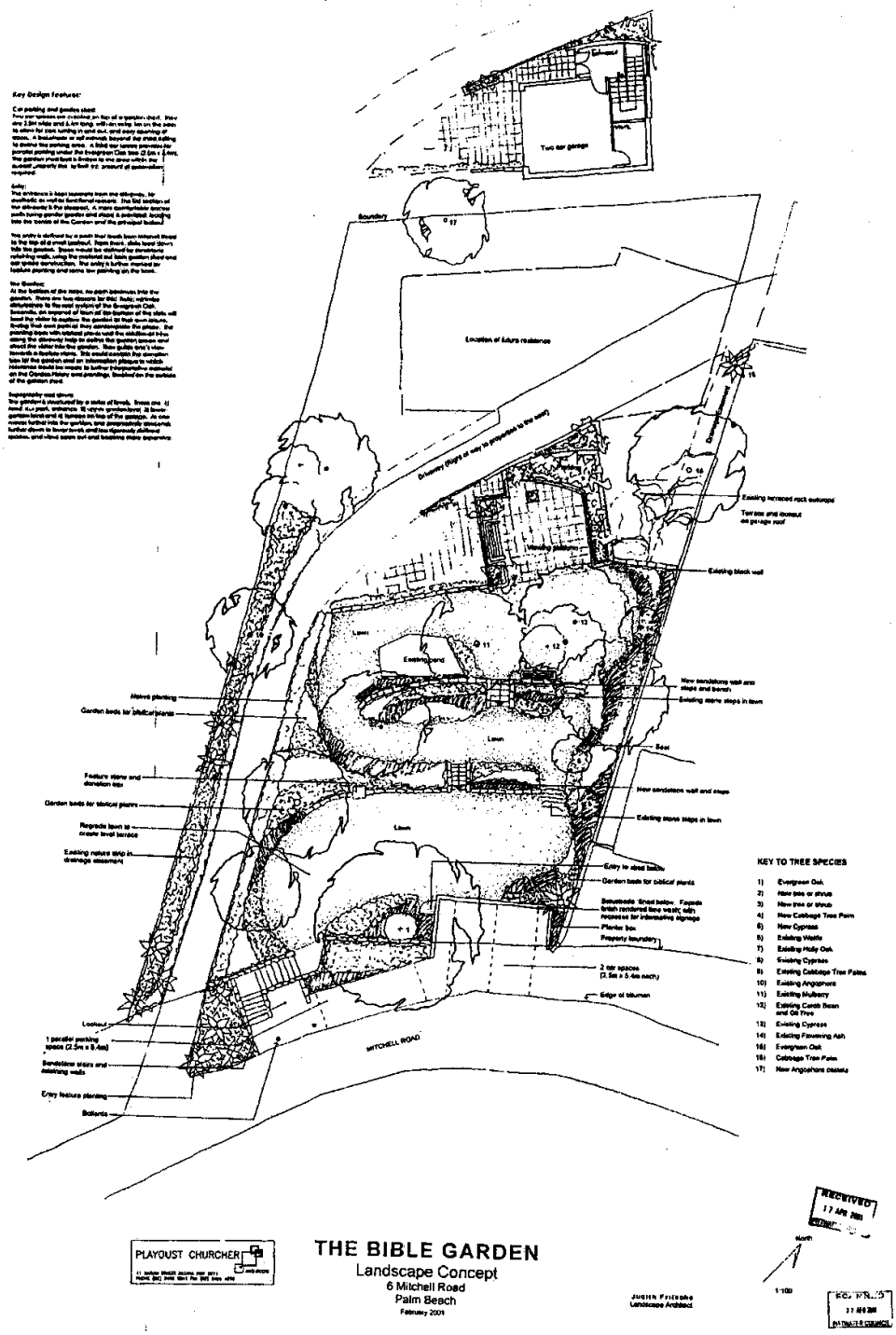


LEFT: Myrtle (" . . . instead of the briar shall come up the myrtle tree"—Isaiah).

ABOVE: Gourd, or castor-oil tr God "prepared a gourd, and ma it to come up over Jona

ANNEXURE D

LANDSCAPE CONCEPT PLAN



ANNEXURE E

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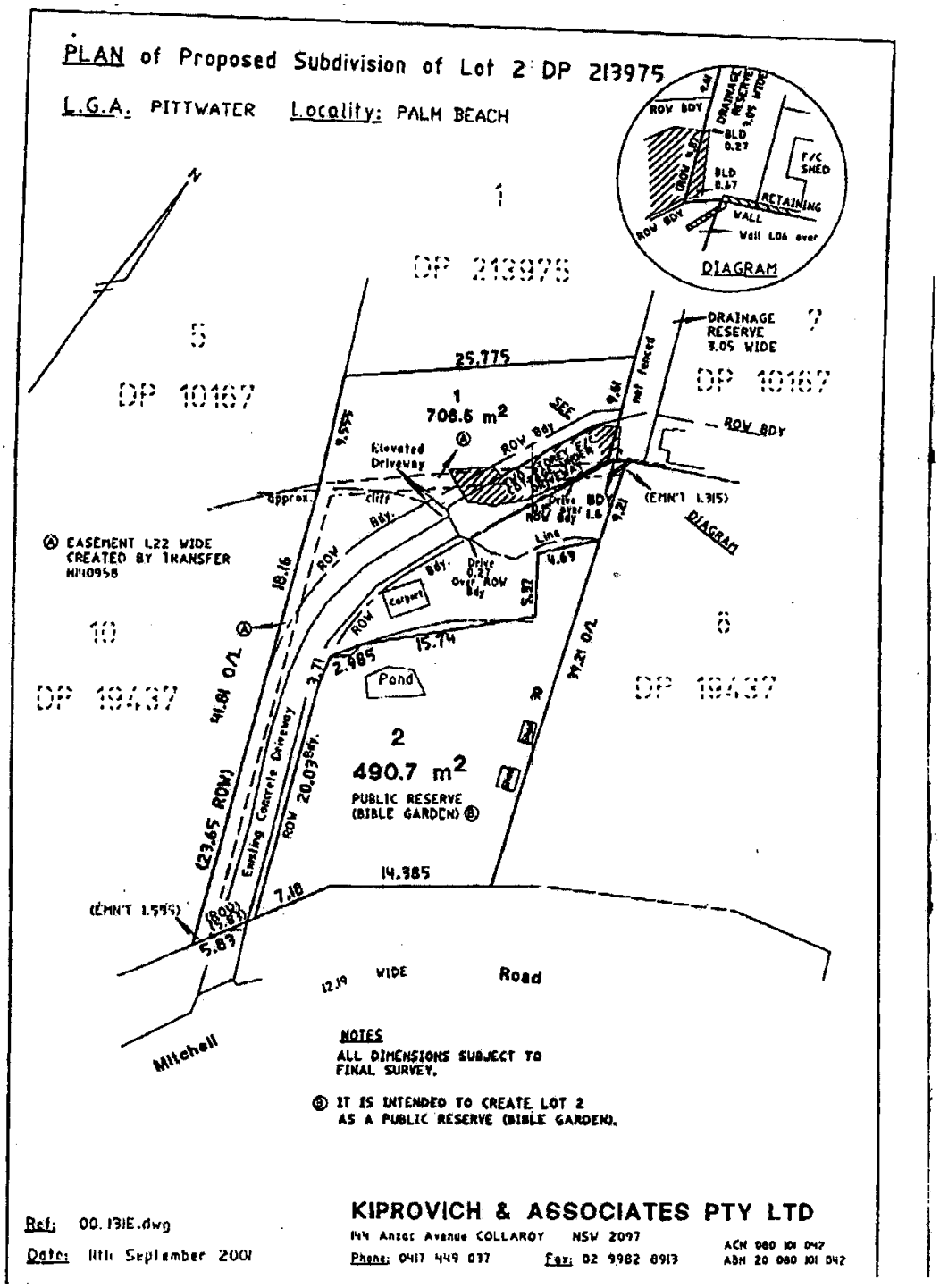


ANNEXURE F

Draft Plan of Management of the 'Bible Garden' as Community Land (Local Government Act 1993, section 36)

Land: proposed lot 2 in plan of subdivision of 6 Mitchell Road, Palm Beach (the 'Bible Garden')

Classification of the land as 'community land (area of cultural significance)' (section 36(4)(d) Local Government Act 1993)

Objectives (section 36(3)(b))
Conservation and enhancement of the land as a bible garden, in particular for:

- The cultivation of plants mentioned in the Bible,
- Ecumenical contemplation,
- Admiring the view north, and
- Weddings, baptisms and informal visits

Performance Targets (section 36(3)(b))

- Timely and effective undertaking of routine maintenance
- Maintaining appropriate public liability insurance
- Encouraging active, ongoing assistance from the incorporated association 'Friends of the Bible Garden Memorial' ('Friends')
- Assisting with signage and other means of publicising the Bible Garden, as discussed with the committee of the Friends from time to time

Means by which Council proposes to achieve the plan's objectives and performance targets (section 36(3)(c)):

- Management by a committee of Council the members of which include the committee of the Friends

Assessment. Manner in which Council proposes to assess its performance with respect to the plan's objectives and performance targets (section 36(3)(d):

- Consideration of periodic reports from the Friends, including annual financial and activity reports, and periodic landscaping and planting plans

ANNEXURE G

Annexure to Application for Incorporation of 'Friends of the Bible Garden'

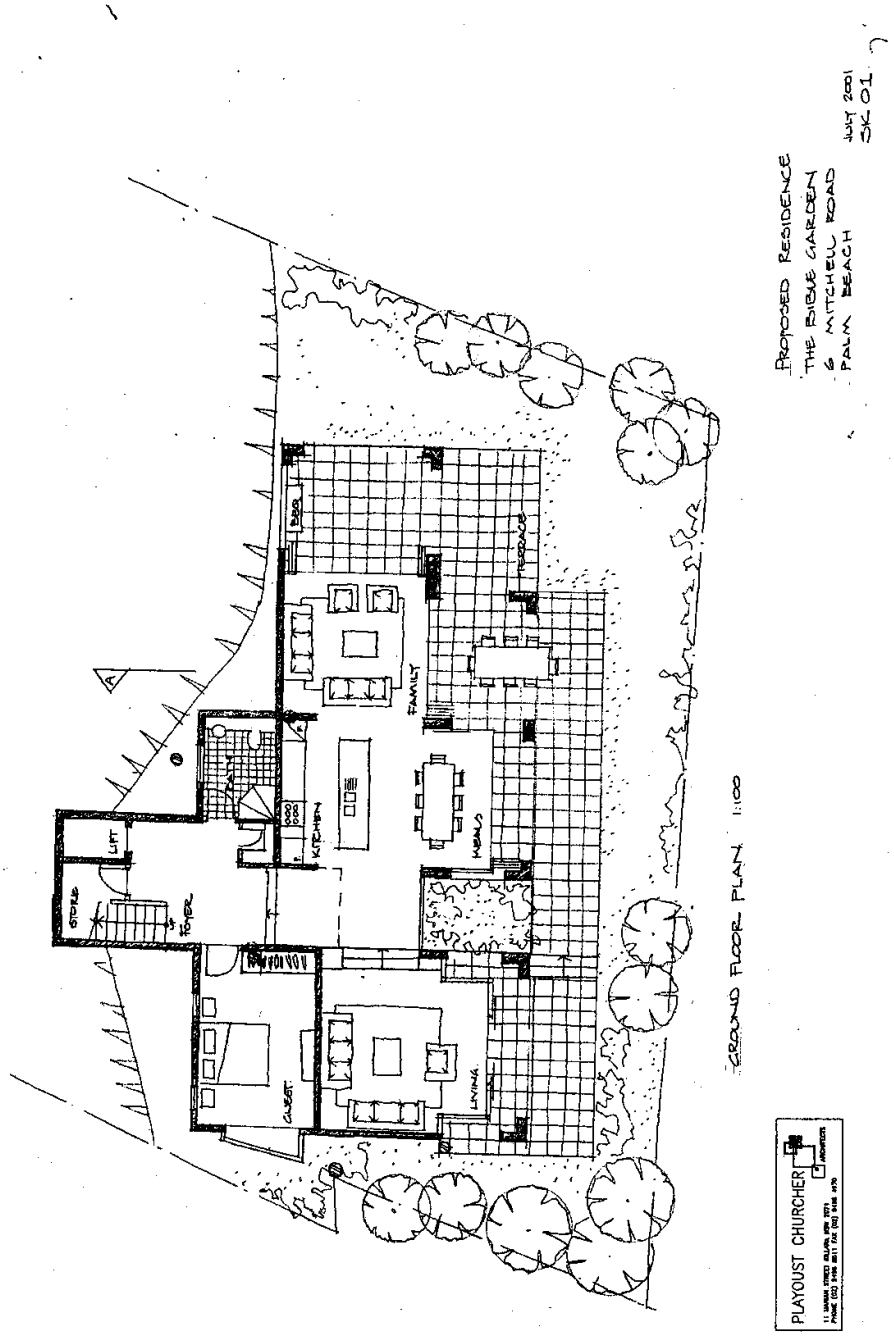
The **objects** of the Association will be to support the conservation, maintenance and enhancement of the Bible Garden at Mitchell Road, Palm Beach as a place of ecumenical contemplation and a place that promotes consideration of God's creation, the Bible and the teachings of Jesus Christ.

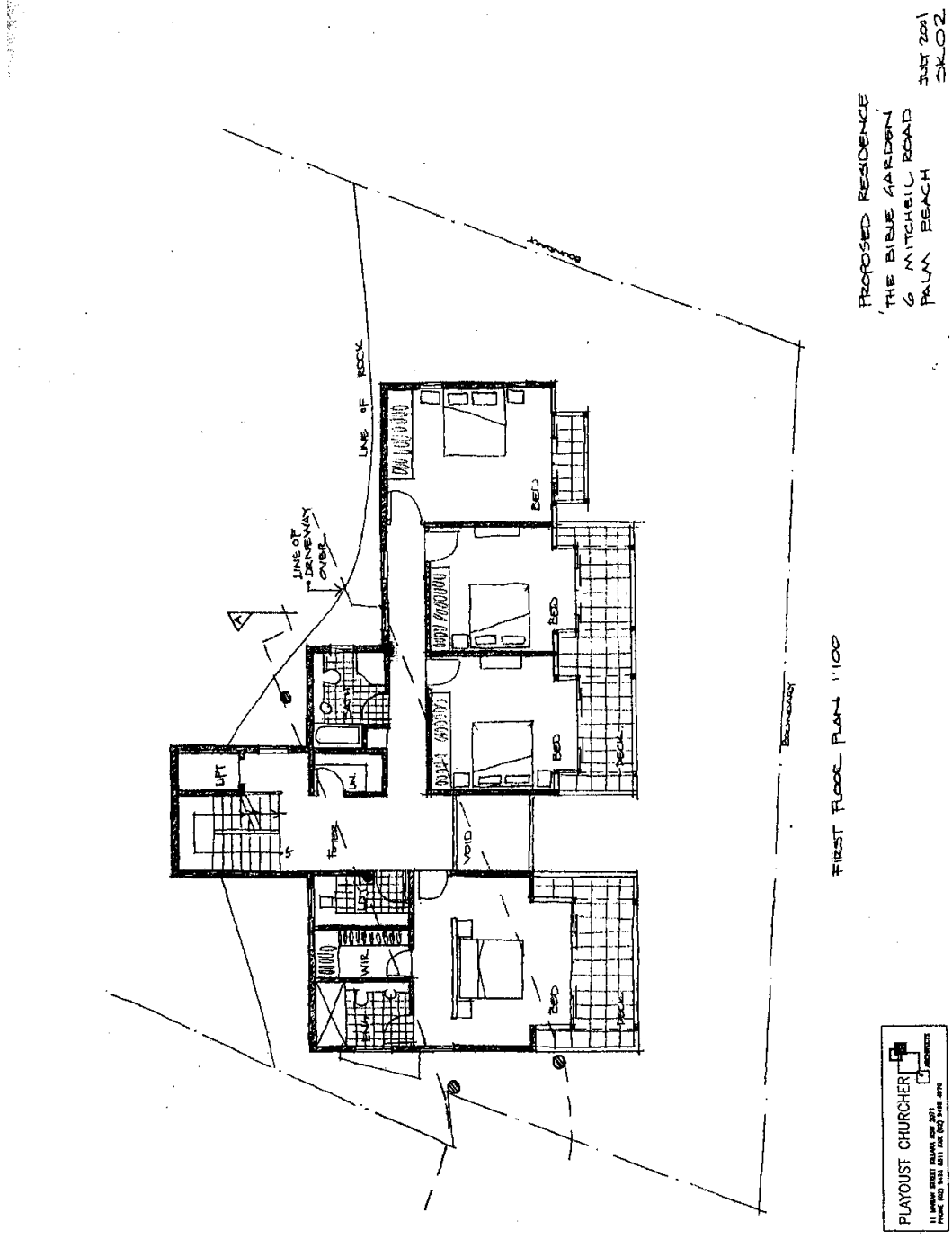
The **principal activities** of the association will be:

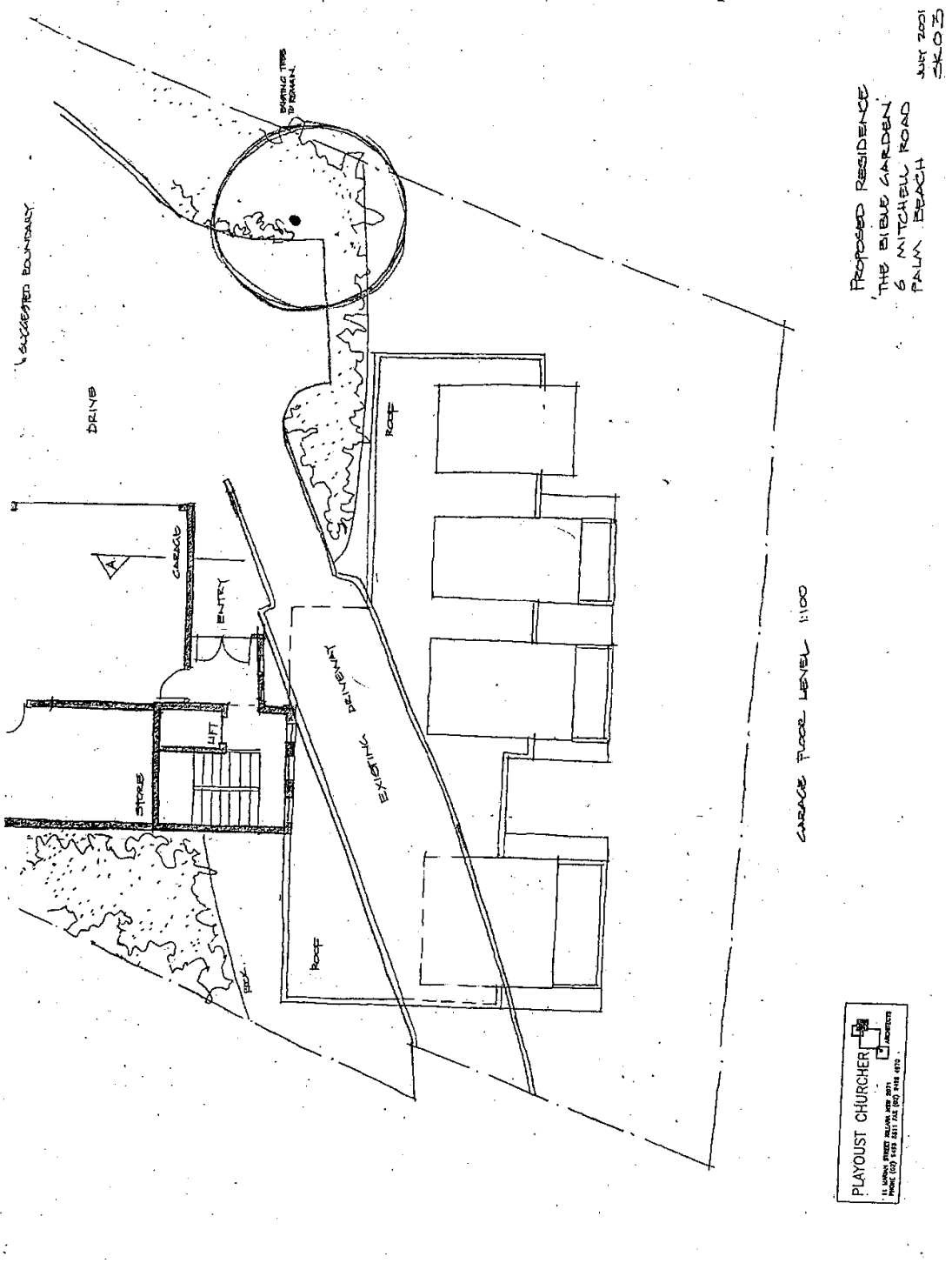
1. assisting Pittwater Council to conserve and enhance the Bible Garden, and to promote the public enjoyment of the Bible Garden;
2. volunteering gardening and other services, including:
   a) coordinating bookings of the Bible Garden for wedding and christening ceremonies;
   b) preparing and implementing periodic landscaping and planting plans;
   c) planting and labelling of biblical and other plants in accordance with periodic plans; and
   d) maintaining the garden;
3. fundraising;
4. publishing a newsletter; and
5. any other activities to support the Bible Garden.

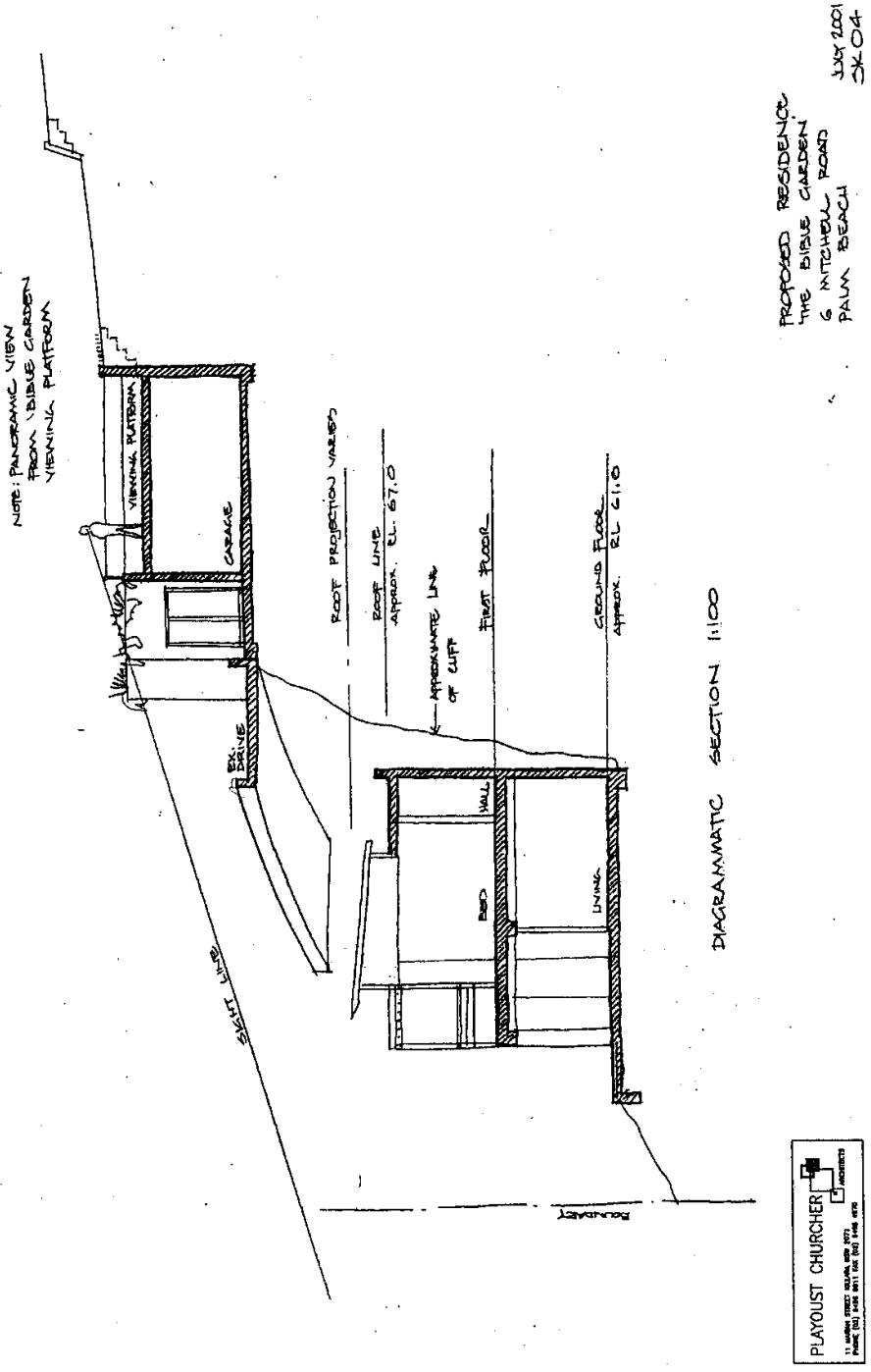
ANNEXURE H

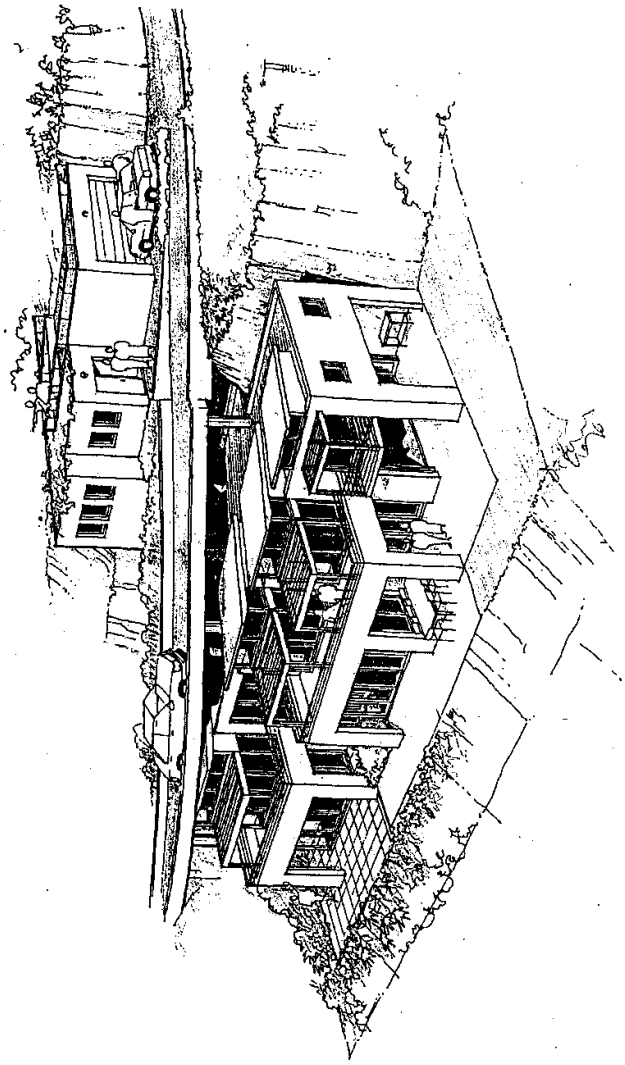
PROPOSED RESIDENCE SKETCH




PROPOSED RESIDENCE
THE BIBLE GARDEN
6 MITCHELL ROAD
PALM BEACH
JULY 2001
DA02
LINE OF ROCK
LINE OF DRIVEWAY OVER
BED 3
BED 2
BED 1
DECK
LIFT
LIN
TOWEL
VOID
WIR
BOUNDARY
FIRST FLOOR PLAN 1:100
PLAYOUST CHURCHER


PROPOSED RESIDENCE
THE BIBLE GARDEN
6 MITCHELL ROAD
PALM BEACH
JULY 2001
SK-03
SUGGESTED BOUNDARY
DRIVE
GARAGE
ENTRY
LIFT
STORE
EXISTING
PLANTING
ROOF
GARAGE FLOOR LEVEL 1:100
PLAYOUST CHURCHER


PROPOSED RESIDENCE
THE BIBLE GARDEN
6 MITCHELL ROAD
PALM BEACH
JULY 2001
DA04
NOTE: PANORAMIC VIEW FROM BIBLE GARDEN VIENNA PLATFORM
VIENNA PLATFORM
GARAGE
ROOF PROJECTION VALLEY
ROOF LINE APPROX. RL 67.0
APPROXIMATE LINE OF CLIFF
FIRST FLOOR
GROUND FLOOR APPROX. RL 61.0
BIBLE GARDEN
WALL
BED
LIVING
EIGHT LINE
BOUNDARY
DIAGRAMMATIC SECTION 1:100
PLAYOUST CHURCHER

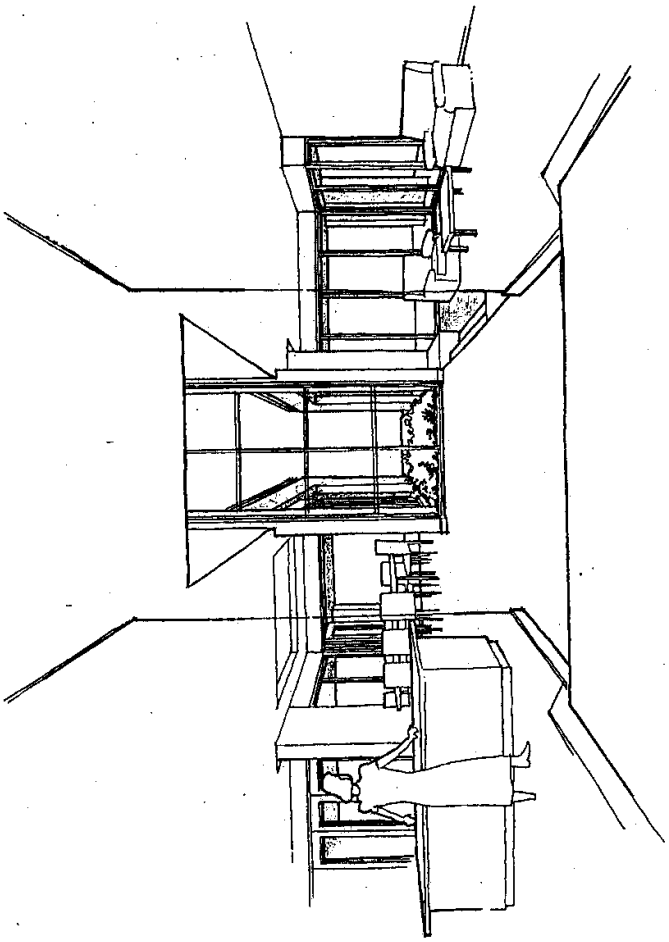


PROPOSED RESIDENCE
THE BIBLE GARDEN
6 MITCHELL ROAD
PALM BEACH
JULY 2001
SK05

AERIAL VIEW OF
PROPOSED RESIDENCE AND
BIBLE GARDEN.

PLAYOUST CHURCHER ARCHITECTS
11 MARIAN STREET KILLARA NSW 2071
PHONE (02) 9498 2811 FAX (02) 9498 4970

PROPOSED RESIDENCE
'THE BIBLE GARDEN'
6 MITCHELL ROAD
MALVA BEACH JULY 2001
SK06



INTERNAL PERSPECTIVE VIEW. - GROUND FLOOR

PLAYOUST CHURCHER

ANNEXURE I

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11 MARIAN STREET KILLARA NSW 2071 TEL (02) 9498 6811 FAX (02) 9498 4970 PLAYOUST CHURCHER ARCHITECTS SINCE 1961

13 September 2001

PROPOSED RESIDENCE

6 Mitchell Road, Palm Beach

Introduction

The following concept sketches are intended to illustrate a possible future residential development of proposed Lot 1. They have been prepared for the purpose of identifying suitable development parameters for incorporation in the Development Control Plan/Locality Plan at the time of subdivision. The sketches illustrate the proposed design control parameters, being the envelopes, setbacks and areas that are particular to this site and vary considerably to the DCP.

Development consent is not sought in relation to the residence proposed in the concept sketches. Rather a development application to build any particular residence in accordance with the Development Control Plan/Locality Plan (as amended) will be lodged subsequent to subdivision.

1.0 Compliance with Council Requirements

Under the "Palm Beach Ridgeline" Locality Plan and Building Code, Council sets out various objectives and controls. The following is an explanation of how the proposal responds and complies to each issue.

1.1 Built Form

1.1.1 Designated Slips Areas

The site is located within the designated slip area and a geo-technical report will be required to support a development application. The development control plan states that at no time shall disturbance exceed 40% of the site and the development shall not detrimentally affect the long term stability of the area.

The R.O.W and access road, residence and terraces on lot 1 disturbed in excess of 40% of the natural topography of lot 1 when they were constructed in the 1960s. The design of the new residence has been tailored to the existing landform and features of the site. It is located at the lower end of the site under R.O.W.

The house is situated such that the view lines from the Bible Garden will not be interrupted.

John JF Playoust B.Arch (Syd) FRAIA FACCO Luke JJ Playoust B.Arch (hons) (UTS) ARAIA Brett K Churcher B.Arch (hons) (UTS) ARAIA RFIV
John JF Playoust & Co Pty Limited ACN 008 503 188 & Brett Churcher Architects Pty Ltd ACN 003 751 611 trading as Playoust Churcher Architects

1.1.2 Site Coverage

The following are the site coverage calculations:

Total Site Area by Surveyors Submission 706.5m²

Area of Rights of Way across the site to be deducted from the site area:

R.O.W. 164.4 m²

Net Site Area: 542.1m²

Allowable Built Upon Area @ 40% net site area: 216.84m²

- Area of garage, drive & entry 160.0m²
- Less: area of Landscaped Roof Garden 36.0m²
  124.0m²
- Add area of Ground Floor footprint 168.0m²

Proposed Total Built Upon Area (to be confirmed) 292.0m² (53.87%)

Proposal would exceed code by approximately 75.16m² (13.9%)depending on the actual subdivision boundary and subject to final survey.

Required Landscaped area @ 60% net site area: 325.26m²

Proposed Landscaped Area: 250.1m² (46.1%)

Proposal would be approximately 75.16m² below the minimum required landscaped area.

The aim of the site coverage development controls is to restrict the footprint of development on site, to enable retention of the natural vegetation and facilitate planting of additional landscaping, to minimize the bulk of buildings' (Development Control Plan No.LP3 – Palm Beach Ridgeline Locality Plan at 3.1.3)

The proposed developments envelope for lot 1 exceeds the controls in the DCP but is consistant with the stated aim of the controls.

- The alternative of residential redevelopment of the undivided site would result in a larger permissible built upon area than if the proposed development is allowed on lot 1, with lot 2 being excluded from residential development through rezoning.
- The proposal would not have an adverse effect on natural vegetation, which was substantially altered in the 1900's when the elevated concrete driveway was constructed and the remainder of lot 1 was terraced. An *angophora costata* would be planted near the northern boundary to replace the existing dead specimen.
- The bulk of buildings is minimised by their location underneath the existing elevated driveway

PLATOUST CHURCHER ARCHITECTS 11 MARIAN STREET KILLARA NSW 2071 TEL (02) 9498 8811 FAX (02) 9498 4970

1.1.3 Side Boundary Setback and Spatial Separation

The side boundary setback is to be one third of the height of the building, from the highest point to the existing ground line

West Boundary – The proposal would comply with this requirement.

East Boundary – Due to the staggered boundary, the wall complies in part with a setback of 2.3m. However, reduces to a 900m dimension at some points of the building. It is important to note that most of the non-compliance occurs under the existing right of way. The existing dwelling is built onto the boundary.

The proximity of the surrounding residences are sufficiently distant so that Council's spatial separation requirements should not apply. There is no residence adjacent to the West, and the proposed residence to the East will be located partly underneath the elevated concrete access driveway, on the Eastern side of a 3.05 metre wide drainage reserve.

1.1.4 Building Lines

We propose that a 3.5m rear building line (to the North) excluding terraces apply to the site.

1.1.5 Building Height

The slope of the land is greater than 20%, thus the maximum building height shall be 10.0 metres. The proposed residence will be well below the maximum permitted height. The building varies in height and has a height above existing ground level of between 7 and 7.5 metres on both the east and west elevations.

1.1.6 Visibility/Viewlines

The proposed residence has been designed to have no impact or views either to or from the Bible Garden. As per the Heritage Report prepared by Musecape Pty Ltd, the development is located so that the Bible Garden can still be read as a discrete entity and appreciated for its original purpose.

Due to the nature of the site and its topography, the residence is located at the northern end of the site below the existing driveway.

The two-storey residence will have a clearance under the driveway varying from approximately 1.2 metres to 4.5 metres. As a result, of its location, views from the Bible Garden will be maintained.

The location of the garage also allows a viewing platform to be located on the garage roof. Again, the location and design will not allow any visual intrusion into the view from the Bible Garden. Refer Section Drawing SK04.

PLAYOUST CHURCHER ARCHITECTS 11 MARIAN STREET KILLARA NSW 2071 TEL (02) 9498 8811 FAX (02) 9498 4970

1.1.7 Building Materials

Proposed building materials will be in sympathy with the surrounding locality. Natural materials such as stone and timber will be used extensively, while painted surfaces will be of natural earthy tones to evoke the character of the Australian bush, and beach.

Materials used will be:

- Stone facing
- Timber cladding and decking
- Painted rendered walls
- Painted steel framing
- Timber framed glazing
- Colorbond steel roof sheeting

Although reinforced concrete will be used extensively for the structure of the residence, there will be no unpainted concrete exposed externally. Correct overhangs have been provided for the large areas of glass, eliminating the need for reflective tinting to the glass to provide sun protection.

1.1.8 Car parking

Council requires a minimum of two off street carparking areas. It was considered that the most sensitive position for the carparking on this site was under a rooftop viewing terrace which forms part of the Bible Garden. Part of the viewing terrace will also be landscaped by way of planters which are over the store and stair.

Due to the nature of the site, the garages and entry to the residence are located below the Bible Garden viewing lines therefore the garage and entry will not become a dominant element in the landscape.

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ANNEXURE J
STATEMENT OF ENVIRONMENTAL EFFECT

Statement of Effect

The environmental effects of the proposed subdivision are regarded as minimal, given the purpose of the application, namely to give planning and land title recognition to the existing distinct Bible Garden and residential uses of the land.

The environmental effects of subdivision of 6 Mitchell Road, so as to retain a part of the land as a Bible Garden (lot 2), would be significantly less than if the whole of the land is sold for residential redevelopment.

See also '7.0 Statement of Heritage Impact' in the Heritage Assessment (annexure C) and in 'Proposed Residence – Compliance with Council Requirements' (annexure I).

ANNEXURE K

Proposed Planning Process for Subdivision of 6 Mitchell Road and Conservation of the Bible Garden Portion

1. Public Exhibition - Draft Heads of Agreement
Draft Heads of Agreement exhibited for public comment.
Timeframe: exhibition period commences within 1 month of receipt of draft documents from Trustees

2. Heads of Agreement Signed
Following consideration of public submissions, Council and Trustees sign the Heads of Agreement.
Timeframe: within 1 month of the last day of the exhibition period

3. Lodgment of Applications
Concurrent lodgment of Development Application (DA) for subdivision, SEPP 1 submission, and application for amendment of Development Control Plan / Locality Plan (DCP), including:

- public reservation of Bible Garden area (based on cultural, heritage and environmental attributes)
- development parameters for the residential lot (for incorporation in DCP) as per concept sketches (Annexure H) and discussion of compliance with council requirements (Annexure I)

Timeframe: within 1 month from date of the Heads of Agreement

4. Public exhibition
Public exhibition of DA, draft DCP, draft plan of management of the Bible Garden as community land (Local Government Act 1993, section 36), the objects and activities of the incorporated association Friends of the Bible Garden Memorial Inc, and proposal to establish a standing committee of Council responsible for the management of the Bible Garden and whose members include the committee of the Friends of the Bible Garden Memorial Inc.
Timeframe: within 2 months of lodgment of applications

5. Approvals
Subject to due compliance with Council's statutory role as a planning authority:

- granting of development consent for subdivision
- public reservation of Bible Garden area
- draft DCP adopted
- resolution that the Bible Garden area will be classified as "community land" upon dedication to Council
- obtain Sydney Water certificate
- lodgment with Land and Property Information of subdivision plans endorsed with Council's subdivision certificate

Timeframe: within 5 months from date of lodgment of applications

6. Issuing of separate land titles and vesting

- Issuing of separate certificates of title and vesting of Bible Garden area in Pittwater Council as Public Reserve (Bible Garden)
- Council adopts Plan of Management of the Bible Garden as Community Land (Local Government Act 1993, section 36) and forms a management committee which includes the committee of the Friends of Bible Garden Memorial Inc

Timeframe: within 7 months of date of lodgment of applications

7. Rezoning of Bible Garden portion

Council proceeds to amend Pittwater Local Environmental Plan 1993 (or make corresponding arrangements under any successor plan) so as to rezone Bible Garden in accordance with the dedication of Public Reserve (Bible Garden) stated in the plan of subdivision, and include the Bible Garden as a heritage item. Council submits the draft plan etc to the Director-General of the Department of Infrastructure, Planning and Natural Resources.
Timeframe: within 11 months of date of lodgment of applications

- Various new sandstone walls for garden beds, and sets of stairs within the garden, and bench and seat
- New feature stone and donation box
- Regraded lawn to create a level terrace
- Viewing platform projecting beyond the NW boundary. This improvement would be provided by the eventual owner of the subdivided northern portion of 6 Mitchell Road, who would make the excavation necessary for a two-car garage, and create a load-bearing roof to the garage to serve as a viewing platform for visitors to the Bible Garden. The roof would be flagged in sandstone and include a balustrade.
- Sandstone paving, interpretation signage, planter boxes, seating and pond upgrade to integrate the existing viewing area with the new viewing platform.

The proposal to subdivide 6 Mitchell Road Palm Beach and give the southern half to Council as 'community land' does not provide a budget for funding the above capital improvements to the Bible Garden. Proceeds of sale of the northern (residential) portion of the land are to be used to fund other projects of the Bible Garden Memorial Trust.

The Friends will seek to fundraise for capital works, and Council and the Friends will work together to seek any potential sources of capital works funding over time.

ANNEXURE L

RESPONSIBILITIES FOR ONGOING MANAGEMENT AND IMPROVEMENT OF THE BIBLE GARDEN

Background

While public reserves are an asset for the community, they can be expensive to maintain. In relation to the proposed gift of the Bible Garden to Council, joint Friends of the Bible Garden-Council maintenance and improvement is proposed. The committee of the incorporated association Friends of the Bible Garden Memorial ('Friends') would be recognised as a formal management committee of Council.

Maintenance: Role of Council

- Prepare and periodically update a plan of management for the Bible Garden, in accordance with the 'community land' provisions of the Local Government Act 1993
- Maintain public liability insurance
- Take bookings for weddings or christenings, and/or collect fees, in accordance with arrangements with the Friends. (The committee of the Friends, as a formal committee of Council, could handle reservations and collect fees on behalf of Council, or Council's Reserves Booking Officer could do so. Pittwater Council presently has both models working well in respect of its other reserves and community buildings.)
- Designate a suitable liaison officer from its Parks and Reserves staff and, upon request, provide advice to the Friends
- Assist with publicity, for example:
    - Street signage
    - Council's website
    - By making available to interested persons periodic reports provided by the Friends to Council, such as financial reports, landscape plans and planting reports
- Provide other assistance as may be agreed with the Friends from time-to-time, for example lawn-mowing

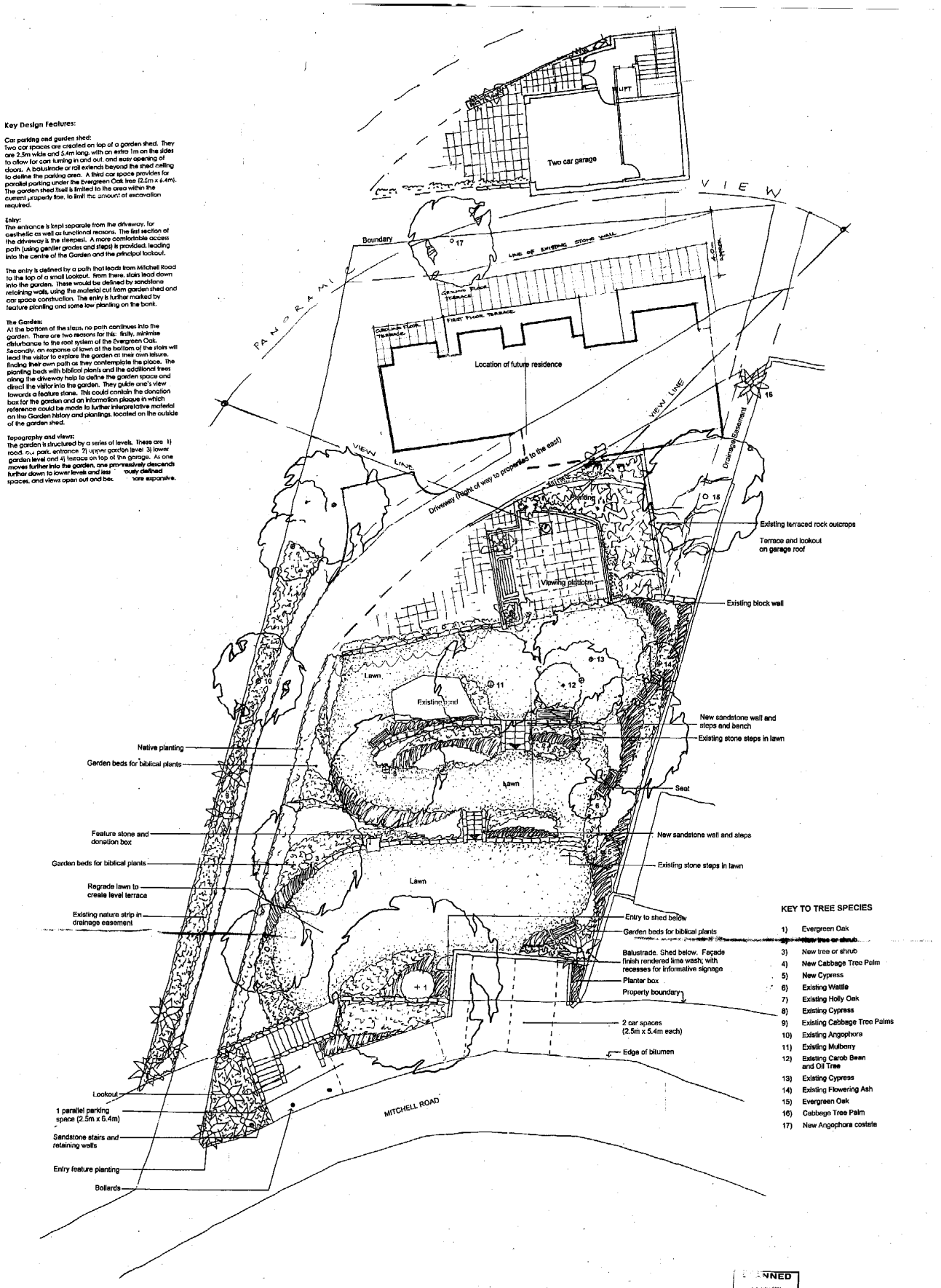
Maintenance: Role of Friends

- Assisting Pittwater Council to conserve and enhance the Bible Garden, and to promote the public enjoyment of the Bible Garden;
- Volunteering gardening and other services, including:
    - Coordinating bookings of the Bible Garden for wedding and christening ceremonies;
    - Preparing and implementing periodic landscaping and planting plans;
    - Planting and labelling of biblical and other plants in accordance with periodic plans; and
    - Maintaining the garden;
    - Fundraising;
    - Publishing a newsletter; and
    - Any other activities to support the Bible Garden.

Capital Improvements

The Landscape Concept Plan (Annexure D) (Judith Fritsche, Landscape Architect, February 2001) includes the following capital improvements to the Bible Garden:

- Improved parking at Mitchell Road boundary, including 3 formed car spaces. Two of the spaces would form the roof (with balustrade) of a garden shed. The shed would include recesses for interpretive signage.
- Improved pedestrian access from Mitchell Road, including bollards, sandstone stairs and retaining walls


Key Design Features:
Car parking and garden shed:
Two car spaces are created on top of a garden shed. They are 2.5m wide and 5.4m long, with an extra 1m on the sides to allow for cars turning in and out, and easy opening of doors. A balustrade or rail extends beyond the shed ceiling to define the parking area. A third car space provides for parallel parking under the Evergreen Oak tree (2.5m x 6.4m). The garden shed itself is limited to the area within the current property line, to limit the amount of excavation required.
Entry:
The entrance is kept separate from the driveway, for aesthetic as well as functional reasons. The first section of the driveway is the steepest. A more comfortable access path (using gentler grades and steps) is provided, leading into the centre of the Garden and the principal lookout.
The entry is defined by a path that leads from Mitchell Road to the top of a small Lookout. From there, stairs lead down into the garden. These would be defined by sandstone retaining walls, using the material cut from garden shed and car space construction. The entry is further marked by feature planting and some low planting on the bank.
The Garden:
At the bottom of the steps, no path continues into the garden. There are two reasons for this: firstly, minimise disturbance to the root system of the Evergreen Oak. Secondly, an expanse of lawn at the bottom of the stairs will lead the visitor to explore the garden at their own leisure, finding their own path as they contemplate the place. The planting beds with biblical plants and the additional trees along the driveway help to define the garden space and direct the visitor into the garden. They guide one's view towards a feature stone. This could contain the donation box for the garden and an information plaque in which reference could be made to further interpretative material on the Garden history and plantings, located on the outside of the garden shed.
Topography and views:
The garden is structured by a series of levels. There are 1) road, cul-de-sac, entrance 2) upper garden level 3) lower garden level and 4) terrace on top of the garage. As one moves further into the garden, one progressively descends further down to lower levels and less obviously defined spaces, and views open out and become more expansive.
Two car garage
LIFT
VIEW
PANORAMA
Boundary
LINE OF EXISTING STONE WALL
4.500m HIGH
GROUND FLOOR TERRACE
FIRST FLOOR TERRACE
Location of future residence
VIEW LINE
Drainage Easement
Driveway (Right of way to properties to the east)
Parking
Existing terraced rock outcrops
Terrace and lookout on garage roof
Viewing platform
Existing block wall
Lawn
Existing pond
New sandstone wall and steps and bench
Existing stone steps in lawn
Native planting
Garden beds for biblical plants
Seat
Feature stone and donation box
New sandstone wall and steps
Garden beds for biblical plants
Existing stone steps in lawn
Regrade lawn to create level terrace
Existing nature strip in drainage easement
Entry to shed below
Garden beds for biblical plants
Balustrade. Shed below. Façade finish rendered lime wash; with recesses for informative signage
Planter box
Property boundary
2 car spaces (2.5m x 5.4m each)
Edge of bitumen
Lookout
1 parallel parking space (2.5m x 6.4m)
Sandstone stairs and retaining walls
Entry feature planting
Bollards
MITCHELL ROAD
KEY TO TREE SPECIES
1) Evergreen Oak
2) New tree or shrub
3) New tree or shrub
4) New Cabbage Tree Palm
5) New Cypress
6) Existing Wattle
7) Existing Holly Oak
8) Existing Cypress
9) Existing Cabbage Tree Palms
10) Existing Angophora
11) Existing Mulberry
12) Existing Carob Bean and Oil Tree
13) Existing Cypress
14) Existing Flowering Ash
15) Evergreen Oak
16) Cabbage Tree Palm
17) New Angophora costata
PLAYOUST CHURCHER ARCHITECTS
11 MARIAN STREET KILLARA NSW 2071
PHONE (02) 9498 8811 FAX (02) 9498 4970
THE BIBLE GARDEN
Landscape Concept
6 Mitchell Road
Palm Beach
February 2001
Judith Fritsche
Landscape Architect
PLANNED
16 NOV 2004
PITTWATER COUNCIL
North
1:100

PLANNING PROPOSAL

Amendments to Pittwater Local Environmental Plan 2014 (PLEP 2014)

6 Mitchell Road, Palm Beach

November 2022

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Executive Summary

Overview

This Planning Proposal seeks a site-specific amendment to the Pittwater Local Environmental Plan (LEP) 2014 for 6 Mitchell Road Palm Beach, to include:

- the additional permitted use of "dwelling house" on a portion of the site at 6 Mitchell Road, Palm Beach currently zoned RE1 Public Recreation, and
- a maximum building height of 74.5AHD for any future residential development on 6 Mitchell Road.

The site directly adjoins and partially forms a part of the locally listed heritage item "The Bible Garden" at 6a Mitchell Road, Palm Beach as identified within the Pittwater Local Environmental Plan (LEP) 2014. A small portion of the subject site forms part of the heritage listing however it is predominantly located on 6a Mitchell Road to the south of the site. The site has a split zoning of C4 Environmental Living and RE1 Public Recreation pursuant to the Pittwater LEP 2014.

On 9 February 2004, a contract was entered into between Pittwater Council and the Trustees of the Bible Garden Memorial Trust in their capacity as owners of 6 Mitchell Road, Palm Beach (the Heads of Agreement Contract). The Heads of Agreement Contract enabled investigation of subdivision of the Original Lot to enable residential development on the Property and to allow the Bible Garden to continue in perpetuity.

On 30 March 2007 the Pittwater Local Environmental Plan (LEP) 1993 was amended to:

> *rezone 6a Mitchell Road, Palm Beach (Lot 2 DP 1086858) (The Bible Garden) from Zone No 2 (a) (Residential "A") to Zone No 6 (a) (Existing Recreation "A") under Pittwater Local Environmental Plan 1993, and to allow land uses permissible under the relevant plan of management for the remaining land to which this plan applies.*

The rezoning ensured the Bible Garden located at 6a Mitchell Road, Palm Beach was zoned for recreation purposes and the remainder of the site (6 Mitchell Road, Palm Beach) could be used for residential purposes in line with the subdivision and Heads of Agreement Contract.

On 26 June 2014, Pittwater LEP 1993 was repealed and the Pittwater LEP 2014 came into force. The subject site was rezoned under the Pittwater LEP 2014 as follows:

- 6a Mitchell Road, Palm Beach – RE1 Public Recreation; and
- 6 Mitchell Road, Palm Beach – part C4 Environmental Living and part RE1 Public Recreation.

The adoption of Pittwater LEP 2014 resulted in a split zoning for the subject site. The split zoning is inconsistent with the intent of the subdivision and rezoning of the site as agreed to under the Heads of Agreement Contract as it prohibited residential development on the portion of the site zoned RE1.

The Heads of Agreement Contract clearly detailed that the future lot (Lot 1 DP1086858) would be for residential purposes and detailed it as an indicative location for a garage with a viewing platform above for use by the Bible Garden as identified in the Concept Plans provided in Annexure H of the Heads of Agreement Contract.

Dwelling houses are prohibited in the RE1 zone and therefore the southern portion of site cannot accommodate any residential development or associated structures. The subject planning proposal therefore seeks to amend the Pittwater LEP 2014 to include the additional permitted use of dwelling houses on the RE1 zoned portion of the site to facilitate future residential development in line with the intended use of the site as outlined in the Heads of Agreement Contract.

This Planning Proposal outlines the intended effects of the proposed LEP amendments to Pittwater LEP 2014 and provides justification for the proposed changes.

This Planning Proposal has been prepared in accordance with:

- Section 3.33 of the Environmental Planning and Assessment Act 1979 (EP&A Act); and
- The Department of Planning – 'Local Environmental Plan Making Guideline.'.

It is the first stage of the Planning Proposal which seeks the initial Department of Planning, Industry and Environment gateway determination to:

- Support the justification for the proposal;
- Confirm the technical investigations and consultation required; and
- Outline the process for continuing the assessment of the proposal.

As outlined in a 'Local Environmental Plan Making Guideline', the Planning Proposal will evolve throughout the course of preparing the amending LEP as relevant sections will be updated and amended in response to the outcomes of technical investigations and consultation.

The proposal is considered to have a high level of strategic merit based on the following key areas:

- It will facilitate the future intended residential development of the site as envisaged by Council and the Trustees of the Bible Garden;
- It will enable appropriate residential development that recognises the heritage significance of the site and surrounding area; and
- It will not adversely impact on the ecological, cultural or scenic significance of the site and surrounding area.

This Planning Proposal is accompanied by a suite of documents prepared by the applicant and considered by Council in its assessment of the planning proposal.

Land to Which this Planning Proposal Applies

The subject site is located on the northern side of Mitchell Road to the south of Florida Road. The site is commonly known as 6 Mitchell Road, Palm Beach and legally described as Lot 1, DP 1086858. The site comprises a battle-axe lot with an area of approximately 695.1m^2. The site is accessed via a shared driveway from Mitchell Road to the south of the site.

The site significantly slopes to the north with a slope of approximately 34 degrees and has views to Palm Beach to the north east of the site. The site currently contains an existing dwelling located beneath the shared driveway.

The site directly adjoins and partially forms a part of the locally listed heritage item "The Bible Garden" at 6a Mitchell Road, Palm Beach as identified within the Pittwater Local Environmental Plan (LEP) 2014.

The site sits within an established low density residential and environmental living area characterized by low density residential dwellings designed to respond to the topography and existing vegetation in the area.

The site's locational context is shown at **Figures 1 & 2** below.

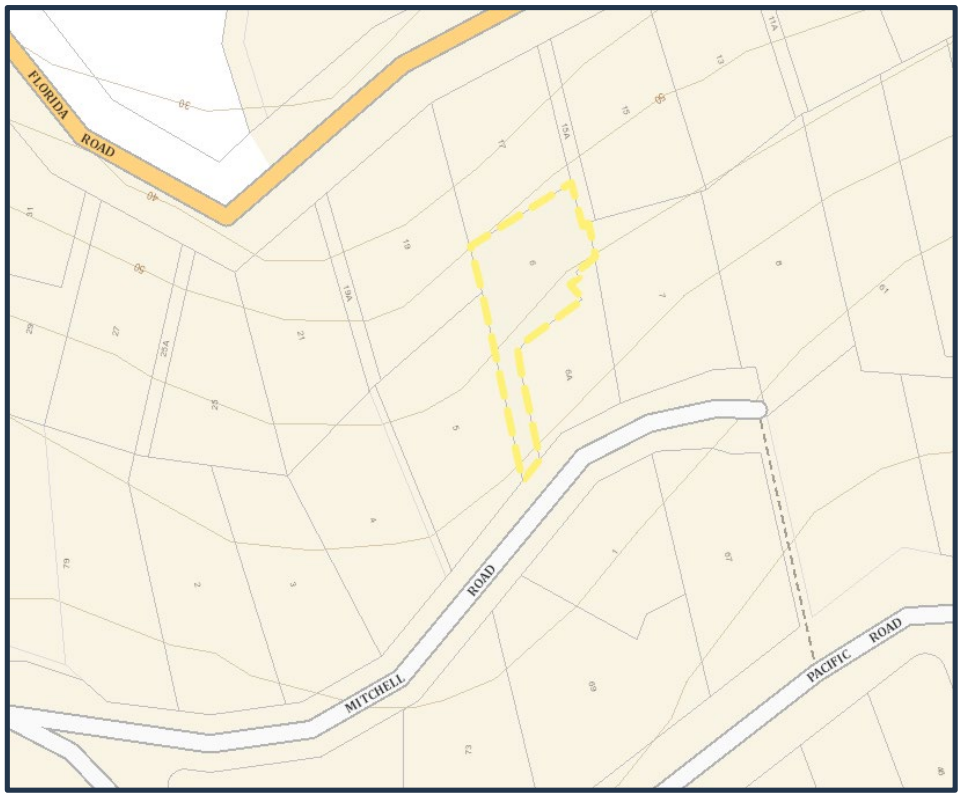


Figure 1: Locality Plan demonstrating the site outlined in yellow (Source – NSW Planning Portal)

Figure 2: Site Aerial with the subject site outlined in yellow (Source: NSW Planning Portal)

Existing Zoning

The site is situated within the Northern Beaches Local Government Area (LGA) and part of the former Pittwater Council. The proposal is subject to the provisions of the Pittwater Local Environmental Plan (LEP) 2014. The site is zoned C4 Environmental Living and RE1 Public Recreation pursuant to the Pittwater LEP, as shown in **Figure 3**.

The site directly adjoins and partially forms a part of the locally listed heritage item "The Bible Garden" at 6a Mitchell Road, Palm Beach as identified within the Pittwater Local Environmental Plan (LEP) 2014. A small portion of the subject site forms part of the heritage listing however it is predominantly located on 6a Mitchell Road to the south of the site as detailed in **Figure 4**.

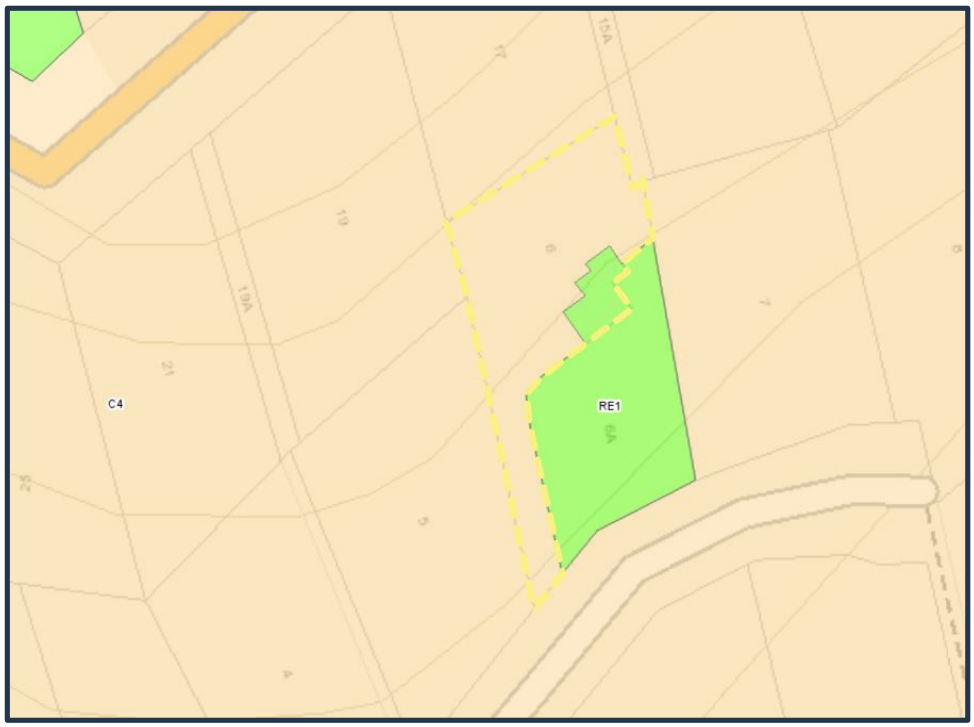


Figure 3: Map showing the land zoning of the subject site (Source: NSW Planning Portal)

Figure 4: Heritage Map with the subject site outlined in red (Source: NSW Legislation)

Proposed Amendments

The intent of the subject Planning Proposal is to amend the Pittwater LEP 2014 to include the additional permitted use of dwelling houses on the RE1 zoned portion of the site to facilitate future residential development in line with the intended use of the site as outlined in the Heads of Agreement Contract.

In summary the project objectives and intended outcomes will achieved by:

- Amend the Pittwater LEP 2014 Additional Permitted Uses Map for the subject site 6 Mitchell Road, Palm Beach (Sheet APU_015) to identify the site for additional permitted uses referenced in Schedule 1 of Pittwater LEP 2014.
- Amend Schedule 1 of the Pittwater LEP 2014 to include a provision for 6 Mitchell Road Palm Beach to limit any future residential development on the site so it does not exceed a height of 74.5 AHD, and permit development for the purposes of a dwelling house on that portion of the site zoned RE1 Public Recreation.

The proposal is considered to have a high level of strategic merit based on the following key areas:

- It will facilitate the future intended residential development of the site as envisaged by Council and the Trustees of the Bible Garden;
- It will enable appropriate residential development that recognises the heritage significance of the site and surrounding area; and
- It will not adversely impact on the ecological, cultural or scenic significance of the site and surrounding area.

The applicant and landowner, Roger Bain, had submitted Concept Plans with the application to demonstrate how the full site could be developed for residential purposes within the height limit of 74.5AHD once the planning proposal is approved. Council reviewed the concept plans and found that a future residential development can be reasonably accommodated below the 74.5AHD height level. These concept plans however, are not being referenced in the proposed amendments to Pittwater LEP 2014.

PART 1 – Objectives and Intended Outcomes

The intent of the subject Planning Proposal is to amend the Pittwater LEP 2014 to include the additional permitted use of dwelling houses on the RE1 zoned portion of the site to facilitate future residential development in line with the intended use of the site as outlined in the Heads of Agreement Contract.

The site has a split zoning of C4 Environmental Living and RE1 Public Recreation pursuant to the Pittwater LEP 2014. Dwelling houses are prohibited in the RE1 zone and therefore the southern portion of site cannot accommodate any residential development or associated structures. The subject planning proposal therefore seeks to amend the Pittwater LEP 2014 to include the additional permitted use of dwelling houses on the RE1 zoned portion of the site to facilitate future residential development.

Site History, Project Context and Intended Outcomes

The site directly adjoins and partially forms a part of the locally listed heritage item “The Bible Garden” at 6a Mitchell Road, Palm Beach as identified within the Pittwater Local Environmental Plan (LEP) 2014.

The Bible Garden at Palm Beach was founded by Gerald H. Robinson in 1962. From the 1970s, Mr Robinson established the garden by using plants in the Bible’s Old and New Testaments. Mr Robinson terraced the steep site and created garden beds himself. By trust deed dated 5 April 1972 GH Robinson settled the Bible Garden in a charitable trust for the construction, use and maintenance of the Bible Garden for all Christians.

A dwelling was constructed on the northern portion of the site beneath the shared driveway in 1972. In 1972 the founder's daughter and a trustee of the Bible Garden Memorial Trust, Deaconess Beatrice Violet Robinson, became the curator of the Bible Garden, living in the dwelling under the driveway and maintaining the Bible Garden for public enjoyment. This house was occupied by Deaconess Beatrice Violet Robinson until her death in 1994.

Following the death of Deaconess Beatrice Violet Robinson, the Trustees of the Bible Garden sought to subdivide the site to form two allotments, with the sale of the residential portion of the land to fund other trust projects and the ongoing conservation of the Bible Garden.

The proposed subdivision submitted to the then Pittwater Council (now Northern Beaches Council) included the provision for a new garage for the residence at 6 Mitchell Road and the provision for a viewing deck, accessible from the Bible Garden on the roof of the new garage.

On 9 February 2004, a contract was entered into between Pittwater Council and the Trustees of the Bible Garden Memorial Trust in their capacity as owners of 6 Mitchell Road, Palm Beach (the Heads of Agreement Contract). The Heads of Agreement Contract enabled investigation of subdivision of the Original Lot to enable residential development on the Property and to allow the Bible Garden to continue in perpetuity. The Heads of Agreement Contract acknowledged that the boundary between the Property and the Bible Garden was chosen to provide space for the “eventual two car garage” on the Property, and that any approved

subdivision would have to enable the construction of the two-car garage as shown on the concept plans (Annexure H of The Heads of Agreement Contract).

The subdivision of the site utilised the existing cliff face and steep topography of the site to form the two lots which ensured the subdivision did not impact the existing bible garden use of the site. As outlined in the Heads of Agreement Contract The trustees of the Bible Garden propose to subdivide 6 Mitchell Road so as to create separate lots for the existing Bible Garden and residential uses of the land:

- The Bible Garden area (lot 2) would be vested in Pittwater Council as community land, being zoned 'Public Reserve (Bible Garden)', included as a heritage item in Pittwater Local Environmental Plan and managed by the incorporated association 'Friends of the Bible Garden Memorial'. Council would recognise the committee of the Friends as a committee of Council.
- The remainder of 6 Mitchell Road (lot 1) would continue to be used for residential purposes, and subject to development parameters consistent with protection of the view from the Bible Garden.

The Planning Process identified in Annexure K of the Heads of Agreement Contract identified the planning proposal to achieve the above subdivision as follows:

1. *Public Exhibition of Draft Heads of Agreement;*
2. *Signing of Heads of Agreement;*
3. *Lodgement of Applications - Concurrent lodgment of Development Application (DA) for subdivision, SEPP 1 submission, and application for amendment of Development Control Plan / Locality Plan (DCP), including:*
   - *public reservation of Bible Garden area (based on cultural, heritage and environmental attributes)*
   - *development parameters for the residential lot (for incorporation in DCP) as per concept sketches (Annexure H) and discussion of compliance with council requirements (Annexure I)*
4. *Public Exhibition - Public exhibition of DA, draft DCP, draft plan of management of the Bible*
   Garden as community land.
5. *Approvals –*
   - *granting of development consent for subdivision*
   - *public reservation of Bible Garden area*
   - *draft DCP adopted*
   - *resolution that the Bible Garden area will be classified as "community land" upon dedication to Council*
   - *obtain Sydney Water certificate*
   - *lodgment with Land and Property Information of subdivision plans endorsed with Council's subdivision certificate.*

On 30 March 2007 the Pittwater Local Environmental Plan (LEP) 1993 was amended to:

rezone 6a Mitchell Road, Palm Beach (Lot 2 DP 1086858) (The Bible Garden) from Zone No 2 (a) (Residential "A") to Zone No 6 (a) (Existing Recreation "A") under

Pittwater Local Environmental Plan 1993, and to allow land uses permissible under the relevant plan of management for the remaining land to which this plan applies.

The rezoning ensured the bible garden located at 6a Mitchell Road, Palm Beach was zoned for recreation purposes and the remainder of the site (6 Mitchell Road, Palm Beach) could be used for residential purposes in line with the subdivision and Heads of Agreement Contract.

On 26 June 2014 Pittwater LEP 1993 was repealed and the Pittwater LEP 2014 came into force. The subject site was rezoned under the Pittwater LEP 2014 as follows:

- 6a Mitchell Road, Palm Beach – RE1 Public Recreation; and
- 6 Mitchell Road, Palm Beach – part C4 Environmental Living and part RE1 Public Recreation.

The adoption of Pittwater LEP 2014 resulted in a split zoning for the subject site as identified in **Figure 5** below.

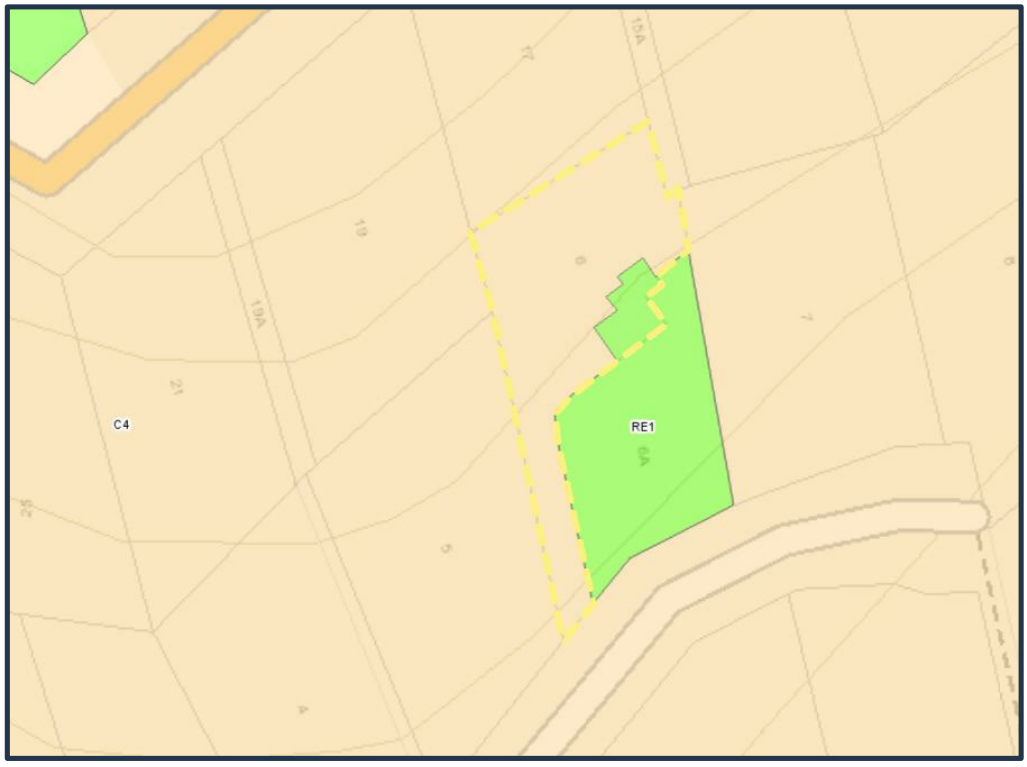


Figure 5: Map showing the land zoning of the subject site (Source: NSW Planning Portal)

The split zoning is inconsistent with the intent of the subdivision and rezoning of the site as agreed to under the Heads of Agreement Contract as it prohibited residential development on the portion of the site zoned RE1.

The Heads of Agreement Contract clearly detailed that the future lot (Lot 1 DP1086858) would be for residential purposes and detailed it as an indicative location for a garage with a viewing

platform above for use by the Bible Garden as identified in the Concept Plans provided in Annexure H of the Heads of Agreement Contract and detailed in **Figure 6-8** below.

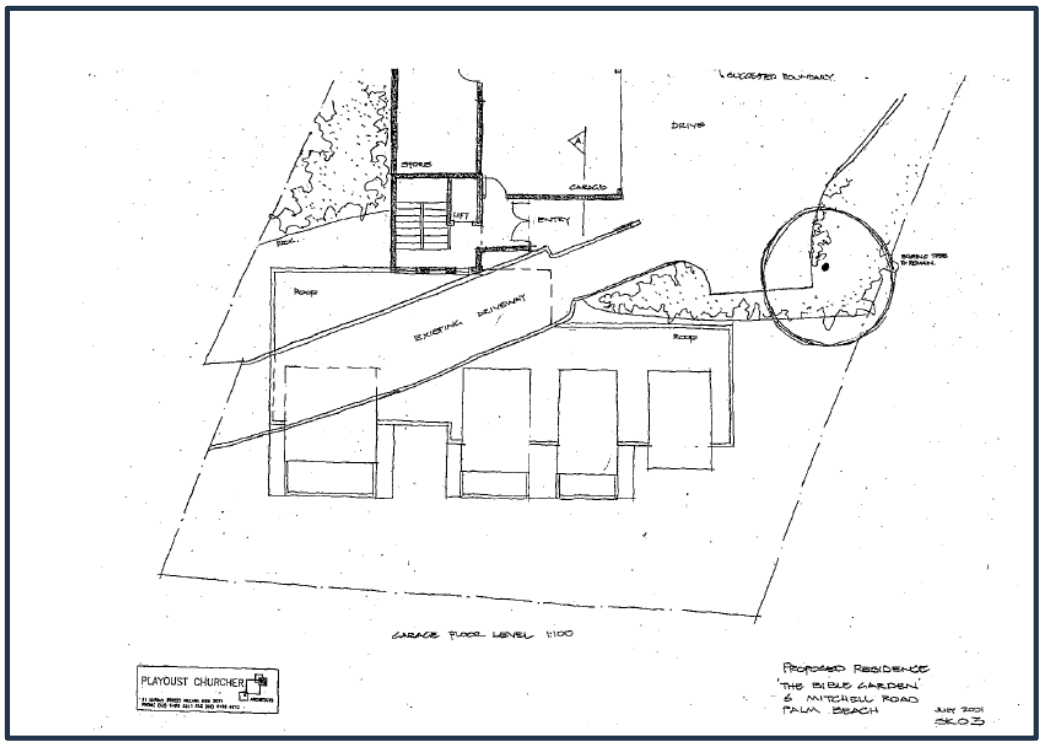


Figure 6: Concept Architectural Plans Detailing location of Garage on southern portion of 6 Mitchell Road (Source: Heads of Agreement Contract 2004)

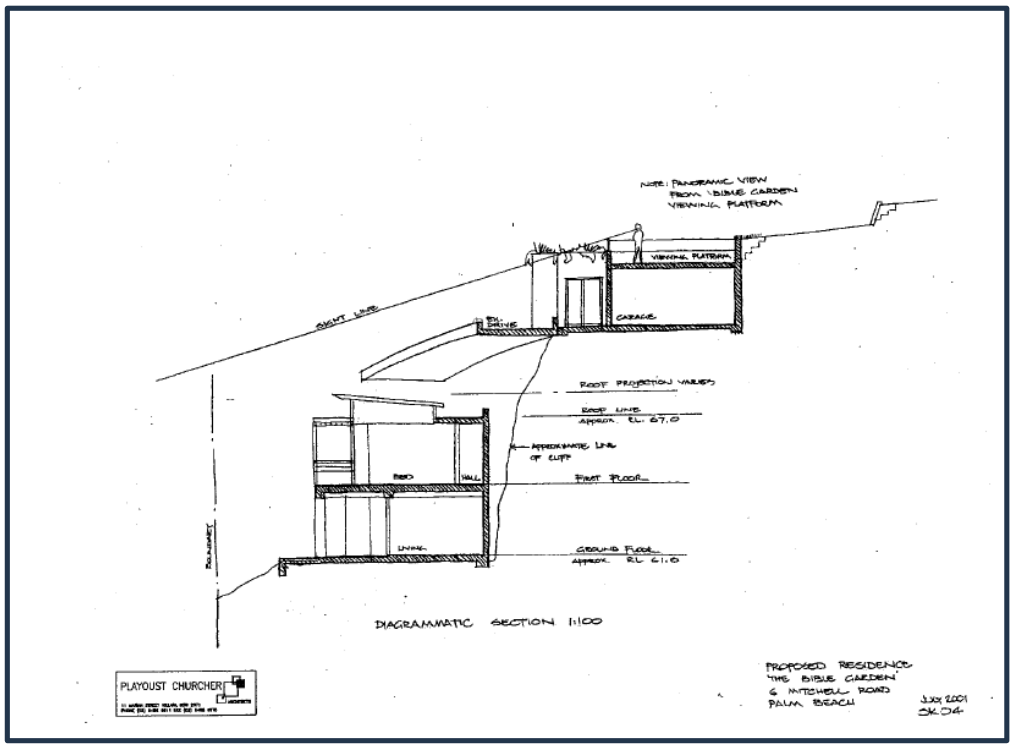


Figure 7: Concept Architectural Plans Detailing location of Garage on southern portion of 6 Mitchell Road with associated viewing platform (Source: Heads of Agreement Contract 2004)

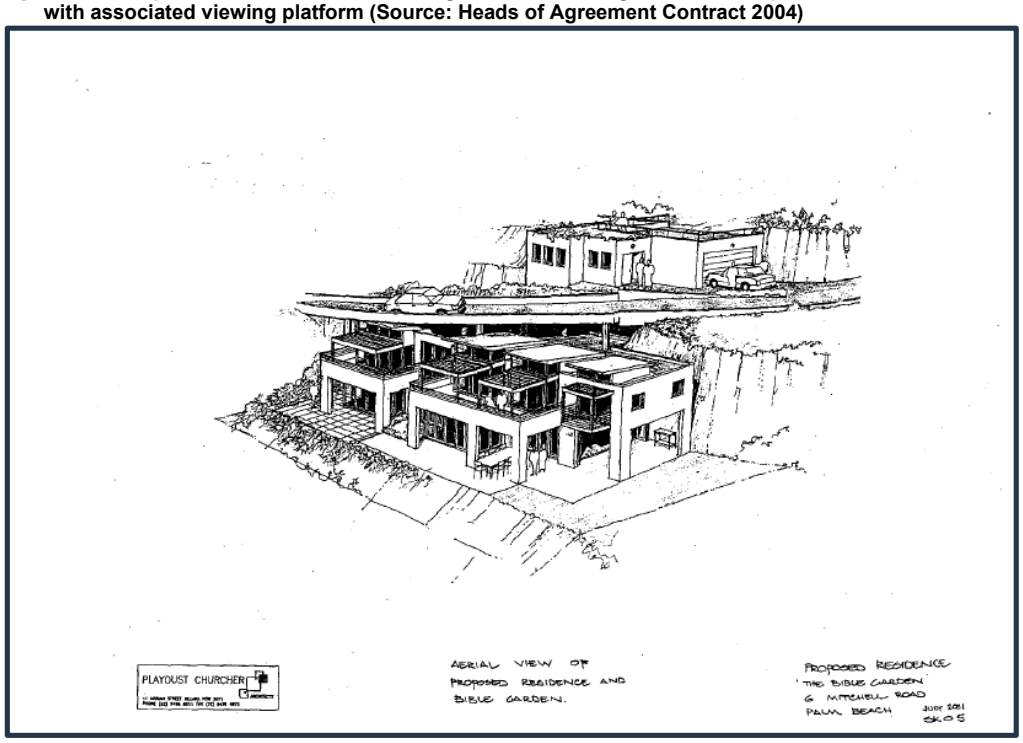


Figure 8:Concept Architectural Plans Detailing location of Garage on southern portion of 6 Mitchell Road with associated viewing platform (Source: Heads of Agreement Contract 2004)

Dwelling houses are prohibited in the RE1 zone and therefore the southern portion of site cannot accommodate any residential development or associated structures. The subject planning proposal therefore seeks to amend the Pittwater LEP 2014 to include the additional permitted use of dwelling houses on the RE1 zoned portion of the site to facilitate future residential development in line with the intended use of the site as outlined in the Heads of Agreement Contract.

Strategic Merit

A key consideration for any Planning Proposal is its strategic merit. The proposal is considered to have a high level of strategic merit based on the following key areas:

- It will facilitate the future intended residential development of the site as envisaged by Council and the Trustees of the Bible Garden;
- It will enable appropriate residential development that recognises the heritage significance of the site and surrounding area; and
- It will not adversely impact on the ecological, cultural or scenic significance of the site and surrounding area.

Future intended residential development of the site as envisaged by Council and the Trustees of the Bible Garden

The proposal is deemed to have strategic merit in that it will ensure the site can be developed in line with the intended use and development outlined in the Heads of Agreement Contract. The subdivision and future development outlined in the Heads of Agreement Contract allowed the development of the subject site for residential purposes without impacting on the adjoining heritage item and ensuring they could coexist through appropriate design that responded to the natural characteristics of the site.

The planning proposal will allow the subject site to facilitate the development envisaged in the Heads of Agreement Contract and resolve the key issues associated with the split zoning of the site. As discussed earlier, Council reviewed the concept plans submitted to demonstrate how a future residential development can be accommodated below the 74.5AHD height level and deemed this reasonable. These concept plans however, are not being referenced in the proposed amendments to Pittwater LEP 2014.

Enable appropriate residential development that recognises the heritage significance of the site and surrounding area

A key consideration in the preparation of the proposal was heritage impacts and the proposal has been designed to ensure it will not result in any adverse impacts on the adjoining heritage item as outlined in the Heritage Impact Statement (submitted with the application) and the redevelopment of the site envisaged in the Heads of Agreement Contract. This will be achieved based on the topography of the site and the low scale garage development envisaged for the southern portion of the site in the Heads of Agreement Contract.

No adverse impact on the ecological, cultural or scenic significance of the site and surrounding area

The proposal has been designed to ensure that any future development on the site will be designed to ensure there are no adverse impacts on the adjoining public open space or the ecological, cultural or scenic significance of the surrounding landscape. The following specialist studies have been prepared in support of the proposal and submitted with the application to ensure all potential impacts are minimised and appropriately managed:

- Flora and Fauna Assessment
- Arborist Report
- Geotech Report.

The proposal will facilitate future sustainable residential development designed to protect and enhance the natural environment and surrounding landscape.

PART 2 – Explanation of Provisions

In summary the project objectives and intended outcomes will achieved by:

A. Amend the Pittwater LEP 2014 Additional Permitted Uses Map for the subject site 6 Mitchell Road, Palm Beach (Sheet APU_015) to identify the site for additional permitted uses referenced in Schedule 1 of Pittwater LEP 2014.

B. Amend Schedule 1 of the Pittwater LEP 2014 to include a provision for 6 Mitchell Road Palm Beach:

    - Despite any other provision in this Plan, any future residential development on 6 Mitchell Road Palm Beach cannot exceed a height of 74.5 AHD.

    - Permit development for the purposes of a dwelling house on that portion of the land zoned RE1 Public Recreation.

PART 3 – Justification of Strategic and Site-Specific Merit

This section establishes the reasons for the proposed outcomes of the planning proposal and proposed amendments of the LEP. It addresses the key questions to be considered when demonstrating the justification as outlined in the Local Environmental Plan Making Guideline.

The key questions outlined relate to the need for the planning proposal, its strategic planning context, the environmental, social and economic impacts and the implications for State and Commonwealth government agencies.

A. NEED FOR PLANNING PROPOSAL

The intent of the subject Planning Proposal is to facilitate residential development across the whole site at 6 Mitchell Road, Palm. On 9 February 2004, a contract was entered into between Pittwater Council and the trustees of the Bible Garden Memorial Trust in their capacity as owners of 6 Mitchell Road, Palm Beach (the Heads of Agreement Contract).

The Heads of Agreement Contract enabled investigation of subdivision of the Original Lot to enable residential development on the Property and to allow the Bible Garden to continue in perpetuity. The Heads of Agreement Contract acknowledged that the boundary between the Property and the Bible Garden was chosen to provide space for the “eventual two car garage” on the Property, and that any approved subdivision would have to enable the construction of the two-car garage as shown on the concept plans (Annexure H of The Heads of Agreement Contract).

The subdivision of the site utilised the existing cliff face and steep topography of the site to form the two lots which ensured the subdivision did not impact the existing bible garden use of the site. As outlined in the Heads of Agreement Contract, The Trustees of the Bible Garden propose to subdivide 6 Mitchell Road so as to create separate lots for the existing Bible Garden and residential uses of the land:

- The Bible Garden area (lot 2) would be vested in Pittwater Council as community land, being zoned 'Public Reserve (Bible Garden)', included as a heritage item in Pittwater Local Environmental Plan and managed by the incorporated association 'Friends of the Bible Garden Memorial'.

  On 7 February 2006, this lot was transferred into Council ownership and is classified as community land under Council’s Land Register in accordance with the Local Government Act. Although Council owns this land, it is managed by the ‘Friends of the Bible Garden Memorial’ via a Management Deed signed by Council, The Trustees of the Bible Garden and then owner of 6 Mitchell Road (lot 1 and is the subject site) on 23 March 2006.

- The remainder of 6 Mitchell Road (lot 1, the subject site) would continue to be used for residential purposes, and subject to development parameters consistent with protection of the view from the Bible Garden.

On 30 March 2007 the Pittwater Local Environmental Plan (LEP) 1993 was amended to:

rezone 6a Mitchell Road, Palm Beach (Lot 2 DP 1086858) (The Bible Garden) from Zone No 2 (a) (Residential "A") to Zone No 6 (a) (Existing Recreation "A") under Pittwater Local Environmental Plan 1993, and to allow land uses permissible under the relevant plan of management for the remaining land to which this plan applies.

The rezoning ensured the bible garden located at 6a Mitchell Road, Palm Beach was zoned for recreation purposes and the remainder of the site (6 Mitchell Road, Palm Beach) could be used for residential purposes in line with the subdivision and Heads of Agreement Contract.

On 26 June 2014, Pittwater LEP 1993 was repealed and the Pittwater LEP 2014 came into force. The subject site was rezoned under the Pittwater LEP 2014 as follows:

- 6a Mitchell Road, Palm Beach – RE1 Public Recreation; and
- 6 Mitchell Road, Palm Beach – part C4 Environmental Living and part RE1 Public Recreation.

The adoption of Pittwater LEP 2014 resulted in a split zoning for the subject site. The split zoning is inconsistent with the intent of the subdivision and rezoning of the site as agreed to under the Heads of Agreement Contract as it prohibited residential development on the portion of the site zoned RE1.

The Heads of Agreement Contract clearly detailed that the future lot (Lot 1 DP1086858) would be for residential purposes and detailed it as an indicative location for a garage with a viewing platform above for use by the Bible Garden as identified in the Concept Plans provided in Annexure H of the Heads of Agreement Contract.

Dwelling houses are prohibited in the RE1 zone and therefore the southern portion of site cannot accommodate any residential development or associated structures. The subject planning proposal therefore seeks to amend the Pittwater LEP 2014 to include the additional permitted use of dwelling houses on the RE1 zoned portion of the site to facilitate future residential development in line with the intended use of the site as outlined in the Heads of Agreement Contract.

The proposal is deemed to have strategic merit in that it will ensure the site can be developed in line with the intended use and development outlined in the Heads of Agreement Contract. The subdivision and future development outlined in the Heads of Agreement Contract allowed the development of the subject site for residential purposes without impacting on the adjoining heritage item and ensuring they could coexist through appropriate design that responded to the natural characteristics of the site.

The planning proposal will allow the subject site to facilitate the development envisaged in the Heads of Agreement Contract and resolve the key issues associated with the split zoning of the site.

QUESTION 1 – Is the planning proposal a result of an endorsed LSPS, strategic study or report?

The Planning Proposal is not a result of any specific strategic study or report however is a result of the development envisaged on the site under the Heads of Agreement Contract entered into between Pittwater Council and the trustees of the Bible Garden Memorial Trust in their capacity as owners of 6 Mitchell Road, Palm Beach in 2004.

The Heads of Agreement Contract involved investigations and consultation that identified the key framework to facilitate the future development of the subject site for residential purposes. The planning proposal will allow the subject site to facilitate the residential development envisaged in the Heads of Agreement Contract and resolve the key issues associated with the split zoning of the site.

In addition, a comprehensive assessment of the proposal has been undertaken against the strategic planning strategies and policies relevant to the site which is provided in the following sections of this report. The assessment has found that the Planning Proposal is generally consistent with the relevant objectives and actions of the key planning strategies and policies relevant to the site which are as follows:

- Greater Sydney Region Plan;
- Northern District Plan;
- Northern Beaches Local Strategic Planning Statement; and
- Northern Beaches Community Strategic Plan.

QUESTION 2 – Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

There are three options that could apply to the site regarding its potential development. These are as follows:

Option 1: Do Noting

This option does not promote the social and economic potential of the site or facilitate the development envisaged in the Heads of Agreement Contract and resolve the key issues associated with the split zoning of the site.

Option 2 – Lodge a Development Application

A Development Application is not viable as the current zoning does not allow for the development envisaged and no other alternate pathway under current legislation would facilitate the intended outcomes. Therefore, the planning proposal is the most efficient and time effective approach to delivering the outcomes envisaged for the site.

Option 3 – Planning Proposal

The project objectives and intended outcomes can only be achieved through the amendment of the Pittwater Local Environmental Plan 2014. Council is supportive of this Planning

Proposal as this is the only way of achieving the objectives and intended outcomes for this site consistent with the Heads of Agreement signed by Council and the Trustees of the Bible Garden in 2004.

B. RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK

Question 3 – Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?

The Planning Proposal is consistent with the Greater Sydney Region Plan and the North District Plan.

North District Plan

The North District Plan is a guide for the implementation of *A Metropolis of Three Cities* – the Greater Sydney Region Plan at a district level.

A Metropolis of Three Cities – the Greater Sydney Region Plan was implemented by the Greater Sydney Commission and is built on a vision of three cities where most residents live within 30 minutes of their jobs, education and health facilities, services and great places. To meet the needs of a growing and changing population the vision seeks to transform Greater Sydney into a metropolis of three cities:

- the Western Parkland City
- the Central River City
- the Eastern Harbour City.

Greater Sydney's three cities reach across five districts: Western City District, Central City District, Eastern City District, North District and South District.

The North District consists of the City of Ryde, Hornsby, Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Northern Beaches and Willoughby Local Government Areas and contains the subject site.

The North District Plan is structured to implement the aim of the Greater Sydney Region Plan to provide cities where most residents live within 30 minutes of their jobs, education and health facilities, services and great places. This is to be achieved through a number of planning priorities detailed in the plan. The proposed development is considered to be consistent with the plan and a number of planning priorities.

The table below details the relevant planning priorities of the North District Plan and the proposal's consistency with those priorities.

Table 1: Consistency with the North District Plan	
Objective	**Comment**
Planning Priority N1 – Planning for a city supported by infrastructure **Planning Priority N2** – Working through Collaboration **Planning Priority N3** – Providing services and social infrastructure to meet people's changing needs	The planning proposal is not inconsistent with the planning priorities as it will utilize existing infrastructure onsite to accommodate future residential development envisaged for the site. The proposal will not result in development that will adversely impact on the delivery of local, district or metropolitan infrastructure. The proposal will not impede on the provision of services or social infrastructure in the area to meet the community's changing needs. The proposal will ensure that any future development on the site will need to be designed to ensure there are no adverse impacts on the adjoining public open space.
Planning Priority N4 – Fostering healthy, creative, culturally rich and socially connected communities	The proposal is consistent with this planning priority as it will ensure that any future development on the site will be designed to ensure there are no adverse impacts on the adjoining public open space or heritage item. This will be achieved based on the topography of the site and the low scale garage development envisaged for the southern portion of the site.
Planning Priority N5 – Providing housing supply, choice and affordability with access to jobs, services and public transport.	The planning proposal seeks to amend the Pittwater LEP 2014 to include the additional permitted use of dwelling house on the RE1 zoned portion of the site to facilitate future residential development in line with the intended use of the site as outlined in the Heads of Agreement Contract. The proposal will positively contribute to the housing supply and choice in the area.
Planning Priority N6 – Creating and renewing great places and local centres, and respecting the District's heritage	The proposal is consistent with this planning priority as it will ensure that any future development on the site will be designed to ensure there are no adverse impacts on the adjoining public open space or heritage item. This will be achieved based on the topography of the site and the low scale garage development envisaged for the southern portion of the site. A key consideration in the preparation of the proposal was heritage impacts and the proposal has been designed to ensure it will not result in any adverse impacts on

Table 1: Consistency with the North District Plan	
Objective	**Comment**
	the adjoining heritage item as outlined in the Heritage Impact Statement (submitted with the application) and the redevelopment of the site envisaged in the Heads of Agreement Contract.
Planning Priority N7 - Growing a stronger and more competitive Harbour CBD **Planning Priority N8 -** Eastern Economic Corridor is better connected and more competitive **Planning Priority N9 -** Growing and investing in health and education precinct. **Planning Priority N10 -** Growing investment, business opportunities and jobs in strategic centres **Planning Priority N11 -** Retaining and managing industrial and urban services land	The proposal is not inconsistent with the planning priorities as it will facilitate future residential development that will provide employment during its construction and will increase housing supply in an established residential area that positively contributes to the nearby local centres, health and education precincts.
Planning Priority N12 - Delivering integrated land use and transport planning and a 30-minute city **Planning Priority N13 -** Supporting growth of targeted industry sectors **Planning Priority N14 -** Leveraging inter-regional transport connections	The proposal is not inconsistent with the planning priorities as it will facilitate future residential development that is connected to the existing transport network within the region.

Table 1: Consistency with the North District Plan	
Objective	**Comment**
Planning Priority N15 - Protecting and improving the health and enjoyment of Sydney Harbour and the District's waterways **Planning Priority N16 -** Protecting and enhancing bushland and biodiversity	The proposal is consistent with this planning priority as it will ensure that any future development on the site will need to be designed to ensure there are no adverse impacts on the adjoining public open space, heritage item or surrounding landscape. The following specialist studies have been prepared in support of the proposal to ensure all potential impacts are minimised and appropriately managed: • Flora and Fauna Assessment • Arborist Report • Geotech Report.
Planning Priority N17 - Protecting and enhancing scenic and cultural landscapes	The proposal is consistent with this planning priority as the proposed amendment include a height limitation for any future residential development on the site to not exceed 74.5 AHD. This will be well below the level of the existing Bible Garden Terrace therefore not affect existing views of Palm Beach from neighboring property 6a Mitchell Road, Palm Beach also known as the Bible Gardens. A Heritage Impacts Statement was submitted with the application.
Planning Priority W18 - Better managing rural areas	The proposal is not inconsistent with this planning principle. Regardless of zoning (the predominant zoning of the site and its surrounds is C4 Environmental Living under Pittwater LEP 2014), the site is in an established residential area and will not impact on the management of existing rural areas.

Table 1: Consistency with the North District Plan	
Objective	**Comment**
Planning Priority N19 - Increasing urban tree canopy cover and delivering Green Grid connections **Planning Priority N20 -** Delivering high quality open space	The proposal is consistent with this planning priority as it will ensure that any future development on the site will be designed to ensure there are no adverse impacts on the adjoining public open space, heritage item or surrounding landscape. The following specialist studies have been prepared in support of the proposal to ensure all potential impacts are minimised and appropriately managed: • Heritage Impacts Statement • Flora and Fauna Assessment • Arborist Report • Geotech Report.
Planning Priority N21 - Reducing carbon emissions and managing energy, water and waste efficiently **Planning Priority N22 -** Adapting to the impacts of urban and natural hazards and climate change	The proposal is not inconsistent with the planning priorities as it only relates to a small portion of the site zoned RE1 to facilitate the residential development of the site in line with the remaining C4 zoned land. All future residential development will need to ensure it appropriately responds to the natural characteristics of the site and manages energy, water and waste efficiently.

QUESTION 4 – Is the planning proposal consistent with a Council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?

Northern Beaches Local Strategic Planning Statement (LSPS)

The Planning Proposal is consistent with the Northern Beaches Local Strategic Planning Statement (LSPS). The LSPS implements the strategic direction of The Greater Sydney Region Plan and North District Plan at the local level by setting clear local priorities for the jobs, homes, services and parks that the Northern Beaches community will require over the next 20 years. The LSPS sets short, medium and long-term actions linked to the local priorities, to deliver on the community's future vision.

The LSPS is structured around the following four key themes:

- Sustainability;
- Infrastructure and Collaboration;
- Liveability; and
- Productivity.

An assessment of the proposal against the key planning priorities of the LSPS is provided in the table below.

Table 2: Consistency with the Northern Beaches Local Strategic Planning Statement	
Planning Priority	**Comment**
Priority 1 Healthy and valued coast and waterways **Priority 2** Protected and enhanced bushland and biodiversity **Priority 3** Protected scenic and cultural landscapes **Priority 4** Protected Metropolitan Rural Area **Priority 5** Greener urban environments **Priority 6** High quality open space for recreation **Priority 7** A low-carbon community, with high energy, water and waste efficiency **Priority 8** Adapted to the impacts of natural and urban hazards and climate change	The proposal is consistent with the planning priorities as it will ensure that any future development on the site will need to be designed to ensure there are no adverse impacts on the adjoining public open space, heritage item or surrounding landscape. The following specialist studies have been prepared in support of the proposal to ensure all potential impacts are minimised and appropriately managed: • Heritage Impacts Statement • Flora and Fauna Assessment • Arborist Report • Geotech Report. The proposal will facilitate future sustainable residential development designed to protect and enhance the natural environment and surrounding landscape. The proposal it only relates to a small portion of the site zoned RE1 to facilitate the residential development of the site in line with the remaining C4 zoned land. All future residential development will need to ensure it appropriately responds to the natural characteristics of the site and manages energy, water and waste efficiently.
Priority 9 Infrastructure delivered with employment and housing growth	The planning proposal is not inconsistent with the planning priorities as it will utilize existing infrastructure onsite to accommodate future residential development envisaged for the site. The proposal will not result in future development that will adversely impact on the delivery of local, district or metropolitan infrastructure. The proposal will not impede on the provision of services or social infrastructure in the area to meet the community's changing needs. The proposal will ensure that any future development on the site will need to be

Table 2: Consistency with the Northern Beaches Local Strategic Planning Statement	
Planning Priority	**Comment**
	designed to ensure there are no adverse impacts on the adjoining public open space.
Priority 10 World-class education facilities, including a university **Priority 11** Community facilities and services that meet changing community needs **Priority 12** An inclusive, healthy, safe and socially connected community **Priority 13** Strong engagement and cooperation with Aboriginal communities **Priority 14** A community enriched through the arts and connected through Creativity **Priority 15** Housing supply, choice and affordability in the right locations **Priority 16** Access to quality social and affordable housing **Priority 17** Centres and neighbourhoods designed to reflect local character, lifestyle and demographic changes **Priority 18** Protected, conserved and celebrated heritage	The planning proposal seeks to amend the Pittwater LEP 2014 to include the additional permitted use of dwelling houses on the RE1 zoned portion of the site to facilitate future residential development in line with the intended use of the site as outlined in the Heads of Agreement Contract. The proposal will positively contribute to the housing supply and choice in the area. The proposal is not inconsistent with the planning priorities as it will facilitate future residential development that will provide employment during its construction and will increase housing supply in an established residential area that positively contributes to the nearby local centres, health and education precincts. The proposal is consistent with this planning priority as it will ensure that any future development on the site will need to be designed to ensure there are no adverse impacts on the adjoining public open space or heritage item. This will be achieved based on the topography of the site and the low scale garage development envisaged for the southern portion of the site as outlined in the Heritage Impact Statement and the Heads of Agreement Contract. The proposal will promote sustainable residential development on the site with a clear connection and relationship with the surrounding natural environment, public open space and cultural heritage.
Priority 19 Frequent and efficient regional public transport connections **Priority 20** Sustainable local transport networks	The proposal is not inconsistent with the planning priorities as it will facilitate future residential development that is connected to the existing transport network within the region. The establishment of future residential development on the site will generate contribution to the existing and future transport network.

Table 2: Consistency with the Northern Beaches Local Strategic Planning Statement	
Planning Priority	**Comment**
Priority 21 Redesigned road space and facilities to match changing community needs **Priority 22** Jobs that match the skills and needs of the community **Priority 23** French's Forest as a sustainable health and education precinct **Priority 24** Brookvale as an employment and innovation centre **Priority 25** Dee Why as a thriving cosmopolitan centre by the sea **Priority 26** Manly as Sydney's premier seaside destination **Priority 27** Mona Vale as the contemporary, urban heart of the north **Priority 28** Safeguarded employment lands **Priority 29** A thriving, sustainable tourism economy **Priority 30** A diverse night-time economy	The proposal will facilitate future residential development that will provide employment during its construction and will increase housing supply in an established residential area that positively contributes to the nearby local centres, health and education precincts.

Northern Beaches Community Strategic Plan

The Northern Beaches Community Strategic Plan outlines the community's vision to protect and enhance the natural and built environments, to create more connected and caring communities, to embrace our diverse sports and recreation culture, and to live more sustainably and in balance with the environment.

The key vision principles of the Strategy are:

- Community
- Safety
- Inclusion

- Extraordinary
- Connected
- Costal and Bushland Environment
- Balance.

The strategy identifies the following key community outcomes to achieve the vision:

- Protection of the Environment
- Environmental Sustainability
- Places for People
- Community and Belonging
- Vibrant Local Economy
- Transport, Infrastructure and Connectivity
- Good Governance
- Partnership and Participation

An assessment of the proposal against the key community outcomes of the Northern Beaches Community Strategic Plan is provided in the table below.

Table 3: Consistency with the Key Community Outcomes of the Northern Beaches Community Strategic Plan

Community Outcome	Comment
Protection of the Environment **Environmental Sustainability**	The proposal is consistent with this community outcome as it will ensure that any future development on the site will need to be designed to ensure there are no adverse impacts on the adjoining public open space, heritage item or surrounding landscape. The following specialist studies have been prepared in support of the proposal to ensure all potential impacts are minimised and appropriately managed: • Heritage Impacts Statement • Flora and Fauna Assessment • Arborist Report • Geotech Report. The proposal will facilitate future sustainable residential development designed to protect and enhance the natural environment and surrounding landscape.
Places for People	The planning proposal is not inconsistent with this community outcome as it will utilize existing infrastructure onsite to accommodate future residential

Table 3: Consistency with the Key Community Outcomes of the Northern Beaches Community Strategic Plan	
Community Outcome	**Comment**
	development envisaged for the site. The proposal will not result in future development that will adversely impact on the delivery of local, district or metropolitan infrastructure. The proposal will not impede on the provision of services or social infrastructure in the area to meet the communities changing needs. The proposal will ensure that any future development on the site will need to be designed to ensure there are no adverse impacts on the adjoining public open space. The planning proposal seeks to amend the Pittwater LEP 2014 to include the additional permitted use of dwelling houses on the RE1 zoned portion of the site to facilitate future residential development in line with the intended use of the site as outlined in the Heads of Agreement Contract. The proposal will positively contribute to the housing supply and choice in the area.
Community and Belonging	The proposal is not inconsistent with this community outcome as it will positively contribute to housing supply in the community.
Vibrant Local Economy	The proposal is not inconsistent with the community outcome as it will facilitate future residential development that will provide employment during its construction and will increase housing supply in an established residential area that positively contributes to the nearby local centres, health and education precincts.
Transport, Infrastructure and Connectivity	The proposal is not inconsistent with the community outcome as it will facilitate future residential development that is connected to the existing transport network within the region.

Table 3: Consistency with the Key Community Outcomes of the Northern Beaches Community Strategic Plan	
Community Outcome	**Comment**
Good Governance	The proposal is not inconsistent with the community outcome as it is reflective of the Heads of Agreement Contract entered into by Pittwater Council in 2004.
Partnership and Participation	The proposal is not inconsistent with the community outcome as it is reflective of the Heads of Agreement Contract entered into by Pittwater Council in 2004 and the proposal will be publicly exhibited as part of the gateway determination process.

QUESTION 5 – Is the planning proposal consistent with any other applicable State and regional studies or strategies?

Greater Sydney Region Plan

Greater Sydney Region Plan was finalised in March 2018 and replaces the former *A Plan for Growing Sydney (2014).* This Plan sets the vision and the overarching planning framework to guide future transport, infrastructure, and development in Greater Sydney in concurrence with Future Transport 2056 and State Infrastructure Strategy.

The Plan provides planning priorities that will direct Sydney's growth over the next 20 years. The Region Plan identifies the overarching directions and objectives to guide growth in the Sydney region. These directions have then been used to provide more specific detail to guide growth and land use decisions in each of the districts through the relevant District Plans. As outlined further in this report, the Planning Proposal is consistent with the relevant Directions and Actions in the District Plan and therefore is consistent with the Region Plan.

Future Transport 2026

The NSW Governments *"Future Transport 2056"* was released in 2018 and is an overarching strategy, supported by a suite of plans to achieve a 40-year vision for the NSW transport system. The strategy considers:

- the future road network throughout Sydney
- future light and heavy rail networks
- a future rapid bus and ferry network
- bicycle network, and
- freight network

The Planning Proposal is not inconsistent with the plan as it will facilitate future residential development that is connected to the existing transport network within the region.

QUESTION 6 – Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

The Planning Proposal is consistent with the relevant State Environmental Planning Policies (SEPPs) that apply to the site. A detailed list of the SEPPs and commentary is provided in the table below:

Table 4: Consistency with Relevant State Environmental Planning Policies (SEPPs)		
SEPP	**Aim**	**Comment**
SEPP (Resilience and Hazards) 2021	Chapter 4 of this Policy provides a state-wide planning approach to remediation and aims to promote the remediation of any contaminated land for the purpose of reducing the risk of harm to human health and/or the environment. A planning authority is to consider whether the land is contaminated and if so whether it is, or can be made, suitable for the proposed land uses.	The subject site is not located within an investigation area and has contained only residential land uses for an extended period of time. The site is therefore considered suitable for the intended future use. No further investigation is deemed to be necessary. The proposal is therefore consistent with Chapter 4 of SEPP (Resilience and Hazards) 2021.
SEPP (Biodiversity and Conservation) 2021	**Chapter 2 – Vegetation in Non-rural Areas** Chapter 2 of SEPP (Biodiversity and Conservation) 2021 aims to protect the biodiversity values of trees and other vegetation in non-rural areas and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation. **Chapter 6 – Bushland in Urban Areas** Chapter 6 of SEPP (Biodiversity and Conservation) 2021 aims to protect and preserve bushland within the urban areas.	The proposal has been designed to minimise impacts on the surrounding landscape as outlined in the following specialist studies: • Flora and Fauna Assessment • Arborist Report • Geotech Report. All future development will need to demonstrate consistency with the SEPP and therefore the proposal is not considered to be inconsistent with the SEPP.
SEPP (Building Sustainability Index: BASIX) 2004	The aim of this policy is to mandate minimum sustainability targets for thermal comfort, energy and water use for residential development.	DAs for all future residential development will need to comply with the targets established under BASIX.

Table 4: Consistency with Relevant State Environmental Planning Policies (SEPPs)		
SEPP	**Aim**	**Comment**
SEPP (Exempt and Complying Codes) 2008	The aims of this policy are to provide exempt and complying development codes that have State-wide application.	The Planning Proposal is not inconsistent with this SEPP which would apply to future development.
SEPP (Housing) 2021	The aim of this policy is to enable the development of diverse housing types, including purpose-built rental housing and encouraging the development of housing that will meet the needs of more vulnerable members of the community	The Planning Proposal is not inconsistent with this SEPP which may apply to future development.

QUESTION 7 – Is the Planning Proposal consistent with applicable Ministerial Directions (s9.1 directions)?

The Planning Proposal is generally consistent with the applicable Section 9.1 directions issued by the Minister for Planning. A statement of the consistency of this Planning Proposal with the relevant directions to this planning proposal is provided in the table below:

Table 5: Consistency with Relevant Section 9.1 Ministerial Directions		
Direction	**Requirement**	**Comment**
Focus Area 1 – Planning Systems		
1.1 Implementation of Regional Plans	Planning proposals must be consistent with a Regional Plan released by the Minister for Planning.	The proposal is generally consistent with this direction as it is consistent with the Greater Sydney Region Plan as detailed above.
1.4 Site Specific Provisions	(1) A planning proposal that will amend another environmental planning instrument in order to allow particular development to be carried out must either: (a) allow that land use to be carried out in the zone the land is situated on, or (b) rezone the site to an existing zone already in the environmental planning instrument that allows that land use without imposing any	The planning proposal seeks to amend the Pittwater Local Environmental Plan (LEP) 2014 to include the additional permitted use of dwelling houses on the RE1 zoned portion of the site. The planning proposal will provide a site-specific provision for the site allowing the additional permitted use of dwelling houses whilst maintaining the RE1 zoning of the site and is therefore inconsistent with this direction.

Table 5: Consistency with Relevant Section 9.1 Ministerial Directions		
Direction	**Requirement**	**Comment**
	development standards or requirements in addition to those already contained in that zone, or (c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended. (2) A planning proposal must not contain or refer to drawings that show details of the proposed development. A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Planning Secretary (or an officer of the Department nominated by the Secretary) that the provisions of the planning proposal that are inconsistent are of minor significance.	The adoption of Pittwater LEP 2014 resulted in a split zoning for the subject site. The split zoning is inconsistent with the intent of the subdivision and rezoning of the site as agreed to under the Heads of Agreement Contract as it prohibited residential development on the portion of the site zoned RE1. Dwelling houses are prohibited in the RE1 zone and therefore the southern portion of site cannot accommodate any residential development or associated structures. The subject planning proposal therefore seeks to amend the Pittwater LEP 2014 to include the additional permitted use of dwelling houses on the RE1 zoned portion of the site to facilitate future residential development in line with the intended use of the site as outlined in the Heads of Agreement Contract. The proposal is therefore considered to be of minor significance.
Focus Area 3 – Biodiversity and Conservation		
3.1 Conservation Zones	(1) A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas. (2) A planning proposal that applies to land within a conservation zone or land otherwise identified for environment conservation/protection	The proposal intends to permit residential development on a small portion of land zoned RE1 Public Recreation in line with the C4 Environmental Living zoning of the remainder of the site. Currently, Council has placed on public exhibition a review of Conservation Zones for the Northern

	purposes in a LEP must not reduce the conservation standards that apply to the land (including by modifying development standards that apply to the land).	Beaches and affects the subject land. In this regard, for this land: • No change in zoning is proposed. The large portion of the parcel will remain within the C4 zone with the other portion proposed to be zoned RE1. • No proposed changes in the RE1 zone permitted uses as part of this process. • There are some minor proposed changes in uses for the C4 zone but they are unlikely to impact the use of that land. The planning proposal is considered to be of minor significance and will not amend or reduce the environmental protection standards that apply to the land. The proposal is therefore consistent with the direction.
3.2 Heritage Conservation	(1) A planning proposal must contain provisions that facilitate the conservation of: (a) items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area, (b) Aboriginal objects or Aboriginal places that are protected under the National Parks and Wildlife Act 1974, and	The site directly adjoins and partially forms a part of the locally listed heritage item "The Bible Garden" at 6a Mitchell Road, Palm Beach as identified within the Pittwater Local Environmental Plan (LEP) 2014. A small portion of the subject site forms part of the heritage listing however it is predominantly located on 6a Mitchell Road to the south of the site. A Heritage Impact Statement has been prepared in support of the proposal by Weir Phillips Heritage and

	(c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.	Planning. The Heritage Impact Statement concludes that the proposal will have no impact on the significance of the adjoining Bible Gardens and that the proposal complies with the provisions contained in Section 9.1 Ministerial Direction for Planning Proposals – 3.1 Heritage Conservation. The proposal is therefore consistent with the direction.
Focus Area 4 – Resilience and Hazards		
4.4 Remediation of Contaminated Land	(1) A planning proposal authority must not include in a particular zone (within the meaning of the local environmental plan) any land to which this direction applies if the inclusion of the land in that zone would permit a change of use of the land, unless: (a) the planning proposal authority has considered whether the land is contaminated, and (b) if the land is contaminated, the planning proposal authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and (c) if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning proposal authority is satisfied that the land will be so remediated before the land is used for that purpose.	The subject site is not located within an investigation area and has contained only residential land uses for an extended period of time. The site is therefore considered suitable for the intended future use. No further investigation is deemed to be necessary. The proposal is therefore consistent with the direction.

	In order to satisfy itself as to paragraph 1(c), the planning proposal authority may need to include certain provisions in the local environmental plan. (2) Before including any land to which this direction applies in a particular zone, the planning proposal authority is to obtain and have regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines.	
4.5 Acid Sulfate Soils	(1) The relevant planning authority must consider the Acid Sulfate Soils Planning Guidelines adopted by the Planning Secretary when preparing a planning proposal that applies to any land identified on the Acid Sulfate Soils Planning Maps as having a probability of acid sulfate soils being present. (2) When a relevant planning authority is preparing a planning proposal to introduce provisions to regulate works in acid sulfate soils, those provisions must be consistent with: (a) the Acid Sulfate Soils Model LEP in the Acid Sulfate Soils Planning Guidelines adopted by the Planning Secretary, or (b) other such provisions provided by the Planning Secretary that are consistent with the Acid Sulfate Soils Planning Guidelines.	The proposal only relates to a small portion of an existing site currently used for residential purposes. The site is mapped as containing Class 5 Acid Sulfate Soils as identified in the Pittwater LEP 2014. The proposal intends to permit residential development on a small portion of land zoned RE1 Public Recreation and is considered to be of minor significance. Any future development will have to take into consideration the Acid Sulfate Soil mapping of the site.

	(3) A relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps unless the relevant planning authority has considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils. The relevant planning authority must provide a copy of any such study to the Planning Secretary prior to undertaking community consultation in satisfaction of clause 4 of Schedule 1 to the Act. (4) Where provisions referred to under 2(a) and 2(b) above of this direction have not been introduced and the relevant planning authority is preparing a planning proposal that proposes an intensification of land uses on land identified as having a probability of acid sulfate soils on the Acid Sulfate Soils Planning Maps, the planning proposal must contain provisions consistent with 2(a) and 2(b).	
4.6 Mine Subsidence and Unstable Land	A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Planning Secretary (or an officer of the Department nominated by the Secretary that the provisions of the planning proposal that are inconsistent are:	The proposal only relates to a small portion of an existing site currently used for residential purposes. The site is identified as Geotechnical Hazard H1 as detailed on the Geotechnical Hazard Map in the Pittwater LEP 2014. The proposal intends to permit residential

	(a) justified by a strategy approved by the Planning Secretary which: i. gives consideration to the objective of this direction, and ii. identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), or (b) justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or (c) in accordance with the relevant Regional Strategy, Regional Plan or District Plan prepared by the Department of Planning and Environment which gives consideration to the objective of this direction, or (d) of minor significance.	development on a small portion of land zoned RE1 Public Recreation and is considered to be of minor significance. A Geotechnical Report has been prepared by Davies Geotechnical Consulting Engineers in support of the proposal. The Geotech Report identifies management and mitigation measures to be incorporated under future development that ensures it can appropriately respond to the Geotech hazard of the site demonstrating that the proposal will not adversely impact on the site or surrounding area. The Geotech Report concludes that the proposal can be supported from a geotechnical risk standpoint. Therefore, the proposal is considered to be of minor significance.
Focus Area 5 – Transport and Infrastructure		
5.1 Integrating Land Use and Transport	(1) A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of: (a) Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and (b) The Right Place for Business and Services – Planning Policy (DUAP 2001).	The Planning Proposal is not inconsistent with the direction as it will facilitate future residential development that is connected to the existing transport network within the region. The proposal will facilitate residential development that is of a consistent and compatible scale with existing land uses in the surrounding area.

5.2 Reserving Land for Public Purposes	(1) A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Planning Secretary (or an officer of the Department nominated by the Secretary). A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Planning Secretary (or an officer of the Department nominated by the Secretary) that: (a) with respect to a request referred to in paragraph (4), further information is required before appropriate planning controls for the land can be determined, or (b) the provisions of the planning proposal that are inconsistent with the terms of this direction are of minor significance.	The planning proposal seeks to resolve split zoning issues on the site and facilitate the residential development of the site in line with the intended use and development outlined in the Heads of Agreement Contract. The proposal seeks to include the additional permitted use of a dwelling house on the small portion of the site that is zoned RE1 Public Recreation. The portion of the site is not currently used for public recreation and the proposal will ensure the entire site can be developed for residential purposes. The proposal is therefore of minor significance.
Focus Area 6 – Housing		
6.1 Residential Zones	(1) A planning proposal must include provisions that encourage the provision of housing that will: (a) broaden the choice of building types and locations available in the housing market, and (b) make more efficient use of existing infrastructure and services, and (c) reduce the consumption of land for housing and associated urban development on the urban fringe, and	The proposal is consistent with this ministerial direction as it will facilitate the intended residential use of the site. Any future development will be required to demonstrate the site can be adequately serviced to facilitate the proposed development. The proposal does not contain provisions which will

	(d) be of good design. (2) A planning proposal must, in relation to land to which this direction applies: (a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and (b) not contain provisions which will reduce the permissible residential density of land.	reduce the permissible residential density of land.

C. ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT

QUESTION 8 – 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?

Ecological Impacts

The subject site is identified as having biodiversity value as detailed in the Biodiversity Map provided in the Pittwater Local Environmental Plan (LEP) 2014.

A Flora and Fauna Assessment was prepared by Ecological Consultants Australia Pty Ltd in support of the proposal. The Flora and Fauna Assessment included:

- On ground surveys on 18 August, 3 September 2019 and 14 May 2022;
- Bionet searches for flora, fauna and endangered populations to identify if there were previous records of threatened species occurring within the local area using a 10km radius around the site; and
- A review of the Planning Proposal and the proposed development it seeks to enable was evaluated for potential environmental impacts.

The Flora and Fauna Assessment concluded that:

- No threatened flora or fauna species were recorded on- site during survey or previously recorded via Bionet.
- No significant habitat features, values or landscape corridors will be impacted by the proposed development.
- The proposal does not trigger entry into the Biodiversity Offset Scheme.

- Tree protection will be consistent with the Arborist report (Beecher 2020) or any updates from Alex Austin (ArborSaw June 2022). Main trees to be managed are trees within close proximity to building works.
- The neighboring bible garden/public recreation area will remain open to the public and unaffected by the proposal; and
- All 5 part tests have concluded that the proposal is not likely to significantly affect Large Forest Owls, Grey-headed Flying-foxes or microbats and will not be likely to put the local populations at risk of extinction.

The assessment also includes a number of recommended mitigation measures to be incorporated during the construction of the development which will be implemented to ensure potential ecological impacts are minimised and appropriately mitigated.

All future development on the site will be sited and designed to best respond to the ecological value of the surrounding area and will include the provision of native landscaping to assist in the integration of the future development into the surrounding environment. It is therefore considered that the Planning Proposal will not adversely impact on critical habitat, threatened species, populations or ecological communities and their habitats.

Tree Impacts

An Arborist Report was prepared by Arborsaw in support of the proposal.

The Arborist Report undertook an assessment of the existing vegetation on the site and within the surrounding area to ascertain the suitability of the proposal.

The Arborist Report concludes that the planning proposal is considered to be suitable from a tree impact perspective provided the recommendations of the report are implemented with any future development onsite.

QUESTION 9 – Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

Heritage

The site directly adjoins and partially forms a part of the locally listed heritage item “The Bible Garden” at 6a Mitchell Road, Palm Beach as identified within the Pittwater Local Environmental Plan (LEP) 2014. A small portion of the subject site forms part of the heritage listing however it is predominantly located on 6a Mitchell Road to the south of the site.

A Heritage Impact Statement has been prepared in support of the proposal by Weir Phillips Heritage and Planning. The Heritage Impact Statement concludes that the proposal will have no impact on the significance of the adjoining heritage item based on the following:

- The proposal is compatible with the concept schemes envisaged when the site was subdivided and sold as part of the Heads of Agreement Contract with The Trustees of the Bible Garden.

- The steeply topography of the existing lot, particularly the northern portion which adjoins the subject site, is not usable by patrons of the Bible Garden. The proposal will allow for the construction of a dwelling with a flat top structure (potential garage). This structure when constructed will provide additional area as part of the garden which will enhance the user experience of the Garden and offer an opportunity to expand the significant plantings on site.

- The previous residential scheme was by Stephen Lesiuk Architect has been presented and endorsed by the Trustees of the "Bible Garden" Memorial Trust in a letter dated 17th August 2020. This demonstrates that the proposed residential zoning is considered to be acceptable by the Trustees of the Bible Garden.

- The proposal will not result in a built form that when viewed from the most significant points at Mitchell Road and from within the Bible Gardens the dwelling will be concealed by the existing topography. There will no visual impact from this perspective.

- The character of the Bible Garden, as a site enjoyed for quiet contemplation and appreciation of the magnificent outlook towards Palm Beach will be unaffected by the proposed rezoning.

- The proposal is unlikely to reduce the user's ability to interpret the cultural landscape of the Bible Garden within its context.

- From Palm Beach and surrounds, the proposal would be visible as one of a number of residential developments within the escarpment behind Palm Beach as a result of the rezoning. Any new dwelling constructed as a result of the proposal would be visible in the landscape from these viewpoints but will have a lessened visual impact due to the scale and constrained nature of the site in comparison to other nearby residential developments. The visual impact from this perspective is considered to be minor.

- The proposal will likely facilitate the demolition of the dwelling on site. The existing dwelling on site is not considered to be of heritage significance, either through the assessment of Northern Beaches Council or by the authors of this statement.

- No other heritage items in the vicinity will be affected by future built form constructed as part of the proposal owing to the separation of these items from the subject site.

View Loss

The notion of view loss is invoked when a property enjoys existing views, and a proposed development would impact on that view. View loss impacts is addressed in the planning principle established by the NSW Land & Environment Court to deal with the assessment of view loss impacts, referred to as the *Tenacity Principle (Tenacity Consulting v Warringah [2004] NSWLEC 140)*.

To determine the impact of view loss, the following four-step assessment should be used.

Step 1 *The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

Step 2 *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.*

Step 3 *The third step is to assess the extent of the impact. This needs to be done for the whole of the property, and not just to that part where the views are affected. The views from living areas (including kitchen areas) are more significant than from bedrooms or service areas. Whilst the impact could be assessed quantitatively, it is more useful to look at the issue in a qualitative sense and ask whether the view loss is negligible, minor, moderate, severe or devastating.*

Step 4 *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 skillful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours.*

The following provides an assessment of the properties deemed to be impacted by the development using the steps established in *Tenacity Principle (Tenacity Consulting v Warringah [2004] NSW LEC 140)*.

Step 1

The existing significant views in proximity to the subject site comprise of ocean and beach views of Palm Beach located to the north east of the site.

The subject site slopes down towards the north and any future development will be designed to respond to the natural topography and step down the site. This will ensure any future development will not impact on any existing views from residential properties and the Bible Garden to the south of the site.

Step 2

Views from the Bible Garden extend from Mitchell Road in an arch from the northwest to northeast towards Palm Beach. The land is also visible also from nearby privately owned residential properties to the north east. The views are achieved from the elevated position of the site and due to the topography, the subject site and existing dwelling are not visible from the Bible Garden as detailed in **Figure 9** and **10** below.

The existing views are achieved from a standing or seated position across the site with the only obstructions consisting of existing vegetation.

Figure 9: Existing view from the Bible Garden (Source: Weir Phillips Heritage and Planning)

Figure 10: Existing view from the Bible Garden indicating the location of the subject site (Source: Weir Phillips Heritage and Planning)

During the preparation of the proposal consultation was undertaken with the Committee of the Friends of the Palm Beach Bible Garden and height poles were installed to determine the potential impact of any future development on the RE1 zoned land. **Figure 11** and **12** below details the height poles with the yellow string identifying the existing level of the bible garden and the red string identifying the maximum height allowable on the subject site as per an existing covenant.

Figure 11: **Site photo detailing the installation of the height poles in relation to the existing view (Source: Stephen Lesiuk Architect)**

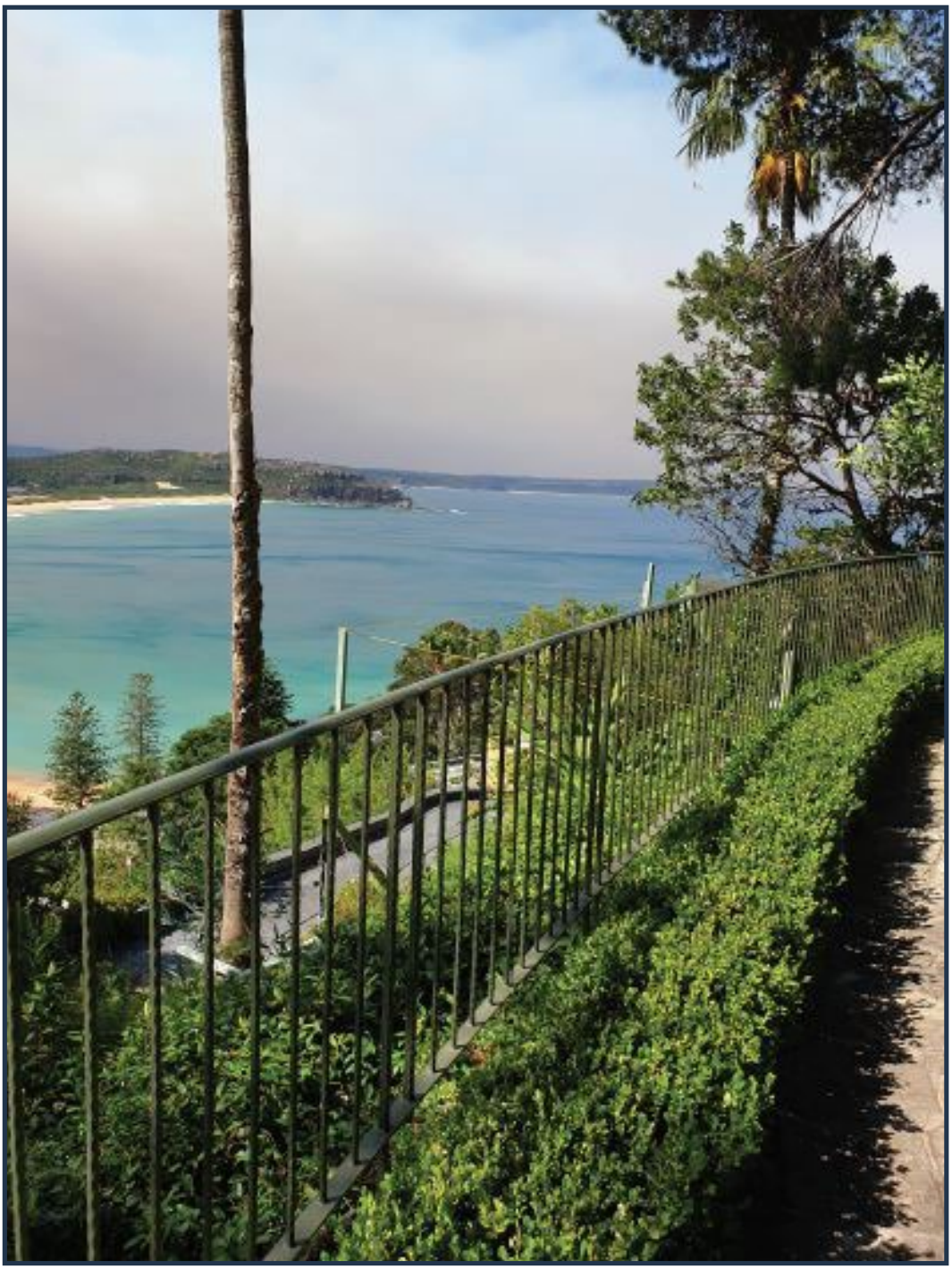


Figure 12: Site photo detailing the installation of the height poles in relation to the existing view (Source: Stephen Lesiuk Architect)

Step 3

As detailed in **Figures 11 & 12** no portion of future residential development will impede on the existing views from the Bible Garden based on the topography of the site, existing covenants and the indicative location of the garage as outlined in the Heads of Agreement Contract.

Step 4

The proposal is therefore considered to be reasonable from a view loss perspective in that any future development would be sited and designed to ensure there are no impacts on existing views obtained from the Bible Garden and surrounding area.

Built Form

Concept Architectural Plans have been prepared in support of the proposal by Housed Architects which demonstrate how the full site could be developed for residential purposes in line with the intended outcomes of the Heads of Agreement Contract.

As demonstrated in the Concept Architectural Plans and detailed in **Figures 13-17** below, the planning proposal will facilitate the development of the whole site for the purposes of a dwelling house and associated works. The portion of the site will be utilised to provide vehicular access, parking and entry to the future dwelling house without adversely impacting on the adjoining Bible Garden or access provided to adjoining sites.

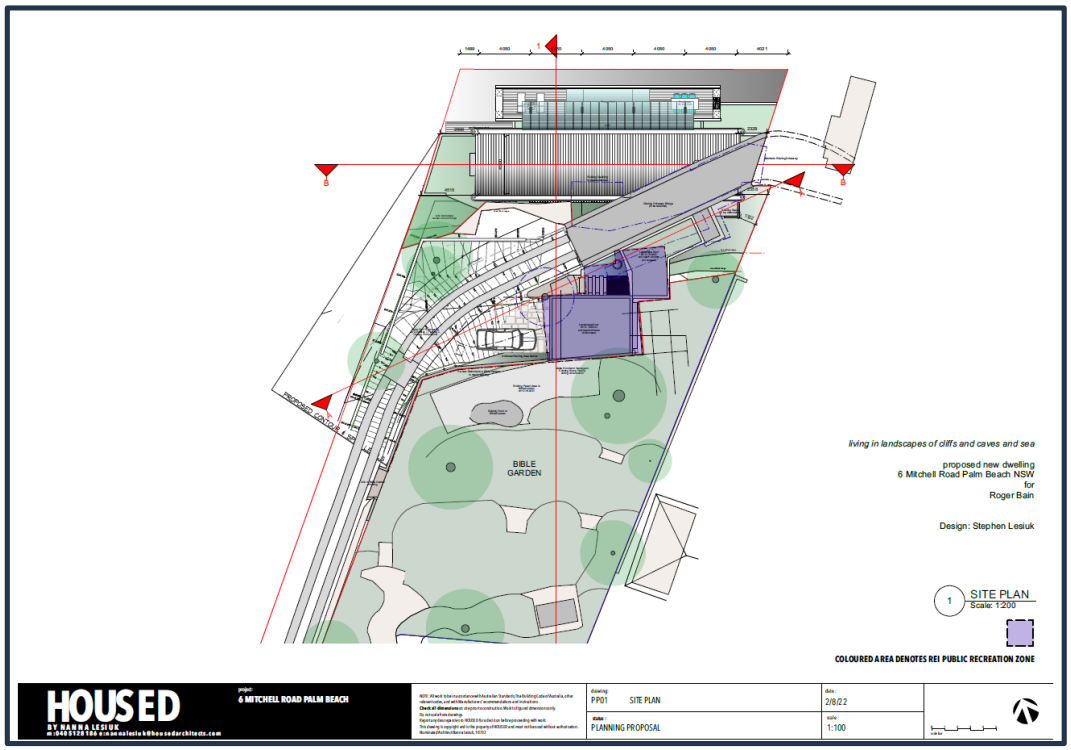


Figure 13: Concept Site Plan with the RE1 zoned portion of the site highlighted in purple (Souce: Housed Architects)

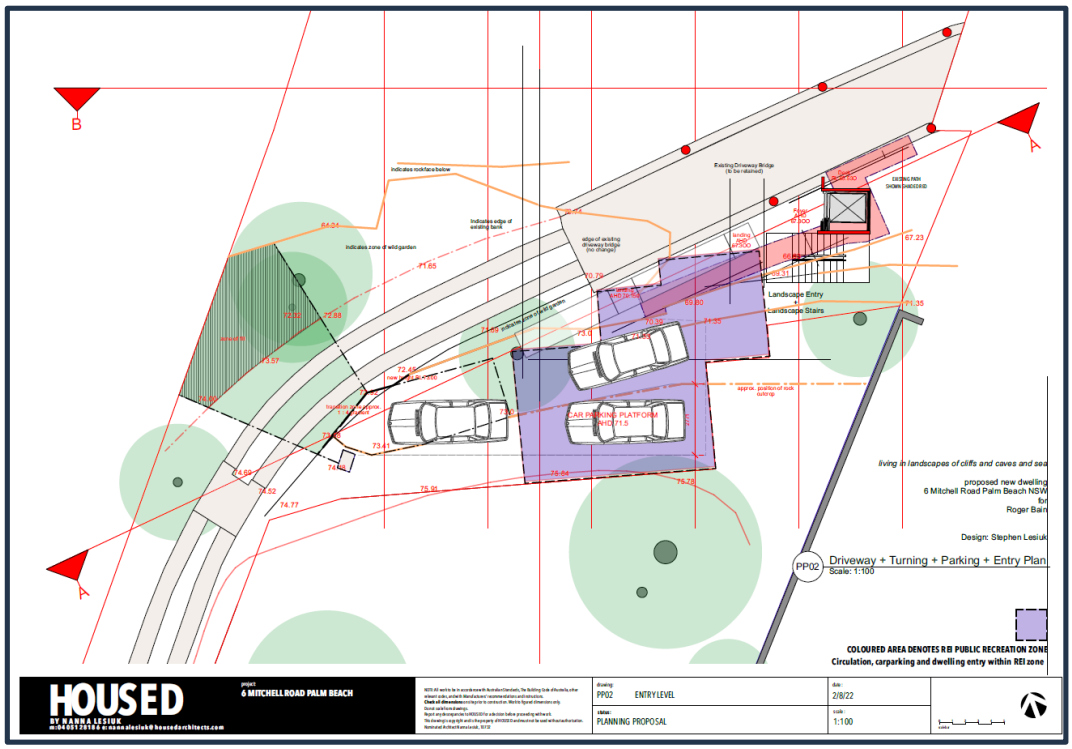


Figure 14: Concept Entry Plan detailing the RE1 zoned land as being utilized for vehilcuar access and garage (Souce: Housed Architects)

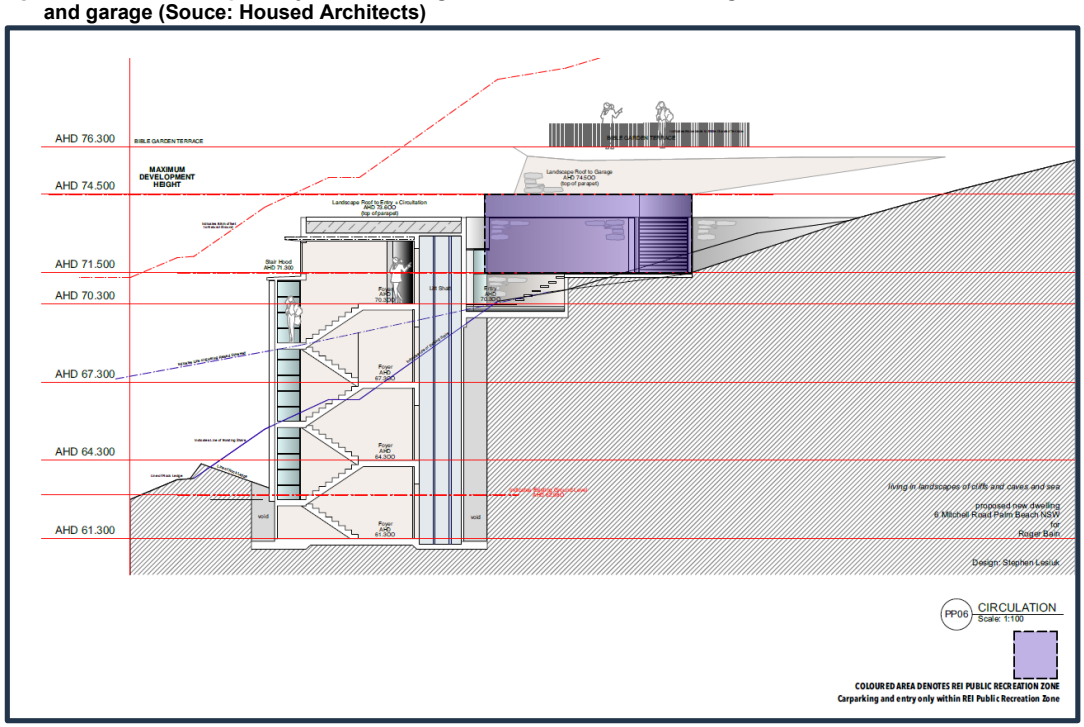


Figure 15: Concept Circulation Plan detailing the garage as below the Bible Garden and height limit (Souce: Housed Architects)

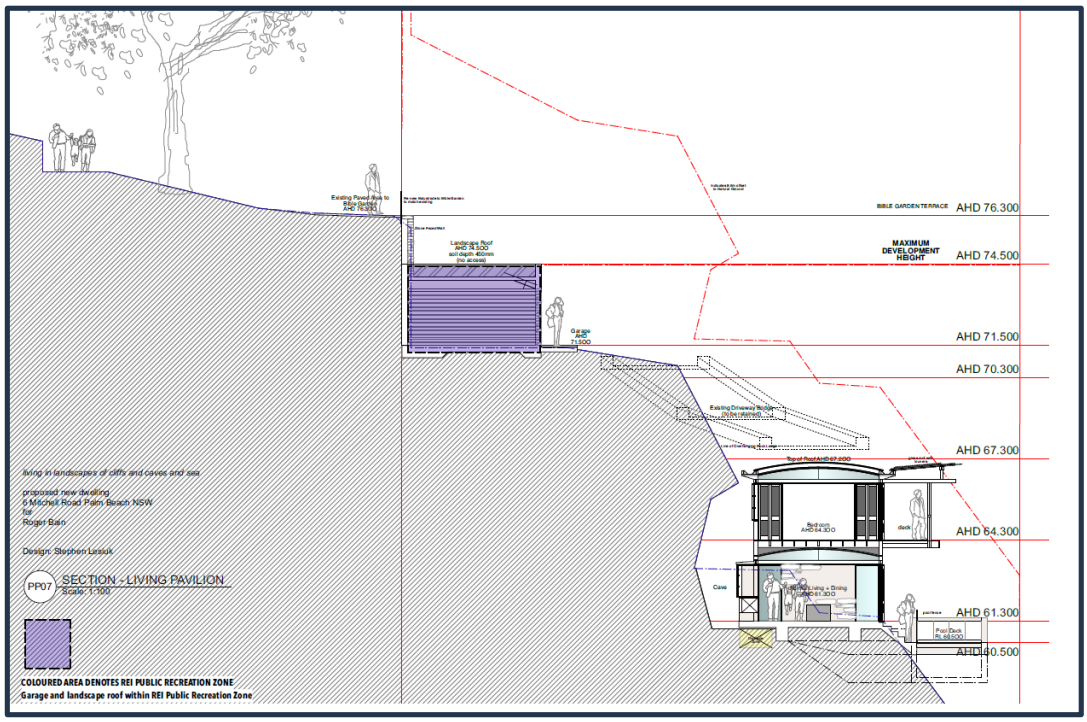


Figure 16: Concept Section detailing the garage as below the Bible Garden and height limit (Souce: Housed Architects)

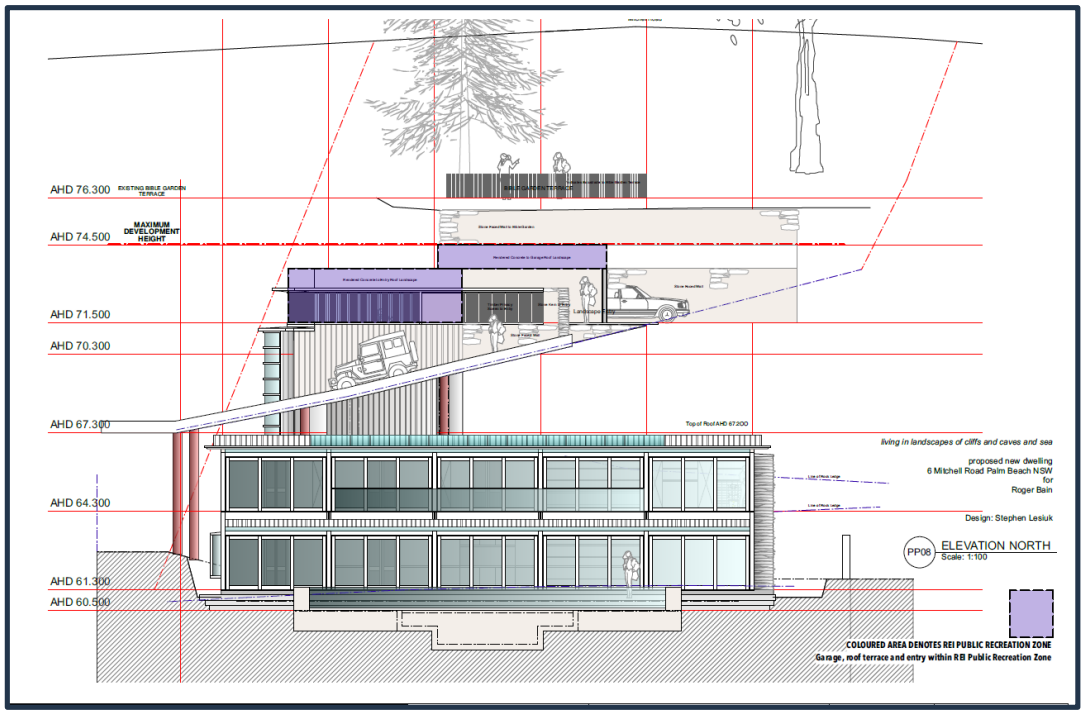


Figure 17: Concept Circulation Plan detailing the garage as below the Bible Garden and height limit (Souce: Housed Architects)

As demonstrated in **Figures 13-17** above, the portion of the site zoned RE1 can be developed for the purposes of a dwelling house without adversely impacting on the setting or functionality of the adjoining Bible Garden and recreation zoned land.

The provision of the height limit for the site as part of the amendment to Schedule 1 of the Pittwater Local Environmental Plan (LEP) 2014 ensures future development will not adversely impact on the adjoining bible garden or surrounding area and an appropriate built form can be achieved onsite. Therefore, the planning proposal will not result in any adverse built form impacts.

Traffic and Access

The proposal will not result in any adverse traffic or access impacts. The portion of land identified to include the additional permitted uses is located adjacent to an existing shared driveway that was envisaged to provide access to the subject site as outlined in the Heads of Agreement Contract. The driveway is of a sufficient size to accommodate any future residential development on the site.

Geotechnical Impacts

The site is identified as Geotechnical Hazard H1 as detailed on the Geotechnical Hazard Map in the Pittwater LEP 2014. A Geotechnical Report has been prepared by Davies Geotechnical Consulting Engineers in support of the proposal.

The Geotech Report identifies management and mitigation measures to be incorporated under future development that ensures it can appropriately respond to the Geotech hazard of the site demonstrating that the proposal will not adversely impact on the site or surrounding area. The Geotech Report concludes that the proposal can be supported from a geotechnical risk standpoint.

QUESTION 10 – Has the Planning Proposal adequately addressed any social and economic effects?

The planning proposal will facilitate the development of the whole site for residential purposes as intended under the Heads of Agreement. The social and economic benefits include increased residential accommodation in the area and resolution of the issues arising from the split zoning of the site.

D. INFRASTRUCTURE (LOCAL, STATE AND COMMONWEALTH)

QUESTION 11 - Is there adequate public infrastructure for the Planning Proposal?

The site contains an existing dwelling that has connection to all services and utilities required to facilitate residential development. The provision of additional permitted uses on the portion of land zoned RE1 Public Recreation will not adversely impact on the provisions of services and utilities in the area and existing services can be utilised in any future development of the site.

QUESTION 12 - What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

Consultation with relevant State and Commonwealth public authorities will be undertaken as part of the exhibition of the Planning Proposal, as directed by the Gateway Determination. In this regard, consultation with the following public authorities is anticipated:

- Sydney Water
- Ausgrid
- NSW Office of Environment and Heritage.

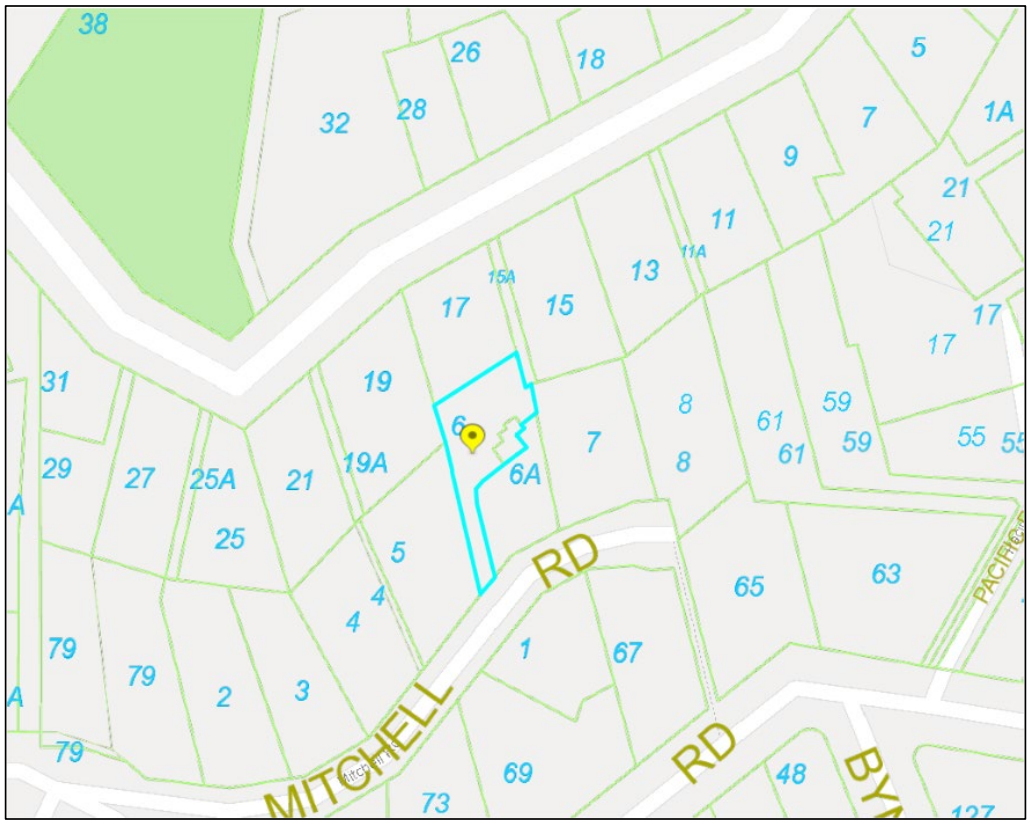
PART 4 – Mapping

As discussed, the Planning Proposal seeks to amend the Pittwater LEP 2014 as follows:

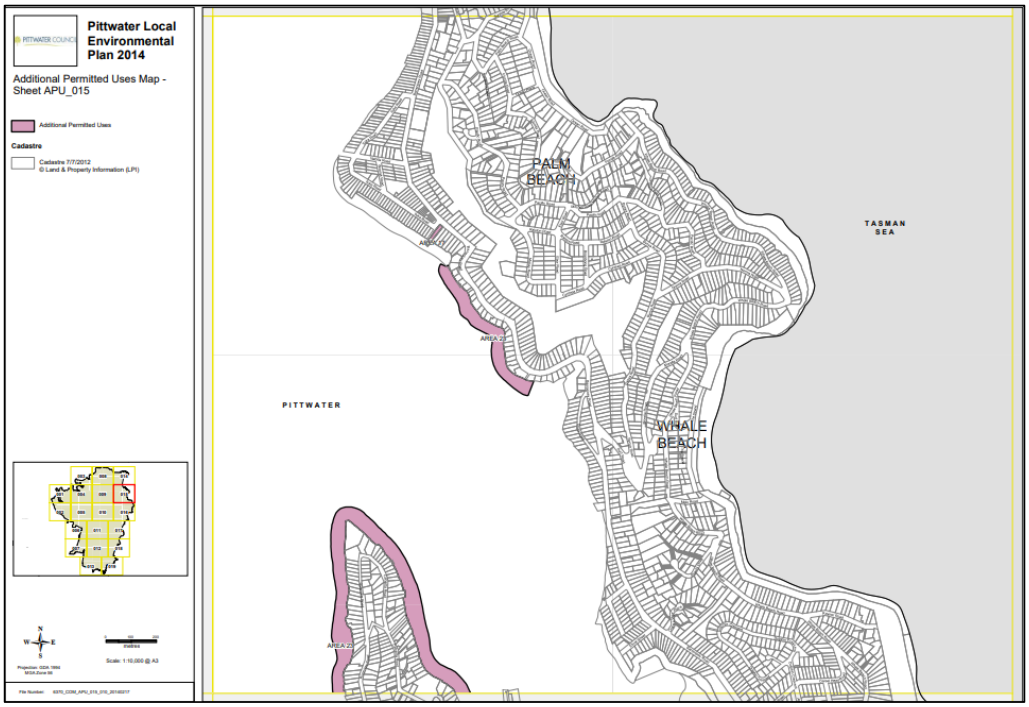
- Amend the Pittwater LEP 2014 Additional Permitted Uses Map for the subject site (Sheet APU_015) to identify the portion of the site zoned RE1 Public Recreation for additional permitted uses referenced in Schedule 1 of the LEP.

The required mapping will be undertaken by Council once Gateway Determination has been issued for the proposal.

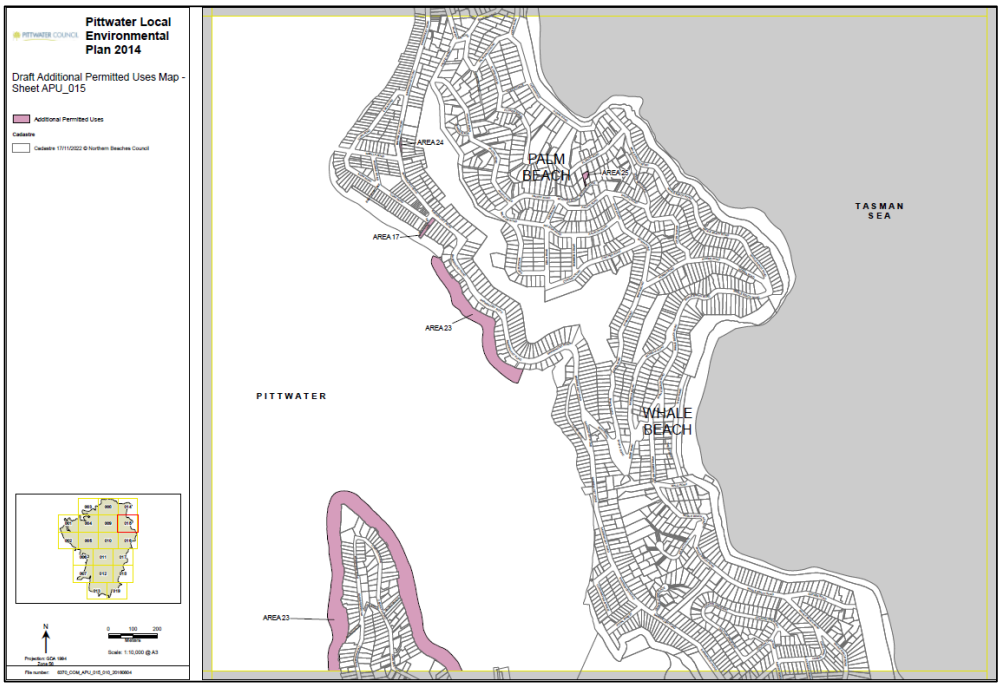
Map 1 – Site Identification Map



Map 2 – Current Additional Permitted Uses



Map 3- Proposed Additional Permitted Use



PART 5 – Community and Key Stakeholder Consultation

Community Engagement (Non-Statutory)

The Planning Proposal was originally placed on non-statutory public exhibition for 14 days in accordance with the Northern Beaches Community Participation Plan from 28 September to 13 October 2022. Notification included:

- Notification letters to adjoining landowners and occupiers;
- Email to community members who have registered their interest;
- An updated Council Public Exhibition website 'Your Say' with relevant information; and
- Council's Community News.

On 12 October 2022, the notification period was extended to 21 October 2022.

Submissions

Six (6) valid submissions were received during the non-statutory exhibition period. The issues raised in the six (6) submissions included:

- Wanting garage on the concept plan to be lowered;
- Vegetation that will feature on garage roof as shown on garage height should be at max development height;
- New structure will obscure view;
- Unlawful public exhibition;
- Unclear amendment proposal;
- Garage roof vegetation upkeep issues;
- Extension of exhibition time; and
- Planning Proposal is unlawful.

One (1) submission was received after 21 October 2022 (closing date of notification period) and has still been considered.

A summary of the 6 valid submissions (including the late submission) and Council's responses to the issues raised is appended to the report presented to the Northern Beaches Local Planning Panel and Council.

Exhibition – Gateway Determination

On issue of the Gateway Determination, Council will formally exhibit the Planning Proposal in accordance with the conditions of the Gateway Determination, Section 3.34 and Schedule 1, Clause 4 of the *Environmental Planning and Assessment Act 1979*.

It is expected that direction as to the nature and extent of the public exhibition will be provided by Department of Planning, Industry and Environment as part of the Gateway Determination. It is anticipated that the Planning Proposal will be publicly exhibited for a period of 28 days.

PART 6 – Project Timeline

Council, as the Relevant Planning Authority (RPA), has discretion to determine the relevant project timeframe for the determination of this Planning Proposal. The information detailed within this Planning Proposal has been provided to outline any potential impacts and provide justification to support and assist the RPA's determination.

Table 6: Anticipated Project Timeline	
Stage	**Timeframe**
Report to Council – obtain Council resolution to progress Planning Proposal	February 2023
Forwarding the Planning Proposal to Department – Request for Gateway Determination	March 2023
Gateway Determination issued (assumes 3 month turnaround)	June 2023
Anticipated timeframe for the completion of required technical information (If required)	July 2023
Public Exhibition	August 2023
Timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)	August 2023
Dates for public hearing (if required)	September 2023
Timeframe for consideration of submissions	September 2023
Report to Council on outcomes of public exhibition	October 2023
If Council agrees, submit to Department to finalise the LEP	November 2023
Anticipated date the local plan-making authority will make the plan (if authorised)	December 2023
Anticipated date the local plan-making authority will forward to the PCO for publication	December 2023

Conclusion

This Planning Proposal seeks to amend the Pittwater Local Environmental Plan (LEP) 2014 to include an additional permitted use of dwelling house on that portion of 6 Mitchell Road, Palm Beach currently zoned R1 Public Recreation; and to ensure that any future residential development on the land does not exceed building height 74.5AHD.

The Planning Proposal has been prepared in accordance with Section 3.33 of the Environmental Planning and Assessment Act 1979 (the EP&A Act) and The Department of Planning's 'Local Environmental Plan Making Guideline.'

The Planning Proposal provides a comprehensive justification of the proposed amendment to the Pittwater LEP 2014, and significant planning merit in the following respects:

- It will facilitate the future intended residential development of the site as envisaged by Council and the Trustees of the Bible Garden;
- It will enable appropriate residential development that recognises the heritage significance of the site and surrounding area; and
- It will not adversely impact on the ecological, cultural or scenic significance of the site and surrounding area.

Given the above significant planning merits and the absence of any adverse social, economic or environmental impacts, it is requested that the Planning Proposal be favorably considered by Council and that Council resolve to forward it to the Department of Planning, Industry & Environment to allow the Department to consider the Planning Proposal for Gateway Determination under Section 3.34 of the Environmental Planning and Assessment Act, 1979.

No.	Date Received	Issue Raised	Council Response to Issue
1	30/09/2022	More information needed on the proposal.	Contacted submitter via phone and explained the contents of Planning Proposal. No future submission made by the submitter.
2	10/10/2022	Wanting the garage area to be moved further east and lowered. Rooftop gardens rarely become a permanent fixture on a property, due to various problems or lack of interest. That would be my concern with this being so close to the max development height. Can the vegetation height on the rooftop be at the max development height.	Both suggestions go to design details of a future built form, that would be subject to a future Development Application being lodged on the site.
3	11/10/2022	Wanting more exhibition time.	The request is noted. Council extended the Non-Statutory Exhibition period to Friday 21st October 2022 and submitter advised accordingly. A latter submission, known as Submission #5 (Piper Alderman(lawyers) on behalf of Jason and Jodie Smith), is made on behalf of the same landowners.
4	12/10/2022	New structure will obscure view.	The proposal will amend the PLEP2014 to include provisions to the subject site that any future residential development cannot exceed a height of 74.5 AHD for the whole property. This will ensure scenic views of Palm Beach from the Bible Gardens will not be obstructed.
		Concerned that with the owner being responsible for the upkeep of the proposed roof garden it will revert to a weedy mess and plants growing up to further obscure the view from the Bible Garden due to it being out of sight and concern to the owner and upkeep not being enforced.	The submitter is talking about the concept plans provided with the Planning Proposal documentation, that show the rooftop garden on top of the garage. The concept plans are information only and do not form part of the recommended Planning Proposal document before Council (see Attachment 2 to the report). Issues regarding the management of any future rooftop garden is to be addressed during an assessment of a Development Application.
5	21/20/2022	**1)** Making of the Planning Proposal is without a connected development application is contrary to section 3.38 of the Environmental Planning and Assessment Act 1979 (EP & A Act);	The Environmental Planning and Assessment Act (the EP&A Act) does not require a Planning Proposal is to be accompanied by a development application. The EP&A Act allows a Planning Proposal to be lodged for assessment.
		2) Planning Proposal is unclear in its terms; the additional clause into schedule 1 of the LEP should be clear & unambiguous. The submitter provides amendments to how the proposal is to be written.	The submitter suggests the description of 6 Mitchell Road alone, without the Lot and DP reference, may be uncertain. It is worth noting that as a document, the Planning Proposal is not meant to read and be worded as a legal instrument in much the same way as the Local Environmental Plan it is seeking to amend. The proponent's Planning Proposal clearly states, in plain English, It is clear the location of land as the area applicable to the clause is shown on the street address that the Planning Proposal relates and insofar what it is proposing to amend under the Pittwater LEP. Council staff, have prepared an amended Planning Proposal for Council to consider, as Attachment 2 to this report. It clearly states: the Planning Proposal will be a site-specific provision applying only to 6 Mitchell Road Palm Beach (to be identified on the Additional Permitted Land Uses Map of the LEP).
		3)Exhibition of the Planning Proposal is unlawful;	Council notified the proponent's Planning Proposal application. This notification phase is the first phase, an opportunity to obtain the local community's views on the proponent's Planning Proposal and is in accordance with Council adopted Community Participation Plan (May 2020). This is best practice approach in community engagement. It is not unlawful, especially as Council is considering the application and views from local community as part of its assessment of the proponent's Planning Proposal and before it determines whether to progress the Planning Proposal to Gateway Determination.
		4) Above breaches lead to the invalidity of any amendment made as a consequence of the Planning Proposal.	The issues raised by the submitter above , namely 1 to 3 inclusive, have been responded to accordingly. None of the issues raised are in breach of the EP&A Act.
6	28/10/2022	Lack of concern for the stone wall on the northern boundary (bordering with the adjoining property 17 Florida Road Palm Beach) of the subject site. The steep slope and conditions hazards and risk to 17 Florida Road, Palm Beach.	The stone wall in which the submitter refers to is located on the northern boundary of the subject site bordering with the adjoining neighbouring property 17 Florida Road, Palm Beach. Council notes the issue raised by the submitter however the geotechnical report submitted with the Planning Proposal do not conclude to require specific provisions that must be included in a site-specific provision as part of the additional permitted land use for this site (this is the basic premise of the proponent's Planning Proposal). Any issues regarding the structural adequacy of the stone wall and geotech hazards of the land is in the future design of a development on this site, that requires addressing in the assessment of a future Development Application.
*An additional submission was received by Council and was subsequently withdrawn by the submitter. The withdrawn submission has not been included in this table.			

ITEM 4.3	**DA2022/1158 - 13 ILUKA ROAD, PALM BEACH - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOL.**
AUTHORISING MANAGER	**Peter Robinson**
TRIM FILE REF	**2022/766783**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Site Plans & Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2022/1158 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 62 DP 14682, 13 Iluka Road, PALM BEACH for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1158

Responsible Officer:	Peter Robinson
Land to be developed (Address):	Lot 62 DP 14682, 13 Iluka Road PALM BEACH NSW 2108
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool
Zoning:	R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Christopher James Stevens
Applicant:	Alejandra Becerra
Application Lodged:	26/07/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	04/08/2022 to 18/08/2022
Advertised:	Not Advertised
Submissions Received:	19
Clause 4.6 Variation:	Nil
Recommendation:	Refusal
Estimated Cost of Works:	$ 1,990,926.00

EXECUTIVE SUMMARY

This development application for demolition work and the construction of a dwelling and swimming pool is referred to the Northern Beaches Local Planning Panel ('NBLPP') for determination as the application has attracted more than ten (10) unique submissions.

This proposal follows a previous application (DA2021/0197) that was withdrawn by the applicant to allow for a redesign of the proposal in response to concerns raised by Council and the neighbours.

Submissions raised during assessment of the current application generally relate to the built form of the development, the character of the architecture, and the amenity impacts to neighbouring properties caused by the proportions of the building and its design. Neighbours are also specifically concerned about view loss and solar access.

It is acknowledged that strict compliance with the 6.5 metre front building line requirements would be unreasonable to apply to both street frontages. The DCP recognizes such instances and identifies a 50% reduction for the second street frontage, however the proposal goes beyond the considerations which this assessment has found that the built form, is unacceptable resulting in unreasonable amenity impacts to neighbouring properties.

This report concludes with the recommendation that the NBLPP, as the consent authority, **Refuses** the development application.

PROPOSED DEVELOPMENT IN DETAIL

Development Consent is sought for demolition works and the construction of a two-storey dwelling house with swimming pool, fencing and associated landscaping.

The ground floor comprises a double garage with a bedroom, bathroom, and an open plan living / kitchen / dining space. An outdoor alfresco area adjoins these spaces.

The first floor accommodates three bedrooms, three bathrooms and two additional living spaces.

The roof of the building accommodates a 24sqm (approx.) roof terrace.

A circular swimming pool is proposed along the western boundary within the front setback and is bound by a 1.8m high fence. The northern boundary of the site is bound by a 1.2m high fence.

The proposal includes the planting of five water gums, three blueberry ash, four fern leaf banksias, one old man banksia (all trees) alongside other shrubs, grasses, and ground covers.

The project architect has supplied two photomontages that are extracted below for reference only (NB : no documentation has been provided to indicate that these have been prepared in accordance with the LEC practice note on photomontages).

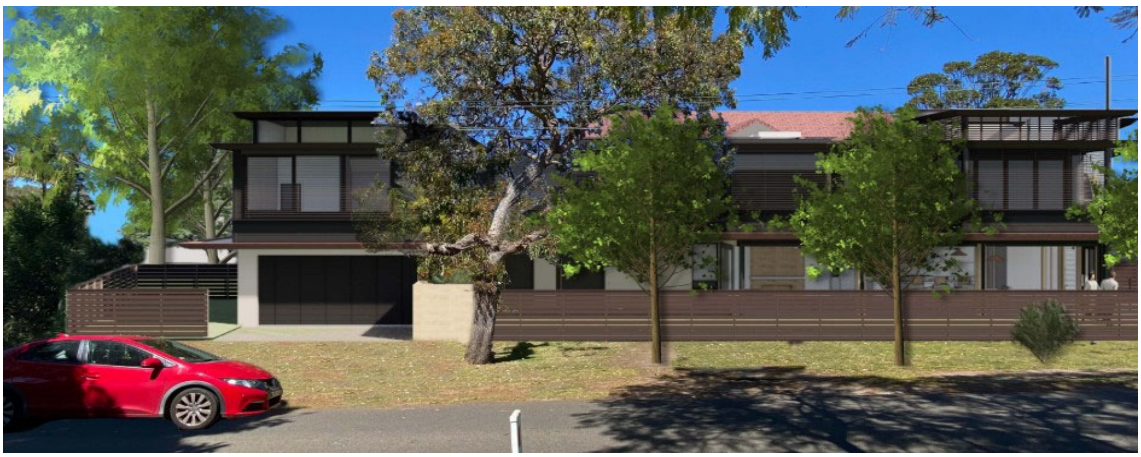


Figure 1: Photomontage of proposal from Nabilla Road, looking south

Figure 2: Photomontage of development from juncture of Iluka Road and Nabilla Road, looking south-west

AMENDED PLANS

During assessment of the application Council requested amendments to the reduce the visual bulk and scale of the building and enhance the capacity for landscaping within the site. Plans were prepared which removed paving from the site frontage in order to increase landscaped area and allow for more trees; reduced the size of the roof terrace; and reduced the width of the eaves/roof overhang elements, however the first-floor components remain at an unacceptable setback to the Nabilla Road frontage.

The revised plans have been reviewed but have not achieved the desired outcomes requested. As the plans have not been formally lodged on the NSW Portal, they cannot form part of the application and this report relies on the original plans submitted.

ASSESSMENT INTRODUCTION

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

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

to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.14 Separately Accessible Structures
Pittwater 21 Development Control Plan - D12.5 Front building line
Pittwater 21 Development Control Plan - D12.6 Side and rear building line
Pittwater 21 Development Control Plan - D12.8 Building envelope
Pittwater 21 Development Control Plan - D12.11 Fences - General

SITE DESCRIPTION

Property Description:	Lot 62 DP 14682, 13 Iluka Road PALM BEACH NSW 2108

Detailed Site Description:	The subject site is a corner allotment bound by Nabilla Road to the north and Iluka Road to the west. To the east the site adjoins a two-storey detached dwelling house, and to the south the site adjoins one half of a two-storey attached dual occupancy development. The site falls within the R2 Low Density Residential zone pursuant to the Pittwater Local Environmental Plan 2014, and is within the Palm Beach Locality pursuant to the Pittwater 21 Development Control Plan 2014. The site has an east - west width varying from 33m (to Nabilla Road) to 43m, and a north - south depth of approximately 12.5m, equating to an overall surveyed area of 492.8m^2. The site is bound by a wide road reserve to the north and west which is generally lawn with one Angophora Costata tree to the north. The street frontages are not kerbed. Presently the site accommodates a detached single storey fibro cottage, and a detached fibro garage / secondary dwelling structure. Surrounding properties consist of dwelling houses, dual occupancy developments and other ancillary structures. These built forms are generally contained within two storey buildings and consist of a varying format of architectural typologies.

Map:

SITE HISTORY

The site has been used for residential purposes for an extended period of time.

DA2021/0197 was a previous application on the site for the construction of a new dwelling house by the same architect. That application was ultimately withdrawn by the Applicant given concerns that were raised during the assessment but were not satisfactorily resolved by revised plans.

The current development application is a revision of the earlier scheme under DA2021/0197.

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	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The
Section 4.15 Matters for Consideration	**Comments**
	Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 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. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 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.

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 Pittwater 21 Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 04/08/2022 to 18/08/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 19 submission/s from:

Name:	**Address:**
Mr Nicholas Kenneth Martin Allen	20 Bishops Avenue RANDWICK NSW 2031
Ms Diana Dennison Philip Quirk	1 Nabilla Road PALM BEACH NSW 2108
Ms Janette Mary O'Neil	72 Iluka Road PALM BEACH NSW 2108
Mr Philip Francis Quirk	3 Woorak Road PALM BEACH NSW 2108
Carolyn Ann Thomas	2 Woorak Road PALM BEACH NSW 2108
Peter Blomfield	960 Barrenjoey Road PALM BEACH NSW 2108
Ms Catherine Alexandra Young	905 Barrenjoey Road PALM BEACH NSW 2108

Miss Ruth Cecilia Ritchie	34A Billyard Avenue ELIZABETH BAY NSW 2011
Mr Mark William Flew	10 Nabilla Road PALM BEACH NSW 2108
Mr Neil Campbell Smith	11 A Iluka Road PALM BEACH NSW 2108
Ms Carolyn Eileen Harris	139 Riverview Road AVALON BEACH NSW 2107
Mr Peter Michael Edward Scarf	6 Nabilla Road PALM BEACH NSW 2108
Mr Michael Lynn Cairns Molesworth	332 Whale Beach Road PALM BEACH NSW 2108
Rosanne Elizabeth Rachel Burkhart	150 Windsor Street PADDINGTON NSW 2021
Mr Daniel Droga	2 Wallaroy Road WOOLLAHARA NSW 2025
Mrs Yasmin Anita Allen	20 Bishops Avenue RANDWICK NSW 2031
Ken Allen	Address Unknown
The Palm Beach & Whale Beach Association Inc	PO Box 2 PALM BEACH NSW 2108
Mr Kenneth James Roberts	528 Barrenjoey Road AVALON BEACH NSW 2107

The public exhibition of this DA has attracted 19 submissions from nearby properties and the wider Palm Beach area. It is noted that several of these are duplicates from the same property (as detailed in the list of submitters above), however notwithstanding that, all issues raised in all submissions received have been considered in this assessment.

The following issues were raised in the submissions:

- Built Form Non-Compliances
- Amenity Impacts
- Vegetation / Natural Environment Impacts
- Use of Building

The above issues are addressed as follows:

- **Built Form Non-Compliances**

  The submissions raised concerns that the proposal is grossly non-compliant with Council's built form controls, particularly with regards to setbacks and building height.

  Comment:

  The building height is compliant with Clause 4.3 *Height of buildings* in the PLEP 2014 and is lesser in height than the adjoining properties to the east and the south.

  The site is a corner allotment and is therefore subject to one primary front setback (6.5m) to Iluka Road and *can* be subject to one secondary street front setback (3.25m, if objectives of the setback control are met) to Nabilla Road, and has residual boundaries being the east and south. The P21DCP is silent on whether these boundaries, for corner allotments, should be assessed as either 'side' or 'rear' boundaries.

  Several submissions have requested that Council assess the east and south boundaries as

'rear' boundaries, thereby requiring a 6.5m setback, and have also suggested that, as the objectives applying to a secondary street frontage under the P21DCP have not been met, that the 6.5m setback control (instead of 3.25m) should be applied to Nabilla Road. This is however impractical and unreasonable, given the site area. The site has a depth of 12.46m and therefore, the strick application for two x 6.5m setbacks would render development of the site virtually impossible, or simply that significant variations would need to be granted to allow a reasonable scale of development. Imposing 6.5m to all sides except for the northern Nabilla Road setback (if it is left at 3.25m) equates to a maximum buildable area of 88sqm, or 18% of the site area. This is significantly less than any other buildings on Iluka Road or Nabilla Road. Such an example is demonstrated on the below working drawing prepared by the author of this report.

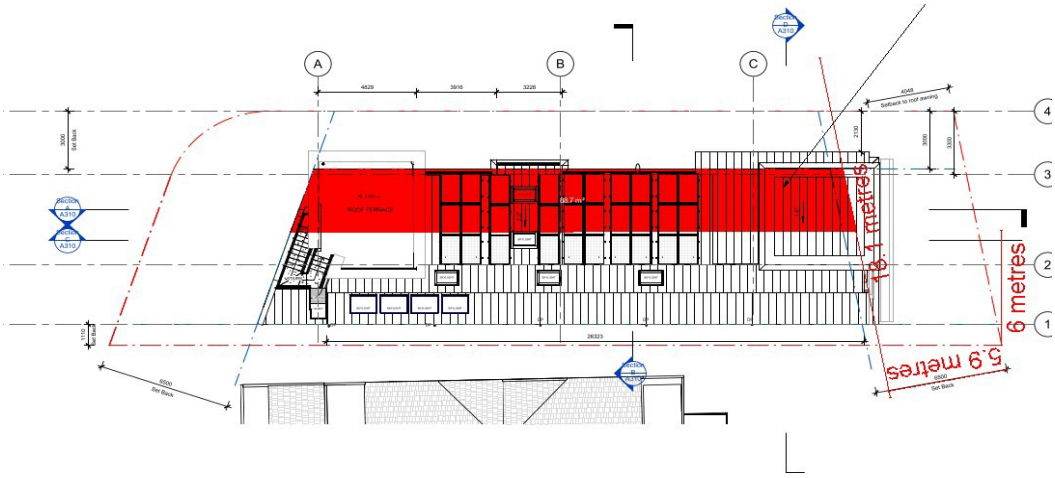


Figure 3: Working plan showing a 6.5m "rear setback" being applied to the western and southern boundaries (indicated in red).

It is therefore evident that a merit-based approach to setbacks is required in this instance, whilst having regards to the desired Outcomes of the relevant controls, and the greater Desired Future Character for the locality.

Concerns have also been raised that the building fails to comply with the side building envelope on the southern elevation. It is correct that there is a breach to this control on this elevation, however the extent of breach is not found to be contributory to any unreasonable building bulk or amenity impacts on neighbours. The extent of the breach proposed is demonstrated on *Figure 4* below.

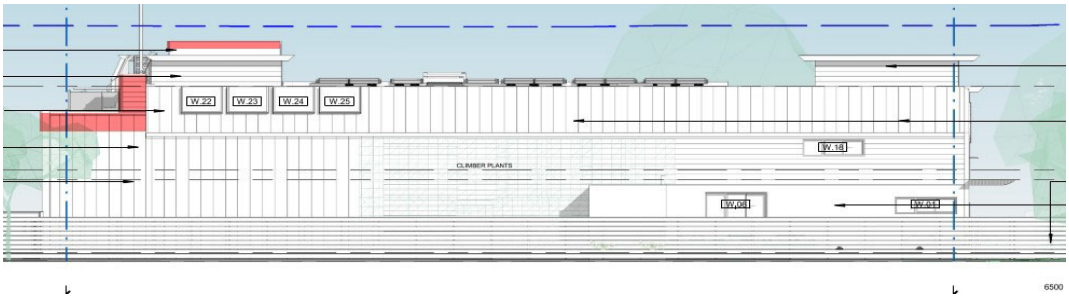


Figure 4: Working plan showing portions of the building encroaching the building envelope (indicated in red).

- **Amenity Impacts**

The submissions raised concerns that the proposal will have an unacceptable visual bulk, and will unreasonably impact on the provision of views, solar access, and aural and visual privacy currently enjoyed by neighbours.

Comment:

The particulars regarding amenity impacts are discussed in greater detail later in this report.

Concerns have been raised by objectors that the existence of a pool and a rooftop deck will result in the building being a "party house" and thus have an adverse impact on aural privacy. Numerous other properties have decks and pools and therefore these factors are not considered fatal to the application. The proposed rooftop deck is positioned at the front of the property bound by two intersecting roads and has privacy screening on the sensitive southern elevation. Any visual privacy impacts to properties across the roads from this deck would not be significantly greater than a deck at first floor level and is therefore considered acceptable.

The impacts of solar access to surrounding properties are addressed later in this report and found to meet the requirements of the DCP.

View loss and visual bulk have also been raised as concerns by neighbours, and these are addressed in detail later in this report, however, are not acceptable and have determining weight.

- **Vegetation / Natural Environment Impacts**

The submissions raised concerns that the proposal will have unreasonable impacts on the natural environment.

Comment:

The proposal has been assessed by Council's Landscape Officer and Bushland Biodiversity Officer who raise no objections to the development, subject to conditions as recommended. The proposal is retaining an *angophora costata* tree on the Nabilla Road verge which leans into the site and with the reduced building setbacks will required removal of branches to allow for the proposed building. The landscape plan seeks to introduce a number of new plantings both on the road reserve and within the site. The proposed pool and large paved area identified on the architectural plans reduces the capacity of Iluka Street frontage. This could be conditioned to enhance additional tree planting if required. With such changes, the proposal would be acceptable.

- **Use of the Building**

The submissions raised concerns that a portion of the building may be occupied as a secondary dwelling, and that such a land use has not been sought under this application.

Comment:

The proposal could lend itself towards a separate occupancy, however conditions could be applied to restrict the use to a single dwelling and that no cooking facilities be installed in the

bar area of the second living area.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	***Supported, with conditions*** Site is designated: Class 3: Acid sulfate soils in a class 3 area are likely to be found beyond 1 metre below the natural ground surface. An acid sulfate report has not been submitted. Environmental Health supports the proposal subject to conditions.
Landscape Officer	***Supported, with conditions*** The development application is for demolition of existing structures and construction of a new dwelling, garage, pool, upper terrace, fencing, tree removal and landscape works, as described and illustrated in the reports and plans. A Landscape Plan and an Arboricultural Impact Assessment accompany the application and are assessed as part of this Landscape Referral. Council's Landscape Referral section have assessed the application against the Pittwater Local Environment Plan, and the following Pittwater 21 DCP controls (but not limited to): • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D12 Palm Beach Locality The submitted Arboricultural Impact Assessment includes recommendations to remove four existing street trees/palms/tall shrubs including two Oleanders, one Cocus Palm, and one Black Locust. All are undesirable species and the Landscape Plan replaces these with native street trees thus no concerns are raised. The property contains one Frangipani tree that is proposed to be transplanted. The native Angophora floribunda street tree is to be retained with pruning works required to one side, and all trees in proximity to the proposed development works within adjoining property are protected. The Arboricultural Impact Assessment includes recommendations for tree protection measures and

Internal Referral Body	Comments
	conditions shall be accordingly imposed. The submitted Landscape Plan provides an enhanced landscape setting to the property and to the streetscape and no concerns are raised subject to imposed conditions.
NECC (Bushland and Biodiversity)	***Supported, with conditions*** The proposal has been assessed against the following applicable biodiversity-related provisions: - SEPP (Resilience and Hazards) - Coastal Environment Area - Pittwater DCP Clause B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land The development will result in removal of exempt exotic trees and provides for appropriate replacement planting of approximately 60% native species. Conditions recommended by the Riparian and Landscape referral bodies will serve to protect coastal environmental/biodiversity values.

NECC (Coast and Catchments)	***Supported, without conditions*** The application has been assessed in consideration of the *Coastal Management Act 2016,* State Environmental Planning Policy (Resilience and Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. **Coastal Management Act 2016** The subject site has been identified as being within the coastal zone and therefore *Coastal Management Act 2016* is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the *Coastal Management Act 2016.* **State Environmental Planning Policy (Resilience & Hazards) 2021** The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021. Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Comment: On internal assessment , the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.

Internal Referral Body	Comments
	Pittwater LEP 2014 and Pittwater 21 DCP No other coastal related issues identified. As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.
NECC (Development Engineering)	***Supported, with conditions*** The proposed development does not require OSD and connection of stormwater to the Council stormwater pit is acceptable. The proposal will require a driveway crossing which has been conditioned. The submitted Geotechnical report addresses the relevant DCP controls. Development Engineering support the proposal, subject to conditions as recommended.

NECC (Riparian Lands and Creeks)	***Supported, with conditions*** This application was assessed in consideration of: - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021; - Relevant LEP and DCP clauses; and - Northern Beaches Council Water management for development policy. The site is close to Pittwater estuary and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of Pittwater estuary, or the quantity and quality of surface and ground water flows that it receives. Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established. Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development. Subject to conditions, the proposal is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Pittwater estuary.

Internal Referral Body	Comments

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	***Supported, with conditions*** The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs 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 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. 1309618S dated 15 June 2022). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0007803307 dated 15 June 2022).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	80

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

SEPP (Transport and Infrastructure) 2021

<u>Ausgrid</u>
Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:
The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 3 Coastal environment area
2.10 Development on land within the coastal environment area

1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
   a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
   b) coastal environmental values and natural coastal processes,
   c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
   d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
   e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
   f) Aboriginal cultural heritage, practices and places,
   g) the use of the surf zone.

Comment:

The site is mapped as being within the coastal environment area. The property is situated some distance from the waters edge, with that distance being intersected by a road and a public car park. The spatial separation and type of structures between the site and the waterway largely minimise opportunities for the development to have adverse impacts on the waterway, its ecology, or the coastal processes.

The development does not impact on access to the coast, any known Aboriginal heritage items or the use of the surf zone.

Therefore, on balance, the consent authority may be satisfied that the development is not likely to have an adverse impact as detailed in cl.2.10 (1) (a) through to (g).

2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
   a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
   b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
   c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The consent authority may be satisfied that the development is designed, sited, and will be managed in an appropriate manner to avoid adverse impacts referred to in subsection 1 as above.

Division 4 Coastal use area
2.11 Development on land within the coastal use area

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

Comment:

The site is also mapped as being within the coastal use area. Given the separation of the site to the coast, the consent authority can be satisfied that the development is designed, sited, and will be managed in an appropriate manner to avoid adverse impacts.

Division 5 General
2.12 Development in coastal zone generally—development not to increase risk of coastal

hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The consent authority may be satisfied that the replacement of a dwelling within an established residential area would be unlikely to cause increased risk of coastal hazards on the subject site or surrounding lands.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings	8.5m	8.0m	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes

7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	(Iluka Road) 6.5m	Building - 6.5m	-	Yes
		Roof overhang - 3.5m	53%	**No**
		Pool - 2.0m	70%	**No**
Secondary Front Building Line	(Nabilla Road) 3.25m	Building - 2.5 - 3.3m	Max. 23%	**No**
		Roof overhang - 2.2 - 3.5m	Max 38%	No
Side building line	(south) 1.0m	1.1m	-	Yes
	(east) 2.5m	4.56 - 6.1m	-	Yes
Building envelope	(south) 3.5m	Two encroachments - dumbwaiter and wall, and privacy screen	Max. 60%	**No**
	(east) 3.5m	No encroachments	-	Yes
Landscaped area	50% (233.5m^2)	48.6% (227m^2) + 6% (29.5m^2) Total: 54.9% (256.5m^2)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes

C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
Clause	**Compliance with Requirements**	**Consistency Aims/Objectives**
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	No	Yes
D12.9 Landscaped Area - General	Yes	Yes
D12.11 Fences - General		
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.12 Palm Beach Locality

Clause A4.12 *Palm Beach Locality* described the Desired Future Character (DFC) of the locality as:

- *The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancy dwellings will be located on the lowlands and lower slopes that have less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, community and recreational facilities will serve the community.*

  Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.

  Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will

harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

The design, scale and treatment of future development within the commercial centres will reflect a 'seaside-village' character through building design, signage and landscaping, and will reflect principles of good urban design. Landscaping will be incorporated into building design. Outdoor cafe seating will be encouraged.

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.

Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved.

Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities.

Palm Beach will remain an important link to the offshore communities.

Comment:

The proposal does not appropriately respond to the Desired Future Character. The building is two storeys in height and is bound by a narrow landscaped curtilage, however the proposal seeks to take advantage of public landscaping to the north and west from a generous road verge. The one significant tree located in the road reserve will require a degree of branch removals as it leans heavily into the site, where the building has a reduced front setback. Plans also indicate a large area of paving associated with the swimming pool in the Iluka Street frontage which reduces the capacity to provide on tree planting.

The height of the building remains beneath the established tree canopy of the locality and is lesser than the heights of adjoining buildings.

Massing of floorspace on the first floor has located unnecessary bulk on the first floor near the front boundary (2.5 metres), whilst the ground floor contains a large ‘outdoor’ undercroft area below the first floor. Whilst the building design and façade is of high quality and interest, it is out of proportion with the lot size on which is it proposed. The building presents a long unbroken façade to the north facing Nabilla Road and to the south facing the neighbouring property. The vertical massing on the first floor to the north, being forward of the ground floor, does not respond to the site dimensions or context of the street.

Redistribution of the floorspace could break the long north and south elevations and provide for greater setbacks to Nabilla Rd at the first-floor level, whilst reducing the need to trim the significant tree located in the road reserve.

The roof terrace presents a dominant feature on the highly visible corner location of Iluka and Nabilla roads. The balustrades could be setback behind the buildings facades to reduce the visual dominance

of this feature.

The building is to be finished in darker colours to blend in with the natural environment.

C1.3 View Sharing

The neighbouring properties to the east at 1 Nabilla Road (also known as 3 Woorak Road) and 5 Woorak Road have objected to the development on the grounds of unacceptable impacts to their existing views.

A view site inspection was carried out at both properties for the previous DA. The circumstances of the sites and their relationships to one another has not materially changed since the assessment of the previous DA, hence that earlier assessment can be relied upon.

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

- *A reasonable sharing of views amongst dwellings.*

  Comment:
  In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

  1. Nature of the views affected

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

  Comment to Principle 1:

  The views in question that may be impacted by the development are water views and, to a lesser extent, distant land-water-interface at West Head. Both views are obtained through the car park and reserve at Lucinda Park which sits west/north-west of the subject site.

  The views are not considered to contain any items that can be described as 'iconic' (as per Tenacity) and are partial views insofar as they are only obtainable across the length of the subject site, across a road, through a car park and between dwelling houses. The view corridor has several trees (generally within Lucinda Reserve) which obscure the wholeness of the view corridor, thus leading to the conclusion that the views are partial. The arc of the views from 1 Nabilla Road are indicated on the below diagram.

-

Figure 5: Aerial photograph of Location - showing approximate "view arc" from 1 Nabilla Road

The extent of view loss is shown in the below photograph provided in the submission received from 1 Nabilla Road. The photograph is taken from the first floor west-facing entertainment deck. The property which is the subject of this DA is clear beyond the lattice fencing (which, according to the survey plan, is not in alignment with the boundary).

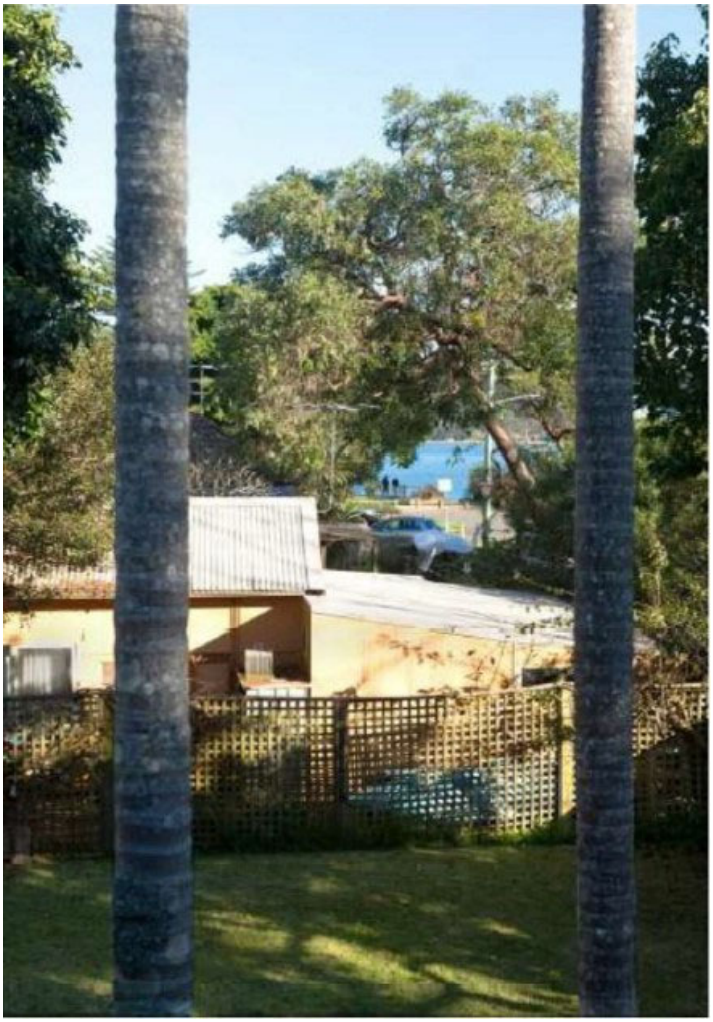


Figure 6: Photograph of existing view from 1 Nabilla Road (photo supplied in submission)

No view loss photographs have been provided from 5 Woorak Road.

2. What part of the affected property are the views obtained

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

Comment to Principle 2:

1 Nabilla Road, Palm Beach
The views available from 1 Nabilla Road are from the first floor in a westerly direction. The westernmost portion of the building is a covered entertaining deck which enjoys the view from both a sitting and standing position. The view is available from inside the kitchen/living/dining

space of the house, albeit to a lesser extent the further east one walks into the dwelling and away from the windows.

Under the P21DCP, there is no definition as to whether the eastern and southern boundary of the subject site is a 'rear' or 'side' boundary.

5 Woorak Road, Palm Beach
It is unclear where views are available from 5 Woorak Road, or what extent of views exist. No photographs of the potential view loss have been provided and no view impact was observed at the site visit (noting that an inspection was not carried out from upstairs). That property has a two storey dwelling house to the street and a two storey outbuilding along the rear boundary for the width of the site.

A review of the approved DA plans and CC plans for the buildings at this site reveal that there are no first floor west facing windows from the outbuilding, and that any views that may be obtainable from the main dwelling would be from a bathroom, however such a view would be highly obstructed by the two storey outbuilding on the site itself, and would be limited to a very narrow oblique angle.

3. Extent of impact

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

Comment to Principle 3:

1 Nabilla Road, Palm Beach
As described earlier, the views in question from 1 Nabilla Road are obtainable from the primary indoor and outdoor living spaces. The view is better from the balcony than it is from the indoor areas. The view corridor is narrow and is largely reliant on developments on the subject site and the growth of vegetation both on private and public property. That is, if and when landscaping was to mature either on the public reserve, or on the site the subject of this application, the view would likely be lost.

It is considered that it is the northern projection of the building, rather than the proposed height, which would be the most likely area of the proposed building to cause view loss.

An analysis of all available information has been extracted into the below analysis.

Figure 7: Photograph of existing view from 1 Nabilla Road

In relation to the photograph above, note that the blue-circle corresponds with the blue circle on the below working plan (derived from the Applicant's Survey Plan).

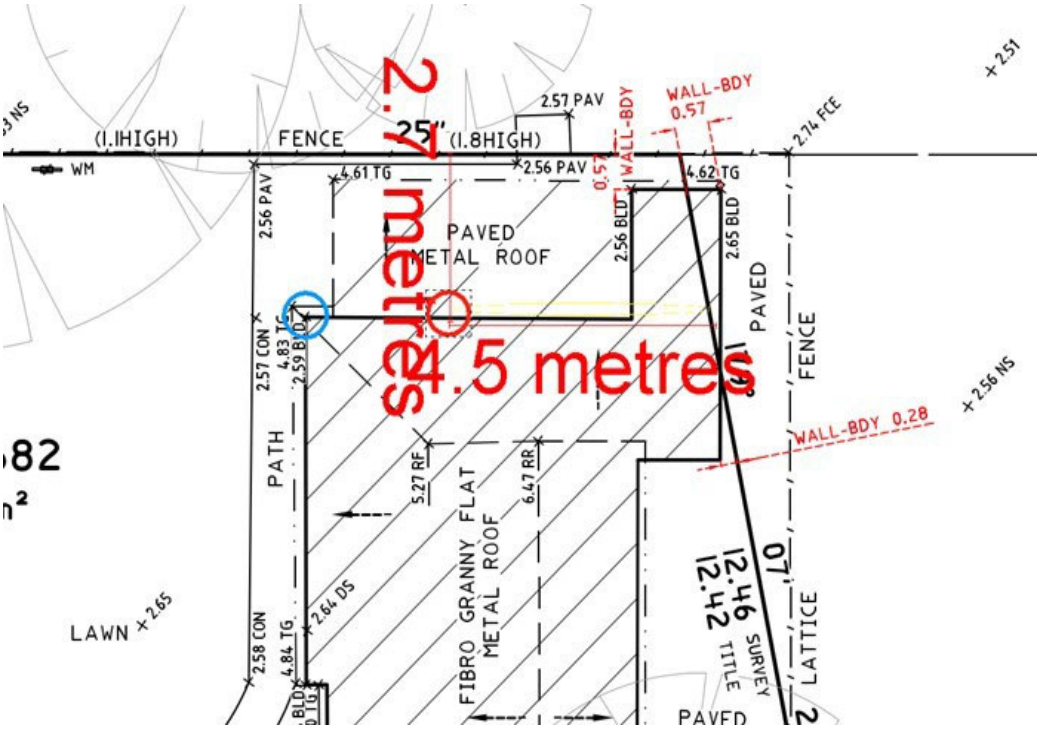


Figure 8: Working Plan/Survey (north/ Nabilla Road is at top of image)

In relation to the figure above, the blue circle corresponds to blue circle on the photograph preceding. The red circle (at the intersection of the 2.7m and 4.5m proposed setback line) corresponds with the north-easternmost corner of the proposed dwelling, at first floor level, as annotated on the below figure which is an extract of the plans.

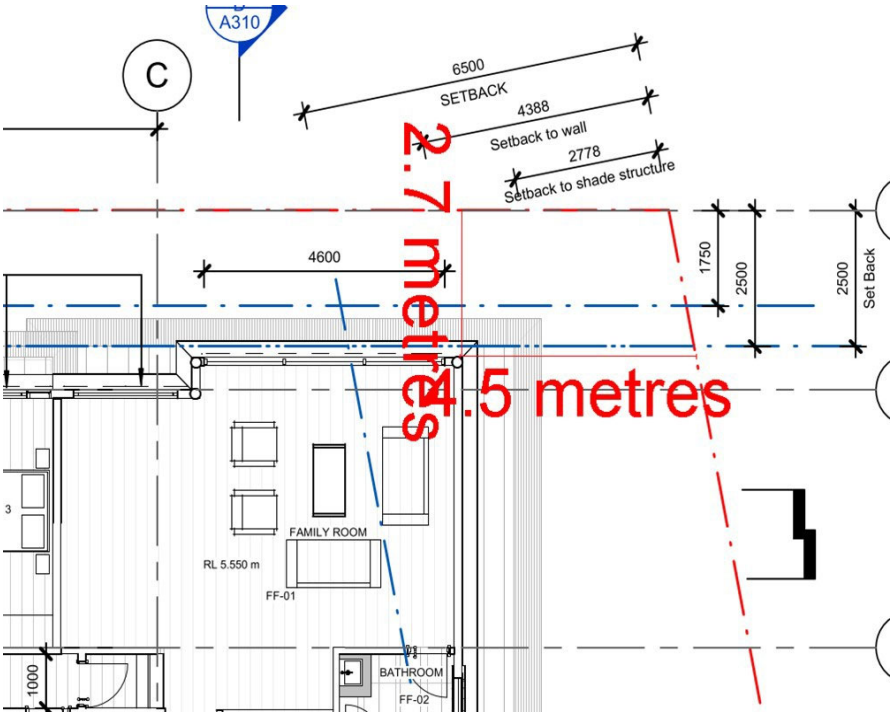


Figure 9: Working Plan (extract of plans)

From the analysis undertaken, it is considered that the vertical line of view loss would occur midway between the front of the white car parked in the public carpark and the white parking sign as shown on the above photograph.

This is approximately half of the available view corridor. On balance of the extent of views available, the quality of those views, and the extent of view loss, it is considered that the overall extent of view loss impact is ***moderate***.

5 Woorak Road, Palm Beach
For the reasons described above, there is no view loss from this property. If there are in fact views available from the first-floor bathroom window, they would be more oblique and currently obstructed, rather than the view depicted in the above photograph.

4. Reasonableness of the proposal that is causing the impact

"*The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide*

the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

Comment to Principle 4:

As described earlier in this report, under the planning controls contained in the P 21 DCP for corner lots, it is not considered realistic to expect a building to be able to achieve full compliance with the setback controls of 6.5 metres.

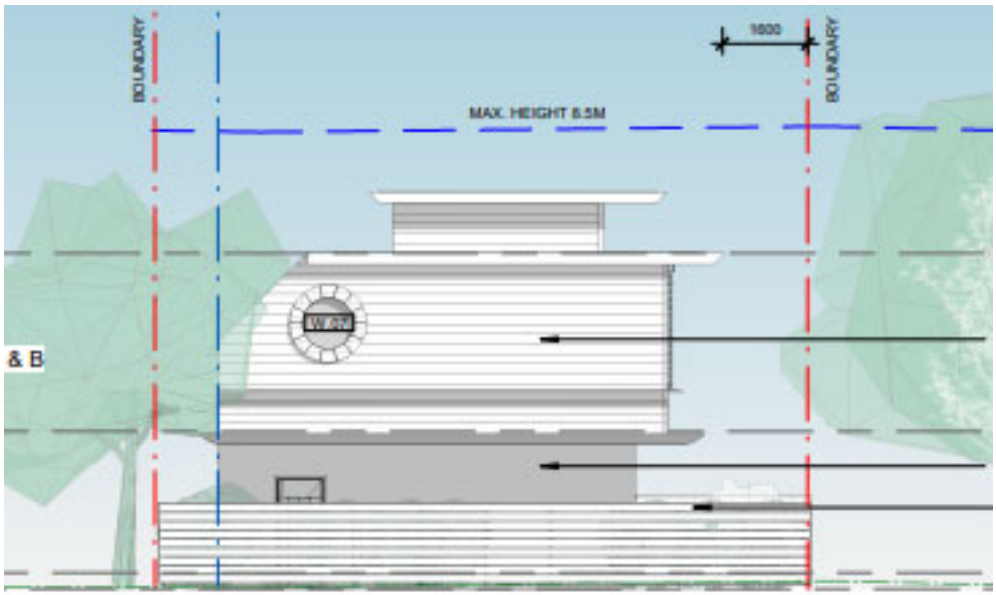


Figure 10: Elevation Plan - showing setback of first floor being 2.5 metres with eaves between 1.5m and 1.8 metres from street at Nabilla Road.

The expectation for full retention of the view is considered to be unreasonable given that the development site is currently single storey, and any first-floor addition is likely to have impacts on views, however as the site is a corner allotment the proposal may benefit from a reduced front setback on the secondary street frontage. The current design exceeds the DCP variation of 3.25metres, proposing a 2.5 metre setback at the first-floor elevation, which does have an impact on views. In this regard the non-compliance makes any minor view loss unacceptable in terms of equitable sharing of views

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

Comment:

It is considered that the development will not unreasonably impact views to, or from public open spaces or the waterway.

- *Canopy trees take priority over views.*

Comment:

The proposal will affect one noteworthy tree, being the angophora costata on the road reserve. The tree leans heavily into the site and will require pruning of branches to allow for the proposed building. The development proposes to plant a number of new trees within the site and on the road reserve.

Having regard to the above assessment, it is concluded that the proposed development is not consistent with the relevant objectives of the DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal cannot be supported, in this particular circumstance.

C1.4 Solar Access

The two primary requirements of clause C1.4 *Solar Access* are:

- *The main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.*

- *Windows to the principal living area of the proposal, and windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).*

The project architect has provided Council with plan and elevational shadow diagrams from 9am, midday and 3pm on the winter solstice as per the P21DCP requirements.

1 Nabilla Road (3 Woorak Road)

The proposal is not considered to unreasonably overshadow 1 Nabilla Road to the east, given the due east/west relationship.

5 Woorak Road

The proposal is not considered to unreasonably overshadow 5 Woorak Road to the south-east. If any overshadowing were to occur, that would be limited to afternoon (approximately 1:45pm onwards), but it is noted that the primary open space of that dwelling is largely self-shaded by the presence of a two storey structure for the width of the site along the rear boundary.

11A Iluka Road

11A Iluka Road to the south is the property that is subject to shading impacts by the development. In general, a north/south relationship between properties creates difficulties in achieving compliance with

the planning controls, particularly when one site has been under-developed for an extended period of time (such as the subject development site).

The shadow diagrams submitted with the proposal show that the proposal will have a greater shadowing impact on the rear garden of 11A Iluka Road than the existing development on site. That impact is depicted on drawing A400 A and A410 A.

The attached dual occupancy development of 11A and 11B Iluka Road, includes a ground floor secondary living room at the rear which leads onto the respective rear gardens. The first-floor eastern portion of the dwellings include kitchen, living and dining spaces and open onto a large (approx. 4mx4m) terrace).

Both the rear garden and first floor terrace are private open space. Given that the terrace adjoins the living, kitchen and dining areas, this space is the 'main' private open space.

The majority (more than 50%) of the rear garden will receive direct sunlight in the morning, 9am, with the extent of sunlight reducing considerably by midday when the majority of the rear yard will be overshaded. In this regard the proposal will not achieve 3 hours solar access to the rear yard (min 80 m2 as required by C1.7 of the DCP) throughout the day. Whilst the DCP requires private open space to be at ground level, it is noted that the first-floor terrace will not be overshadowed by the development. The proposal would equally provide a compliant degree of sunlight to windows.

The proposal does not strictly achieve compliance with the solar access requirements of the P21DCP, however the configuration of the adjoining development with elevated terraces and primary living areas result in an acceptable outcome.

C1.5 Visual Privacy

The proposal is considered to provide an acceptable level of visual privacy to neighbouring properties. The building has limited windows on the eastern and southern elevations, and the northern and western elevation are facing the public road.

The rooftop terrace area is assessed as not likely to cause any adverse or unreasonable overlooking impacts to adjoining properties. The terrace has a privacy screen to the southern elevation to mitigate opportunities for overlooking between the terrace and 11A Iluka Road.

On balance, the degree of privacy afforded to neighbours and future occupants is consistent with what could readily be expected in a residential area.

C1.14 Separately Accessible Structures

The development includes a portion of the house (to the east) which appears capable of being separated from the main dwelling and occupied separately. Whilst no issues would be raised if the applicants had sought approval use of this space as a secondary dwelling, such has not been sought.

Accordingly, conditions could be imposed in any consent requiring the property to only be used as a dwelling house (one dwelling) and that cooking facilities are to be removed from the 'family room' bar area.

D12.5 Front building line

Description of Non-Compliance

Clause D12.5 *Front building line* of the P21DCP prescribes a front boundary setback requirement of either 6.5m, or consistent with the established building line, whichever is the greater. For corner allotments, it also permits a secondary street frontage (in this case, Nabilla Road) to have a setback half of the primary road setback, which in this case is 3.25m.

The proposal breaches the prescribed front setback controls, with a swimming pool which is 2.0m from the Iluka Road frontage and the portions of the first floor at 2.5m and roof overhang at 2.2m from the Nabilla Road frontage.

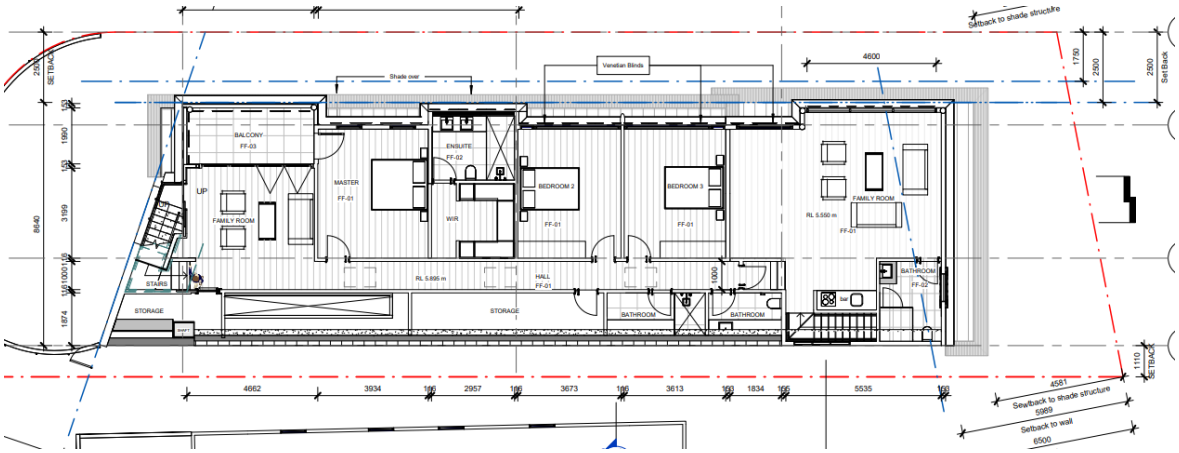


Figure 11: Plan - showing portions of building within the secondary front setback area

Merit Consideration
With regards to the consideration for a variation, the development is considered against the underlying Outcomes of the Control as follows:

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

  Comment:

  As articulated in the report above the proposal is not consistent with the desired future character of A4.12 *Palm Beach Locality*.

  The following assesses the portions of building which do encroach within the front setback areas and their relevance to the desired future character.

  The property benefits from particularly wide road reserves to both frontages - being 8.0m to 8.5m to Nabilla Road and 7.0m to Iluka Road and tree planting is proposed in the road reserve to supplement what can be achieved within the front setbacks.

  At ground level, the swimming pool sits within the Iluka Road front setback. The building footprint is compliant with the front setback controls at this level, although this reduces the capacity for tree planting in the Iluka Road frontage.

  At first floor level, a small portion of habitable floor area (3.1m^2 across two sections) encroaches within the Nabilla Road frontage with a setback of 2.5m. Given the length of the building the design should maintain the minimum of 3.25 metres with articulation that increases, rather and

decreases, the accepted variation to front setback from the minimum 3.25 metres. In addition, the angophora costata in the road reserve leans heavily in to the property and will need to be pruned to cater for the dwelling. Greater articulation could be designed which would break up the façade and presentation to the street which also benefits the landscape character by reduces the volume of pruning of this significant tree.

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

  Comment:

  View loss is discussed in detail under part C1.3 *View Sharing* of this report. In summary, the encroachment of structures within the front building line whilst having a minor impact on views is considered to be unreasonable as they result from a non-compliance.

- *The amenity of residential development adjoining a main road is maintained.*

  Comment:

  N/A - Nabilla Road and Iluka Road are not main roads.

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

  Comment:

  The proposal retains the Angophora Costata on the Nabilla Road frontage within Council's road reserve, which serves as the most prominent vegetation on the site (or its curtilage) at present. This tree will require pruning due to the orientation of the tree growing into the property. By providing greater articulation in the front façade, this could be located so as to reduce the volume of pruning required to this tree. The proposal seeks to introduce extensive new planting on private and public land, including (but not limited to) 4 x *fern leaf banksia*, 1 x *old man banksia*, 4 x *water gums*, 3 x *blueberry ash* in conjunction with other shrubs, grasses and groundcoveres.

  Whilst the proposal is assessed as maintaining the one mature tree more could be done to reduce the impacts on pruning.

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

  Comment:

  Not achieved. Providing vehicular manoeuvring in a forward direction for both ingress and egress would require an extensive area of the site to be dedicated to driveway which would ultimately detract from the ability to plant trees, and thus the developments' ability to achieve the desired future character.

- *To preserve and enhance the rural and bushland character of the locality.*

  Comment:

  The proposal is not considered to be of a proportion, that is consistent with the character of the area and relies heavily on tree planting within the road reserve to establish the landscape character. This is result of reduced building setbacks and the swimming pool/paving in the front

setback.

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

  Comment:

  The proposal is largely at a height lesser than that achieved on surrounding properties, with a primary roof ridge of RL8.89 (commensurate to a ridge at 11A & B Iluka Road of RL11.13 and ridge at 1 Nabilla Road of RL9.75 - data extracted from survey). The height of the development is also lesser than the heights of mature vegetation within the vicinity and is therefore in scale with the natural environment.

  However, the long façade does not enhance the streetscape.

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

  Comment:

  The 'attractiveness' of a building is subjective. It is considered that the material palette chosen, and landscaped treatment selected are appropriate for the land. In that respect, it is not considered that the elements of the building which project within the front boundary setback areas detract from the attractiveness of the building.

  It is further noted that the wide road reserves enhance both the site and the wider locality, and the provision of landscaping within these spaces will enhance the street frontage further and will thus improve pedestrian amenity through aesthetic and natural shading from trees.

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

  Comment:

  The two streets in question have a varying setback, and scale of structures with generous levels of articulation of the built forms throughout them. The breaches sought to the front setback control under this application, being a pool, roof, balcony and $3m^2$ of habitable floor area, does not provide sufficient articulation which does not respond to the spatial characteristics of the existing urban environment.

Having regard to the above assessment, it is concluded that the proposed development is not consistent with the relevant Outcomes of the Pittwater 21 Development Control plan 2014 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act 1979. Accordingly, this assessment finds that the proposal cannot be supported in this particular circumstance.

D12.6 Side and rear building line

Description of Non-Compliance

Part D12.6 *Side and rear building lines* of the P 21 DCP prescribe a minimum rear building line of 6.5m and required side setbacks of 1m to one side and 2.5m to the other side.

The control is silent on the assessment of corner allotments, and whether the boundaries running perpendicular to a street frontage are a 'side' or 'rear' boundary.

As detailed earlier in this report in the Submissions section, if a 6.5m 'rear' setback is applied to both sides (southern and eastern), then the remaining 'buildable area' on the site would be 88m^2 or 18% of the total site area. Given this, it is not considered reasonable to enforce the greater of the two metrics (being the rear instead of site) to two boundaries. Instead, this assessment herein will assess the southern and eastern boundaries of the site on merit.

The proposal has a 4.5m to 6.5m setback to the eastern boundary, and that setback area is to be landscaped. To the southern boundary, the proposal has a 1.125m setback which is also to be landscaped.

Merit Assessment
With regard to the request for a variation, the development is considered against the underlying Outcomes of the Control as follows:

- *To achieve the desired future character of the Locality.*

  Comment:

  The developments consistency measured against the desired future character is established in part A4.12 *Palm Beach Locality* of this report.

- *The bulk and scale of the built form is minimised.*

  Comment:

  The development is not considered to minimise the bulk and scale, although it is recognized that the height of the building has been minimised to reduce the overall impacts. The minimal articulation on the long north and south elevations is not consistent with the character of surrounding buildings in the locality.

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

  Comment:

  View sharing is assessed in detail under part C1.3 *View Sharing* in this report.

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

  Comment:

  View sharing is assessed in detail under part C1.3 *View Sharing* in this report.

  Where view sharing is raised as a concern, the setbacks proposed to the side or rear boundary are not the primary driving factor behind that concern.

- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*

Comment:

The encroachment of structures within the prescribed side or rear setback areas is not considered to unreasonably detract from the amenity of surrounding properties by way of privacy.

- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*

Comment:

As detailed in the discussion covering the Front building line, the site proposes landscaping within the site but relies on the road reserve to supplement that landscaping as other structures are located within the front setbacks.

- *Flexibility in the siting of buildings and access.*

Comment:

For the particular circumstances of this site and having cognizance to the compliant 'buildable area', it is considered warranted to permit flexibility in the siting of buildings on the site. Whilst this is acknowledged the design does not appropriately respond to the objectives to achieve this flexibility that the DCP articulates.

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

Comment:

As described elsewhere, more could be done in the design of the first floor to reduce the required pruning of the one tree to be retained in the road reserve which would assist in reducing the visual built form .

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

Comment:

N/A - there is no adjacent commercial zone to create a buffer.

Having regard to the above assessment, it is concluded that the proposed development is not consistent with the relevant objectives of P 21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D12.8 Building envelope

Description of Non-Compliance

Clause D12.8 *Building envelope* of the P21DCP prescribes a 3.5m envelope to the southern and eastern boundaries of the property.

The proposal has several elements that project outside of the prescribed envelope on the southern boundary, as depicted in red on the below drawing:

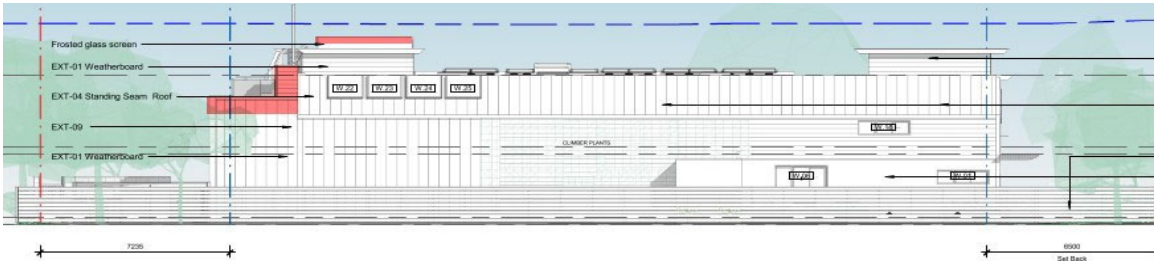


Figure 13: Working Drawing - showing the southern elevation of the proposal, with Iluka Road existing to the left-hand side. The portions in red are outside of the envelope. The blue dashed line indicates the 8.5m height control

Merit Consideration:

With regard to the request for a variation, the development is considered against the underlying outcomes of the control as follows:

- *To achieve the desired future character of the Locality.*

  Comment:

  Consistency with the DFC is addressed earlier in this report.

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

  Comment:

  The portions of building outside of the envelope are not particularly prominent from the streetscape in that they are 6.5m from the Iluka Road boundary and, generally, aligned with the building to the south. The encroaching portions sit below the maximum height of buildings and are below the height of canopy trees. Therefore, the encroaching elements do not jeopardise the streetscape or proportionality of the street.

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

  Comment:

  With regards to spatial characteristics, the lot is generally flat and is relatively small which poses difficulties in achieving compliance. Where a non-compliance exists, it is addressed in the relevant section of this report. The spatial characteristic of the natural environment is considered to refer to topography and vegetation. The height of the building is below the established tree canopy and neighbouring properties and therefore appropriately relates to this.

- *The bulk and scale of the built form is minimised.*

  Comment:

The proposal has gone to considerable lengths to comply with the building envelope control and in turn, to reduce its bulk. The southern wall of the building is, for the most part, 4.5m in height before it slopes inwards at a 45-degree angle to minimise impacts and to achieve compliance.

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

  Comment:

  View sharing is discussed in detail elsewhere in this report, the envelope encroachments do not contribute to any view loss.

- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*

  Comment:

  Amenity provisions are discussed elsewhere in this report.

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

  Comment:

  The proposal is retaining vegetation where appropriate and proposes a significant volume of new vegetation to enhance and visually reduce built form.

Having regard to the above assessment, it is concluded that with the exception to the general compliance with the Desired Future Character, the proposed development is consistent with the relevant outcomes of the P 21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act 1979. Accordingly, this assessment finds that the proposal cannot be supported, in this particular circumstance.

D12.11 Fences - General

The proposal seeks to construct a part timber part stone boundary fence with heights between 1.2m and 1.8m along both the Iluka Road and Nabilla Road frontages. These heights are not considered to be excessive and are not considered to detract from the streetscape, particularly given the wide verge, landscaping on the verge, and the varying materiality of the fencing. Fence height will be implemented as per the heights specified on the architectural plans.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of $19,909 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,990,926.

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 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

- Inconsistent 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

PLANNING CONCLUSIONS

The detailed assessment of the development application has been undertaken as contained in this report in regards to the plans submitted via the NSW Portal with this application.

The development is not compatible with the character of the streetscape, surrounding development and the locality. Where there are variations to built form controls, those variations are assessed as being unreasonable, particularly having regard to the streetscape and view loss.

The proposed development relies heavily on the wide road reserves to meet the landscaped character of Palm Beach Locality.

Accordingly, the application is recommended for refusal.

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

RECOMMENDATION

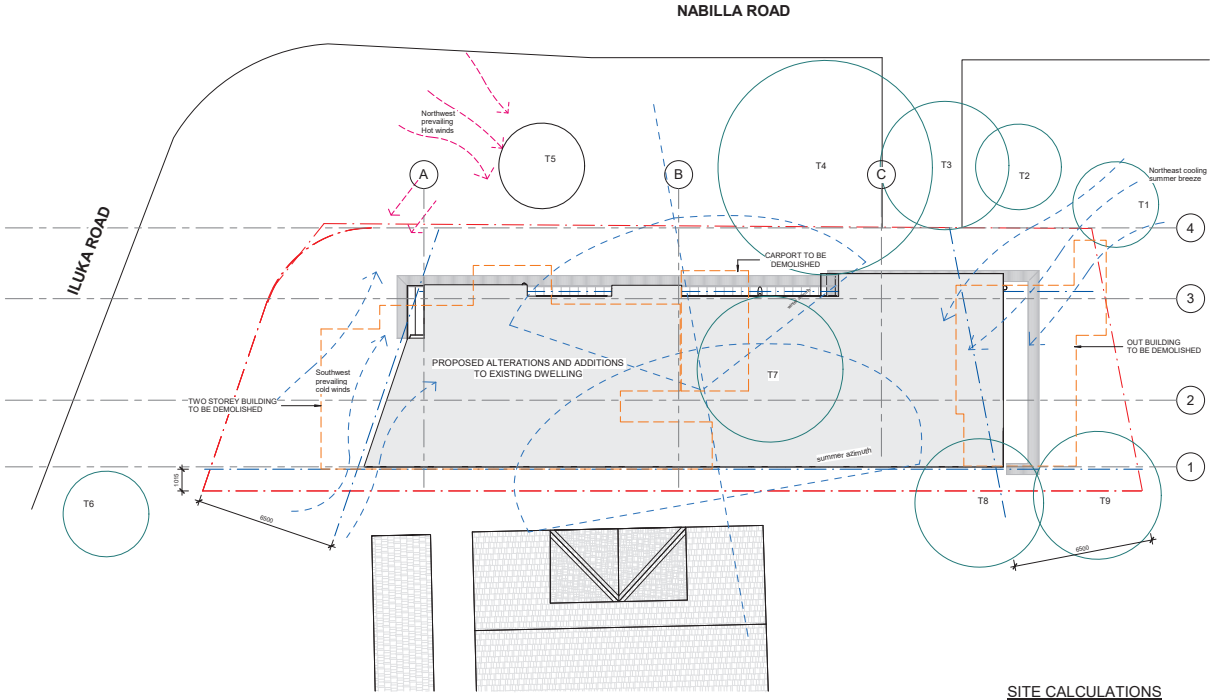
THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority REFUSE DA2022/1158 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 62 DP 14682, 13 Iluka Road, PALM BEACH, on the following grounds:

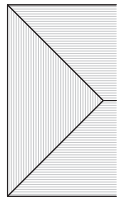
1. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause A4.12 Palm Beach Locality of the Pittwater 21 Development Control Plan.

2. 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 C1.3 Views of the Pittwater 21 Development Control Plan.

3. 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 D12.5 Front building line of the Pittwater 21 Development Control Plan.

4. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.





SITE CALCULATIONS

SITE AREA: 492M2

LANDSCAPE AREA EXISTING: 274M2 = 55%
LANDSCAPE AREA PROPOSED: 273M2 = 55%

FLOOR AREA EXISTING: 174M2
FLOOR AREA PROPOSED: 390M2

SITE COVERAGE EXISTING: 210M2
SITE COVERAGE PROPOSED: 223M2

Walter Barda Design
architecture
landscape
interiors
Nominated Architect: Adrian Ball 7745
2.04 13-15 Wentworth Avenue Sydney NSW 2000
www.walterbardadesign.com ABN: 48 072 136 513
Office: 02 9264 4240

No.	Description	Date
A	Pre-DA	19.10.2021
B	Consultants	31.03.2022
C	Consultants	26.05.2022
D	Issued to Planner	15.06.2022
E	Issued to planner	23.06.2022
F	Issued to Council	30.11.2022

VERONICA & CHRIS STEVENS

NEW DWELLING

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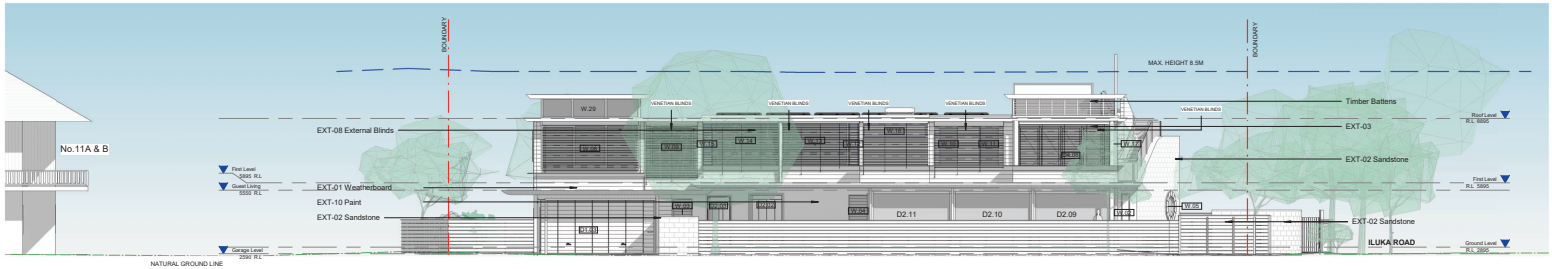
Project Number 2019-01

13 Iluka Road
Palm Beach NSW 2108

Project Status DA

Sheet: Site Analysis & Site Plan

Print Date & Time 30/11/2022 9:49:39 AM
File Path Z:\2019_01_Stevens\06 - Architectural Plans\02 DA Development Application\219-01 Sheets DA2.pln
Drawn By AB | Checked By WBD | Approved By WB
Scale @ A1 1 : 100
Drawing Number A110 | Issue F



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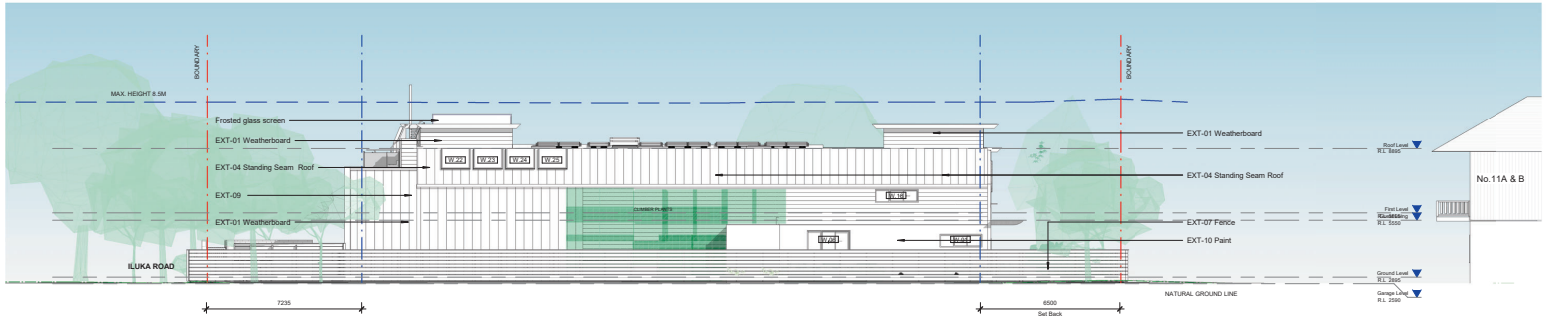
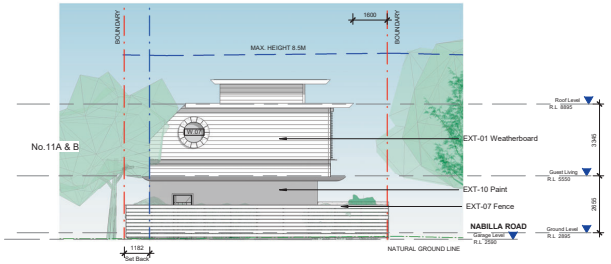
1 : 100



2 Elevation South
1 : 100

EXTERNAL FINISHES	
EX-01	External Cladding, "Vulcan from ADOBO Nero oil colour" or similar weatherboard shiplap 90° smooth, 20 x 180mm horizontal.
EX-02	Sandstone cladding
EX-03	Timber window & door frames
EX-04	Roof standing seam Nexteel "Kalkajaka" colour or similar
EX-05	Gutter & downpipe, Nexteel "Kalkajaka" or equivalent
EX-06	Timber garage door
EX-07	External slat wood fence colour TBC
EX-08	Strong hold external retractable venetian blinds
EX-09	Light weight wall & standing seam cladding
EX-10	Render Paint "Porter's Ghost gum colour" or similar

NOTE: All colour's to be confirmed and signed off prior to purchase of painting or coating finished surfaces



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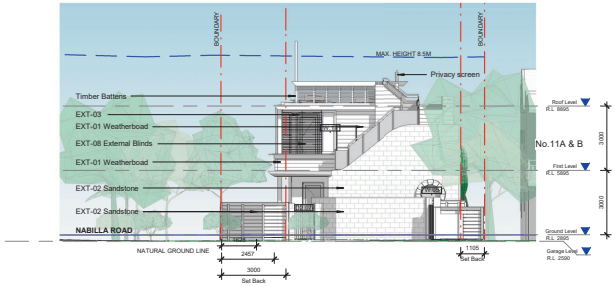
1 : 100



4 Elevation West
1 : 100

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Revisions		
No.	Description	Date
A	Pre-DA	19.10.2021
B	Design Review	18.03.2022
C	Consultants	31.03.2022
D	Consultants	28.05.2022
E	Issued to Planner	15.06.2022
F	Issued to planner	23.06.2022
G	Issued to client	29.11.2022
H	Issued to Council	30.11.2022

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NEW DWELLING

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Project Number 2019-01

13 Iluka Road
Palm Beach NSW 2108

Project Status DA

Sheet Elevations

Print Date & Time 30/11/2022 9:50:12 AM
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Drawn By AB
Checked By WBD
Approved By WB
Scale @ A1 1 : 100
Drawing Number A300
Issue H

ITEM 4.4	**REV2022/0016 - 53 WHISTLER STREET, MANLY - REVIEW OF DETERMINATION OF APPLICATION OF DA2021/1344 FOR ALTERATIONS AND ADDITIONS TO TWO SEMI-DETACHED DWELLINGS INCLUDING A HARD STAND PARKING AREA.**
AUTHORISING MANAGER	**Rod Piggott**
TRIM FILE REF	**2022/756371**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Site Plans & 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. REV2022/0016 for Review of Determination Application Review of Determination of Application of DA2021/1344 for Alterations and additions to two semi-detached dwellings including a hard stand parking area on land at Lot 1 DP 1103720, 55 Whistler Street, MANLY, Lot 1 DP 742272, 53 Whistler Street, MANLY subject to the conditions set out in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2022/0016

Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 1 DP 1103720, 55 Whistler Street MANLY NSW 2095 Lot 1 DP 742272, 53 Whistler Street MANLY NSW 2095
Proposed Development:	Review of Determination of Application of DA2021/1344 for Alterations and additions to two semi-detached dwellings including a hard stand parking area
Zoning:	Manly LEP2013 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Elizabeth Mary Davidson
Applicant:	Alex Pritchard

Application Lodged:	27/06/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	26/07/2022 to 09/08/2022
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 1,666,000.00

EXECUTIVE SUMMARY

The application seeks consent for alterations and additions to the semi-detached dwellings at Nos. 53 and 55 Whistler Street, Manly.

This application involves the review of a determination of development application DA2021/1344. This application was refused by Northern Beaches Local Planning Panel (NBLPP) on 2 March 2022 on the following grounds:

- Owners consent (lack of information)

The application is referred to the NBLPP as it is requesting a Review of Determination under Section 8.2 for a development application previously determined by the NBLPP.

The subject S8.2A application has been made to address the above matters. Council is satisfied that the the application has now satisfied the above matter, as correct owenrs consent has now been given.

Seven (7) submissions were recieved in objection in response to the notification of the application. Issues raised include vehicular access, safety, traffic and construction impacts. The issues raised have been reviewed and they do not warrant the refusal of the application. The issues raised in the submissions largely raise the same concerns to those raised in the original application (DA2021/1344).

No changes to the proposal itself were made to the previous works proposed under DA2021/1344.

This report concludes with a recommendation that the NBLPP should grant approval to the application, subject to the conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for alterations and additions to two semi-detached dwellings at Nos. 53 and 55 Whistler Street, Manly.

Specifically, the works incorporate the following:

- Demolition works including the existing parking structure and rear portion of the ground floor of both dwellings.
- Two storey additions to both dwellings, including:
    - Master bedroom with ensuite and walk in robe;
    - Study; and
    - Living room.
- Single hardstand parking space with access via the Right of Way from No. 57 Whistler Street, Manly;
- Ground floor extension including rear terraces to both dwellings;
- Site prepartions;
- Associated landscaping.

This Review of Determination does not include any further amendments to the original application with regard to design amendments.

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3
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 1 DP 1103720 , 55 Whistler Street MANLY NSW 2095 Lot 1 DP 742272 , 53 Whistler Street MANLY NSW 2095
Detailed Site Description:	**The site** The site, formed by two Lots, Lot 1 DP 742272 (No. 53 Whistler Street) and Lot 1 DP 1103720 (No. 55 Whistler Street), is located on the western side of Whistler Street No. 53 Whistler Street is on the lot on the southern side of the subject site. It has a total site area of 295.6sqm, an eastern street frontage of 8.56m, a rear boundary of 9.015m, a northern boundary of 33.775m and a southern boundary of 33.77m. The site is relatively level. No. 55 Whistler Street is on the lot on the northern side of the subject site. It has a total site area of 278.3sqm, an eastern street frontage of 8.105m, a rear boundary of 8.32m, a northern boundary of 33.70m and a southern boundary of 33.775m. The site is relatively level. Existing on each lot is a single-storey semi-detached dwelling. Both are late Victorian cottages and listed heritage items under Manly Local Environmental Plan 2013. The front part of each dwelling is constructed of sandstone and they have a shared hip roof. Both dwellings have rear extension which have been added later and are not original or contributory. Both dwellings have a small landscaped area within the front setback, with additional landscaping to the rear. No parking is provided at No. 53 Whistler Street, but No. 55 Whistler Street has a single carport to the rear which is accessed via a right-of-way across No. 57 Whistler Street.

	Existing boundary encroachments Parts of the existing dwelling and rear extension on No. 55 Whistler Street sit on or slightly over the shared boundary with No. 57 Whistler Street. This is detailed on the survey and architectural plans submitted with the application. **Surrounding development** Located to the south of the site is, what was originally, a Masonic Hall which is listed as a heritage item. It was converted from a commercial building to a dwelling house under DA 253/2016. Located to the north of the subject site is a two storey residential flat building. A driveway is located within the southern setback over which a right-of-access easement permits vehicle access to the rear of No.55 Whistler Street. At grade, hardstand parking is provided within the front setback. Located on the opposite side of Whistler Street are multi-storey residential flat buildings with basement parking. Located to the rear of the subject site is No.106, Pittwater Road, a three-storey residential flat building with parking at grade to the rear of the site, adjoining the rear of No.53 Whistler Street.

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:

DA2021/1344 - Alterations and additions to two semi-detached dwellings including a hard stand parking area. (Refused 2 March 2022)

This DA was reported before the NBLPP and refused on 2 March 2022 for the following reasons:

1. *Pursuant to Clause 49 (1) of the Environmental Planning and Assessment Regulation 2000, the development application has not been made with the consent of the owners of all land on which the development occurs.*

Under this application, demolition works were proposed on the existing Right of Way at 57 Whistler Street, Manly. No owner consent from No. 57 Whistler Street was given and as such was refused by the panel.

The application proposes the same demolition works under this review application. Owners consent from No, 57 Whistler Street has been lodged with the application. Therefore overcoming the listed reason for refusal for DA2021/1344.

Right of way details

A Title Search for the subject properties that define the ownership or benefactor to the Right of Way (ROW) was carried out by the applicant and has been submitted as supporting documentation. This search shows:

- No. 55 Whistler Street (Lot 1 in DP 1103720) (the site) has noted as item 2 on the Certificate of Title for the Property a Right of Way "..*appurtenant to the part shown so benefited in the title diagram affecting the land shown in DP 561787*". The Land shown in DP 561787 is No. 57 Whistler Street (Adjoining Property).
- The ROW burdening the Adjoining Property is identified in DP 561787 as 10' wide (Conveyance No. 862 Book 552) extends along the boundary of Nos. 57 & 55 Whistler Street from Whistler Street to the rear boundary of the Adjoining Property and then along the rear boundary of the Adjoining Property to the northern boundary of the Adjoining Property.
- The details of the ROW are contained in Conveyance No. 862 Book 552, which is attached to the Certificate of Title to the property as identified in DP 561787.
- The details of the ROW provide that it is a right of carriage night and day for all purposes for the benefit of the site.
- There is no limitation to or specific use relating to the ROW, whether that be for waste or any other purposes.

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 8.3 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 8.3 (2) of the Act, the request for the review must be made and determined within 12 months after the date of determination of the development application. The application was determined on 2 March 2022 and the notice of determination was issued on 3 March 2022. The review was lodged on 2 June 2022 and is to be considered by Northern Beaches Local Planning Panel on 14 December 2022, which is within 12 months of the date of determination.

Section 8.3 (3) 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 8.3 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 8.3 (3) of the Act

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 26/07/2022 to 09/08/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 7 submission/s from:

Name:	Address:
Mr John Boyd Schroder	9 Fromelles Avenue SEAFORTH NSW 2092
Mr Gareth Scott Rudram	C/- Bergelin Estate Agents Ground Floor 4 Belgrave Street MANLY NSW 2095
Ms Carol Patricia George	7 / 57 Whistler Street MANLY NSW 2095
Mr Peter Gerard Bourke	12 / 133 Sydney Road FAIRLIGHT NSW 2094
Nick Chatres	Address Unknown
Mr Kenneth Arthur Bourke Ms Kathleen Anne Bourke	7 Waratah Street FRESHWATER NSW 2096
Mr Ryan Joshua Cole	6 / 57 Whistler Street MANLY NSW 2095

The following issues were raised in the submissions:

- **Vehicular Access and Safety**

- **Right of Way (ROW)**
- **Building enroachment**
- **Impact on property value**
- **Consultation with neighbours**
- **Construction impacts**
- **Impact on neighbouring parking**

The above issues are addressed as follows:

- **Vehicular Access and Safety**

  The submissions raised concern with vehicular entry and exit to and from the proposed hardstand parking space on the subject site and the impact upon the neighbouring residential flat building to the north of the site No. 57 Whistler Street, Manly.

  Comment:

  Council's development engineer and traffic engineer have both reviewed the proposed development and raised no issue with the proposed turnining circles/swept paths and the ability for cars to enter and exit the site safely, subject to conditions of consent.

- **Right of Way (ROW)**

  The submissions raised concerns that the proposed parking and use of the ROW will impact upon parking for residents of No. 57 Whistler Street, who currently utilise the end of the ROW for parking.

  Comment:

  While it is acknlowledged that the end of the ROW is currently used for parking for residents of No. 57 Whistler, the terms of the easement means that parking in this area is prohiibited. A review of the approved parking scheme for No. 57 Whistler Street, clearly indicates that there is no approved parking space to the rear of the ROW.

- **Building encroachment**

  The submissions raised concerns that the existing wall enroaches on the adjoining property to the north.

  Comment:

  Little detail is provided explaining which wall the objector is referring to. All new works proposed are within the existing subject property. The existing wall which encroaches on the northern property boundary is proposed to be demolished, which will rectify the exising encroachment.

- **Impact on property value**

  Concern is raised that the development would have an adverse impact on property value.

  Comment:

  The issue of property value is not one which can be considered under the provisions of Section 4.15 (1) of the Environmental planning and Assessment Act 1979. This issue does not warrant

the refusal of the application.

- **Consultation with neighbours**

  The submissions raised concerns that there has no consultation between neighbours.

  Comment:

  Consultation while encouraged is a not a legisaltive requirement prior to the lodgement of a development application.

- **Construction impacts**

  The submissions raised concerns with regard to potential construction impacts in terms of noise and impact upon the neighbouring properties.

  Comment:

  Significant development of any site will undoubtedly case disruption to adjoining properties. In order to reduce the potential disruption, standard conditions have been included as part of recommendation to ensure compliance with the relevant Australia standards and to allow for respite for neighbouring properties by imposing set operation/construction hours. Conditions of consent are recommended to require the preparation of pre and post construction dilapidation reports for the adjoining buildings to the north and south.

- **Asbestos**

  Concern is raised in regards to the potential of hazardous materials being exposed during demolition works.

  Comment:

  Suitable conditions has been imposed as part of this recommendation to ensure the suitable management of hazardous removal in accordance with relevant Australia Standards. Evidence is to be provided to certifying authority prior to construction certificate.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	**Supported, no conditions** The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development. Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.
Landscape Officer	**Supported, subject to conditions** The proposal for alterations and additions to two semi-detached

Internal Referral Body	Comments
	dwellings under this review application is assessed by an alternate Landscape Officer to DA2021/1344. As outlined in the Review of Determination Statement, the changes for review to DA2021/1344 are for the demolition and construction of a new wall and an amendment to the roof form. There are no changes to the information provided regarding the landscape. The Arboricultural Impact Assessment (AIA) is not included in the review application; however, as there are no changes to the landscape proposal Landscape Referral can support the recommendations of the AIA as summitted in DA2021/01344 for tree removal. Four trees are exempt by species, height or proximity to an approved dwelling and one prescribed tree will be removed. Replacement tree planting is proposed which is supported, subject to the imposed conditions.
NECC (Development Engineering)	**Supported, subject to conditions** Development Engineering has no objection to the application subject to the following conditions of consent.
NECC (Stormwater and Floodplain Engineering – Flood risk)	**Supported, no conditions** The application was previous assessed and supported by Council based on it full compliant with flood controls in Council's DCP.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS Discussion of reason for referral **Supported, subject to conditions** The proposal has been referred to heritage as the subject property is a heritage item **I257 and Item I258 - Pair of houses at 53–55 Whistler Street** and adjoins the **C1 - Pittwater Road Conservation Area** to its western boundary; **Item I256 - Masonic Hall - 51 Whistler Street** to its southern boundary and **Item I2 - All stone kerbs** - Manly municipal area to its eastern boundary. It is also within the vicinity of a number of heritage items: **Item I206 - House** - 108 Pittwater Road **Item I207 - House** - 110 Pittwater Road Item I259 - House - 65 Whistler Street Details of heritage items affected Details of the conservation area and the heritage items as contained within the Manly Heritage inventory are: **Item I257 and Item I258 - Pair of houses** Statement of significance: Cottage at 53 and 55 Whistler Street is of significance for Manly area as a representative example of a Victorian sandstone cottage and for its ability to demonstrate the pattern of Manly's development, particularly that associated with the early development of the flat area north of Manly Village. It is one of a

Internal Referral Body	Comments
	pair of substantial late 19th Century semi-detatched sandstone cottages and an important remnant of early development in Manly. Physical description: 53 and 55 Whistler Street: One of a pair of late Nineteenth century single storey semi-detached sandstone cottages with hipped roof and awning verandah. Constructed of rock faces ashlar sandstone with hipped roof and central sandstone chimneys. Roof and awning have new zinc coated corrugated metal cladding. Simple timber posts to awning. Evidence would suggest awning originally bull nosed and set higher (flashing). Symmetrical façade to both with central entrance door and double hung windows either side. Boarded dividing wall between. Low timber picket fence. 53 Whistler Street: Simple timber cross brace baulustrade. 55 Whistler Street: Cast iron lace baulustrade. End of verandah infilled with four-pane fixed glazed sash and boarding in lower hald. New tiles to verandah. **C1 - Pittwater Road Conservation Area** Statement of Significance: This street pattern is distinctive and underpins the urban character of the area. The streets remain unaltered in their alignment, although the names of Malvern, Pine and North Steyne are now names for what were Whistler, Middle Harbour and East Steyne respectively. Physical Description: The streetscape of Pittwater Road is a winding vista of late 19th and early 20th century commercial and residential architecture of generally one or two floors - although there are exceptions such as the four storey private hotel. The streetscape provides a 19th century atmosphere due to it's scale, width and the number of extant Victorian structures. Within the streetscape there are a number of individually significant buildings which are listed seperately. Adjacent streets generally comprise a consistent pattern of one and two story residential cottages, with the occasional terrace. Some streets have intermittent street plantings and remnant stone kerbs. The flat topography is accentuated by the escarpment to the west which provides an important visual, vertical and vegetated backdrop. **Item I256 - Masonic Hall** Statement of significance: The former Masonic Hall in Whistler Street is of significance for the local area for historic, aesthetic, social and reasons of rarity. The building was originally associated with the local Free Masons Lodge and was designed in accordance with the needs of Masonic ceremonial practices, thus retaining the ability to demonstrate a strong spiritual association with this identifiable historic group. The building's fabric significantly contributes to the understanding of life style and cultural practices around the time of its creation. It makes an important contribution to the streetscape and presents a local landmark. The building is locally rare both in terms of its social significance and its building techniques and architectural style.

Internal Referral Body	Comments
	The Masonic Hall is a representative example of an early twentieth century Masonic Hall designed in the Federation Arts & Crafts style and is a representative example of the work of local architect Harold Mead. Physical Description: The building is a simple two-storey brick Basilica form of building with a truncated pediment on the front façade and a simple pitched roof covering the building. This form is typical of smaller Masonic lodges. 1932: A 9 metre long section added to the rear of the building. One-storey high with a hipped roof.

Other relevant heritage listings

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
Australian Heritage Register	No	
NSW State Heritage Register	No	
National Trust of Aust (NSW) Register	No	
RAIA Register of 20th Century Buildings of Significance	No	
Other	No	

Consideration of Application

The proposal seeks consent for a Review of the Determination Application in relation to the refused Development Application No.2021/1244 for alterations and additions to a pair of heritage listed semi-detached Victorian cottages. The proposed works include the demolition of the existing rear additions and the construction of two storey rear extensions and new landscaping.

It is noted that, no alterations have been proposed to the street frontages apart from the front fences. However, the existing floor plans of the heritage cottages have not been provided, therefore the extent of the alterations are not clear from the submitted drawings. It is understood that, proposed changes to the heritage listed cottages involve internal alteration to convert the existing kitchen area into a bathroom.

The proposal is generally considered to be acceptable as it retains the key features and the streetscape presentation of the cottages, subject to the following conditions:

- A photographic archival recording
- A maintenance plan
- The rear addition to not extend above the ridge level of the main roof

Internal Referral Body	Comments
	Therefore no objections are raised on heritage grounds, subject to three conditions. Consider against the provisions of CL5.10 of Manly LEP 2013. Is a Conservation Management Plan (CMP) Required? Yes Has a CMP been provided? No Is a Heritage Impact Statement required? Has a Heritage Impact Statement been provided? Further Comments COMPLETED BY: Oya Guner, Heritage Advisor DATE: 07 July 2022
Traffic Engineer	**Supported, subject to conditions** The revision provides for demolition of the existing carport and construction of a parking space at the rear of the property. Swept path plots provided with the application demonstrate that access to and from the proposed car space by a B85 vehicle is feasible without encroachment onto the adjacent property. The B85 vehicle is the appropriate design vehicle to use for access to parking spaces and along parking aisles and is also the appropriate design vehicle for use in situations with severe space limitations coupled with low traffic volumes as is the case in this circumstance. Subject to the sliding gates being driver operable and retractable over the full extent of the rear set back of 8m to facilitate egress from the parking space there is no traffic engineering concerns with approval of the application . The above will be conditioned

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	**Supported, subject to conditions** The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs 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 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 Nos. A406024_04 dated 16 June and A406056_04 dated 16 June 2022).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 3 Coastal environment area
2.10 Development on land within the coastal environment area

1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
    a) the integrity and resilience of the biophysical, hydrological (surface and groundwater)

and ecological environment,

b) coastal environmental values and natural coastal processes,

c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,

d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,

e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

f) Aboriginal cultural heritage, practices and places,

g) the use of the surf zone.

Comment:

The proposal is consistent with considerations to maintain appropriate protection of the foreshore area, landscaping, water quality and natural features of the site. No known aboriginal relics are recorded on the site.

2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or

b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The proposal will not create unreasonable impacts on the coastal environment in terms of runoff, coastal processes, ecology, landform, or scenic amenity. Suitable conditions are recommended to address the coastal location and environmental considerations.

Division 4 Coastal use area
2.11 Development on land within the coastal use area

1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:

a) has considered whether the proposed development is likely to cause an adverse impact on the following:

i) existing, safe access to and along the foreshore, beach, headland or rock
ii) platform for members of the public, including persons with a disability,
iii) overshadowing, wind funnelling and the loss of views from public places to
iv) foreshores,
v) the visual amenity and scenic qualities of the coast, including coastal headlands,
Aboriginal cultural heritage, practices and places,
cultural and built environment heritage, and

b) is satisfied that:
   i) the development is designed, sited and will be managed to avoid an adverse
   ii) impact referred to in paragraph (a), or
   iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
   if that impact cannot be minimised—the development will be managed to mitigate that impact, and

c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The development work is situated well 2 block back from Manly Beach. The proposal will remain consistent with the aims and considerations for the coastal environment of Manly along Whister Street.

Division 5 General
2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The proposal will not create unreasonable impacts on the coastal environment in terms of runoff, coastal processes, hazards and geotechnical safety for excavation and building works. Suitable conditions are recommended to address the coastal location and environmental considerations

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

The proposal will not create unreasonable impacts on the coastal environment in terms of runoff, coastal processes, ecology, landform, or scenic amenity. Suitable conditions are recommended to address the coastal location and environmental considerations.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	6.6m	-	Yes
Floor Space Ratio	FSR: 0.75:1	**53 Whistler** 0.70:1 (194.60sqm) **55 Whistler** 0.70:1 (194.70sqm)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
5.8 Conversion of fire alarms	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 53 - 295.6sqm 55 - 278.3sqm (total 573.9sqm)	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	N: 9.0m (based on gradient being flat)	6.6m	-	Yes

	S: 9.0m (based on gradient being flat)	6.6m	-	Yes
4.1.2.2 Number of Storeys	3	2	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.5m	-	Yes
	Pitch: maximum 35 degrees	0 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	Unchanged, consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N: 2.1m (based on wall height) S: 2.2m	0.85m 1.31m	59.5% 40.45%	**No** **No**
	Windows: 3m	N: 1.1m S: 1.6m	63.3% 46.7%	**No** **No**
4.1.4.4 Rear Setbacks	8m	Rear wall - minimum of 7.85m Pergolas - minimum of 4.8m	1.9% 35.3%	**No** **No**
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS2	Open space 50% of site area	Number 53: 49.6% (146.6sqm) Number 55: 39.4% (109.8sqm)	0.8% 21.2%	**No** **No**
	Open space above ground 25% of total open space	0%	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 25% of open space	Number 53: 73% (108sqm) Number 55: 64% (70.4sqm)	-	Yes Yes
4.1.5.3 Private Open Space	18sqm per dwelling	both dwellings >18sqm	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	1 space for number 55 No spaces for number 53	50% 100%	**No** **No**

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	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
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

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

Description of non-compliance

Clause 4.1.4.2 of the Manly DCP requires development be setback at least 2.1m from the northern side boundary and 2.2m from the southern side boundary.

Clause 4.1.4.2 also requires windows from habitable rooms of dwellings that face the side boundary to be setback at least 3m from side boundaries.

Clause 4.1.4.4 of the Manly DCP requires any part of a building and the rear boundary must not be less than 8m.

North side setback- 0.85m (2.1m required)
South side setback - 1.31m (2.2m required)
Windows: North - 1.1m, South - 1.6m (3m required)
Rear Setbacks: Rear wall - minimum of 7.85m, Pergolas - minimum of 4.8m (8m required)

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 setback non-compliances apply to the rear additions which will have a negligible impact on the streetscape.

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 side boundary non-compliance does not directly attribute to unreasonable privacy and solar impacts on adjoining properties. No view impacts arise from the proposal. The proposal maintains appropriate building separation that is consistent with the street and streetscape envisaged by the MDCP

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

Comment:

The proposed setbacks allow a reasonable building footprint, compliant with the floor space ratio to provide for two functional dwellings for the site.

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 application proposes a compliant level of landscape open space. Landscaping is able to be provided down along both the front and rear of the dwelling to soften the built form and assist in privacy.

There are adequate deep soil zones in the front and rear setbacks to provide suitable planting as shown in the landscape plan.

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

Comment:

The subject site is not located in a bushfire zone.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5.1 of the MDCP requires at 55% of the site being total open space. The application proposes 49.6% (146.6) of the site as total open space for No. 53 Whistler Street, and 39.4% (109.8sqm) for No 55 whistler Street, non-compliant with the numeric control. This represents a 0.8%% and 21.2% variation to the numeric control.

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 application does not propose the removal of any important landscape features (Trees, plants or rock formations).

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

Comment:

The proposed development provides suitable landscape open space on site, compliant with the numeric control.

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

Comment:

Amenity considerations including sunlight, privacy and views have been are suitability mitigated to a reasonable standard as part of this application, despite the non-compliance with the numeric control.

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

Comment:

The proposed development provides ample soft open spaces for the purpose of onsite water infiltration to minimise stormwater runoff.

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

Comment:

The proposal is not likely to lead to a significant spread of weeds.

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

Comment:

The development will not affect any existing wildlife habitat and potential for wildlife corridors.

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

Schdule 3 - Part A1 (Parking Rates and Requirements for Vehicles) of the Manly DCP requires 2 parking spaces for each semi-detched dwelling

No. 53 Whistler Street, propses zero on site parking, which resprents a 100% variation to the numeric control.
No. 55 Whistler Street, proposed a 1 on site parking space, which represents a 50% variation to the numeric control.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of *4.1.6 (Parking, Vehicular Access and Loading (Including Bicycle Facilities)) of the MDCP* 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 does not amend the frontage to allow for further off-street parking. The subject site is a noted heritage item under the MLEP 2013 and introducing 2 parking spaces for each dwelling to the front of the site would have a unreasonable impact upon the hertiage significance of the site. Further,

the existing front setback does not allow for the required dimensions for a car space on the subject site. If parking space were provided to the front of the subject site, this would result in the removal of on-street parking to provide vehicular access to the site. Therefore, whilst the proposal is not numerical consistent with Schedule 3 of MDCP 2013 that requires 2 parking spaces, the provision of car parking within the subject site is not reasonable within the existing context.

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 continue to provide for one car parking space. It is unreasonable to expect the site to provide for 2 car parking spaces without a visually dominant structure within the front setback. The provision of a singular car parking space on site is supported in this particular circumstance.

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 existing driveway and hardstand area will be retained as approved

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 alterations and additions will not require any excavation.

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

Comment:

There are no changes proposed to the existing driveway and vehicular crossing.

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

Comment:

The proposal provided for additional planting to soften the built form.

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 maintains the existing one off-street parking space.

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

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of $16,660 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,666,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- 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

PLANNING CONCLUSION

Overall, the development is a high-quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval, subject to the recommended conditions attached.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to REV2022/0016 for Review of Determination of Application of DA2021/1344 for Alterations and additions to two semi-detached dwellings including a hard stand parking area on land at Lot 1 DP 1103720, 55 Whistler Street, MANLY, Lot 1 DP 742272, 53 Whistler 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 with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
DA.100	April 2021	madeleine blanchfield architects
DA.301/ Rev A	April 2021	madeleine blanchfield architects
DA.310/ Rev A	April 2021	madeleine blanchfield architects
DA.311/ Rev A	April 2021	madeleine blanchfield architects
DA.312/ Reb B	December 2021	madeleine blanchfield architects
DA.401/ Rev B	December 2021	madeleine blanchfield architects
DA.402/ Rev B	December 2021	madeleine blanchfield architects
DA.403/ Rev B	December 2021	madeleine blanchfield architects
DA.404/ Reb B	December 2021	madeleine blanchfield architects
DA.501/ Reb B	December 2021	madeleine blanchfield architects
DA.902/ Rev A	April 2021	madeleine blanchfield architects
Da.903/ Rev A	April 2021	madeleine blanchfield architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**

Hertiage Impact Assessment	March 2021	Zoltan Jovacs Architect
Flood Risk Management Report	30 July 2021	Stellen Consulting
Geotechnical Investigation	Febutrary 2021	Crozier Geotechnical Consultants
BASIX Certificate A406056_04	16 June 2022	Northern aspect Energy Consultants
BASIX Certificate A406024_04	16 June 2022	Northern aspect Energy Consultants

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**
DA01/ Landscape Plan	11 February 2021	Sticks and Stones
DA02/ Planting Plan	11 February 2021	Sticks and Stones

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	18 June 2021	Breet Newman and Libby Davidson

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

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

2. **Compliance with Other Department, Authority or Service Requirements**
The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	**EDMS Reference**	**Dated**
Ausgrid	Ausgrid Referral Response	N/A

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

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. **Approved Land Use**
Nothing in this consent shall authorise the use of dwellings as detailed on the approved plans for any land use of the site beyond the definition of a semi-detached dwelling in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

semi-detached dwelling *means a dwelling that is on its own lot of land and is attached to only*

one other dwelling.

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.

4. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifier 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 Certifier 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 Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

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

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

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

(iii) must, at least 7 days before excavating below the level of the base of the

footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

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

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

Reason: Legislative requirement.

5. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) 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 an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) 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.

(e) 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.

(f) 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.

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

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

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

(j) 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.

(k) 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.

(l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) 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 2018

(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.

6. **Retractable gates**
The Applicant is to ensure that the retractable gate providing access to the parking space at No.55 is remotely operated by the driver and able to retract along the full length of the 8m rear set back.

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

Reason: To facilitate convenient entry and egress to the parking space without encroachment on adjacent property

FEES / CHARGES / CONTRIBUTIONS

7. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of $16,660.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of $1,666,000.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council’s website at Northern Beaches Council - Development Contributions.

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

8. **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 are required 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, and details demonstrating payment are to be submitted to the Certifier 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

9. **Driveway Operable Gates**
The Applicant is to ensure driveway operable gate within the private property can slide open wide enough to permit vehicle to maneuver completely within the right of way at No 57 Whistler Street, Manly during entering and exiting the property.

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

Reason: To ensure suitable vehicular access to private property.

10. **Photographic Archival Record**
A photographic archival record of the site is to made of all existing buildings and structures (including interiors and exteriors and their setting), generally in accordance with the guidelines issued by the NSW Heritage Division of the NSW Office of Environment & Heritage (OEH).

This record must be submitted and approved by the Certifiying Authority prior to commencement of any demolition or works on-site.

The photographic record should be made using digital technology, submitted on archival quality CD-R disc, and should include:

- Location of property, date of survey and author of survey;
- A site plan at a scale of 1:200 showing all structures and major landscape elements;
- Floor plans of any buildings at a scale of 1:100;
- Photographs which document the site, cross-referenced in accordance with recognised archival recording practice to catalogue sheets. The extent of documentation will depend on the nature of the item.

Reason: To provide an archival photographic record of the site, including any buildings and landscape elements, prior to any works.

11. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The recommendations of the risk assessment required to manage the hazards as identified in

the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of a Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

12. **Boundary Identification Survey**
A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

13. **On-site Stormwater Detention Details**
The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's WATER MANAGEMENT FOR DEVELOPMENT POLICY , and generally in accordance with the concept drainage plans prepared by Stellen Consulting, drawing number DR-001 to DR-002, dated 25/5/2021.

Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer. Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

14. **Maintenance Plan**
A Maintenance Plan for the site is to be prepared in accordance with the NSW Heritage Council's "Preparing a Maintenance Plan" document. This document should include a cyclical maintenance program, covering both annual and long term maintenance requirements. Details demonstrating compliance with this condition are to be submitted to and approved by Council's Heritage Advisor prior to the issue of the Construction Certificate.

Reason: To ensure the ongoing conservation and protection of Northern Beaches significant heritage resources.

15. **Height reduction to rear additions**
Proposed building height should not extend above the ridge level (RL 12250) of the main roof. Details demonstrating compliance with this condition are to be submitted to the Council prior to the issue of the Construction Certificate.

Reason: To preserve the heritage significance of the heritage item.

16. **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 Certifier prior to the issue of the Construction Certificate.

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

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

Please refer to the website www.sydneywater.com.au for:
- "Tap in" details - see http://www.sydneywater.com.au/tapin
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

18. **Tree Removal Within the Property**
This consent approves the removal of the following tree within the property (as recommended in the Arboricultural Impact Assessment submitted in DA2021/1344):
i) T5 - *Callistemon viminalis* (Weeping Bottlebrush),
ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

19. **Pre-Construction Dilapidation Report**
Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property: Nos. 51 and 57 Whistler Street, Manly

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

20. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

21. **Geotechnical Requirements**
All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

22. **Demolition Works - Asbestos**
Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

23. **Survey Certificate**
A survey certificate prepared by a Registered Surveyor at the following stages of construction:

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

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

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

Details demonstrating compliance are to be submitted to the Principal Certifier.

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

24. **Property Boundary Levels**
The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

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

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

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

25. **Landscape Completion**
Landscaping is to be implemented in accordance with the approved Landscape Plan, and inclusive of the following conditions:
i) all tree planting shall be a minimum planting size of 75 litres or as otherwise scheduled if greater in size, and shall meet the requirements of Natspec - Specifying Trees,
ii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and the two *Banksia integrifolia* in the rear setbacks shall be located at least 3.0 metres from buildings, 2.0 metres from structures, and at least 1.5 metres from common boundaries, and located either within garden bed or within a prepared bed within lawn,
iii) mass planting shall be installed in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
iv) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

Prior to the issue of an Occupation Certificate, details from a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

26. **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.

27. **Post-Construction Dilapidation Report**
Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

28. **Geotechnical Certification Prior to Occupation Certificate**
A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.
Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

29. **Landscape Maintenance**
If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

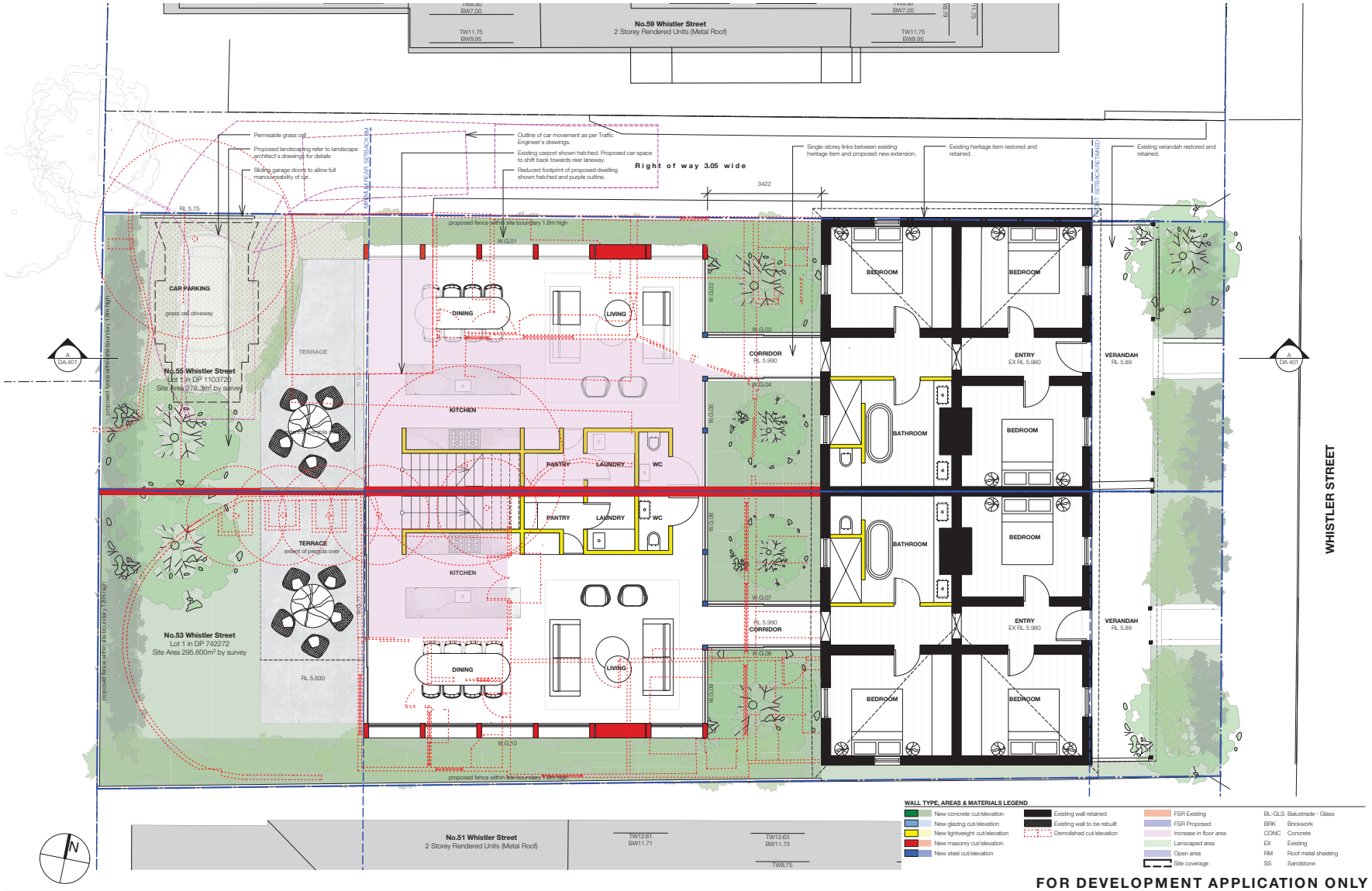
If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

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

Reason: To maintain local environmental amenity.

30. **Geotechnical Recommendations**
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to me maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.



WALL TYPE, AREAS & MATERIALS LEGEND

New concrete cut/elevation	Existing wall retained	FSR Existing	BL-GLS	Balustrade - Glass
New glazing cut/elevation	Existing wall to be rebuilt	FSR Proposed	BRK	Brickwork
New lightweight cut/elevation	Demolished cut/elevation	Increase in floor area	CONC	Concrete
New masonry cut/elevation		Lanscaped area	EX	Existing
New steel cut/elevation		Open area	RM	Roof metal sheeting
		Site coverage	SS	Sandstone

FOR DEVELOPMENT APPLICATION ONLY

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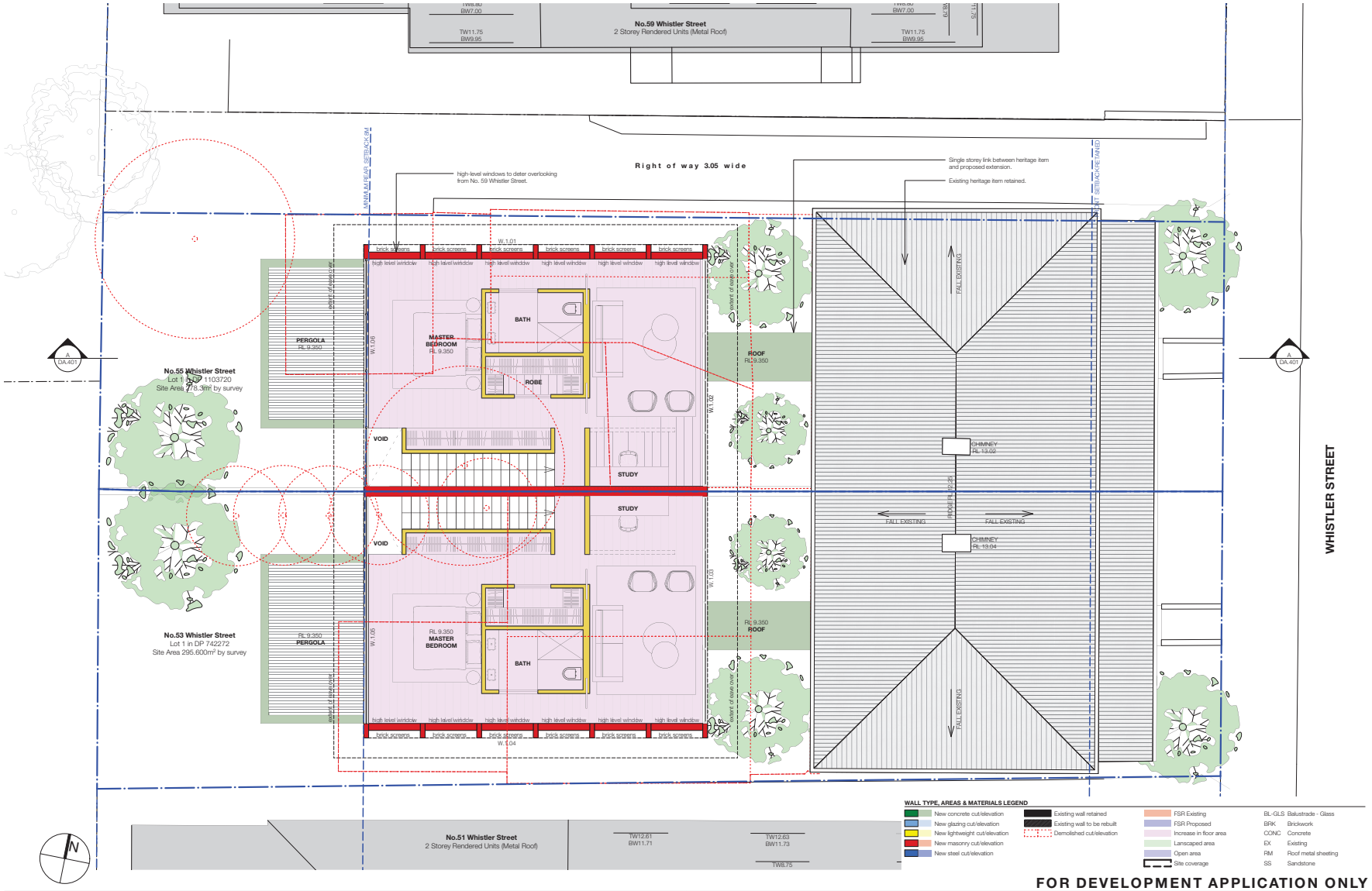
A REV. FOR DEVELOPMENT APPLICATION — AP DRAWN — 1/4/21 DATE

Project
3090 - DAVIDSON NEWMAN MANLY RESIDENCES
53 & 55 WHISTLER STREET, MANLY
LOT 1 IN DP 1103720 & LOT 1 IN DP 742272

Drawing
PROPOSED GROUND FLOOR PLAN

0 1 2 3 4 5 M

Scale 1:100@A3 — Date APRIL 2021 — Drawing **DA.310** — Rev. **A**



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53 & 55 WHISTLER STREET, MANLY
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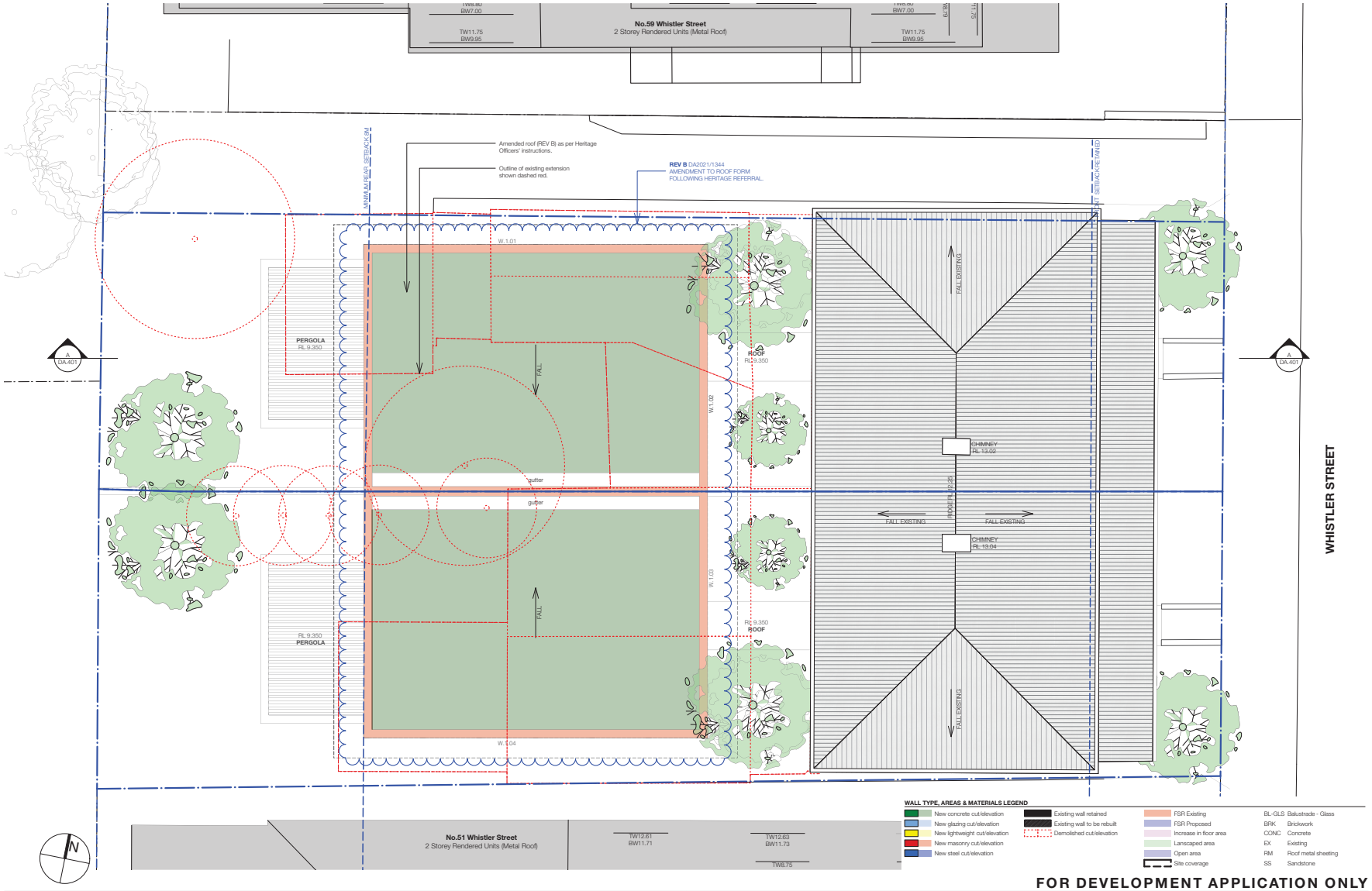
Drawing
PROPOSED FIRST FLOOR PLAN

Scale 1:100@A3 — Date APRIL 2021 — Drawing **DA.311** — Rev. **A**



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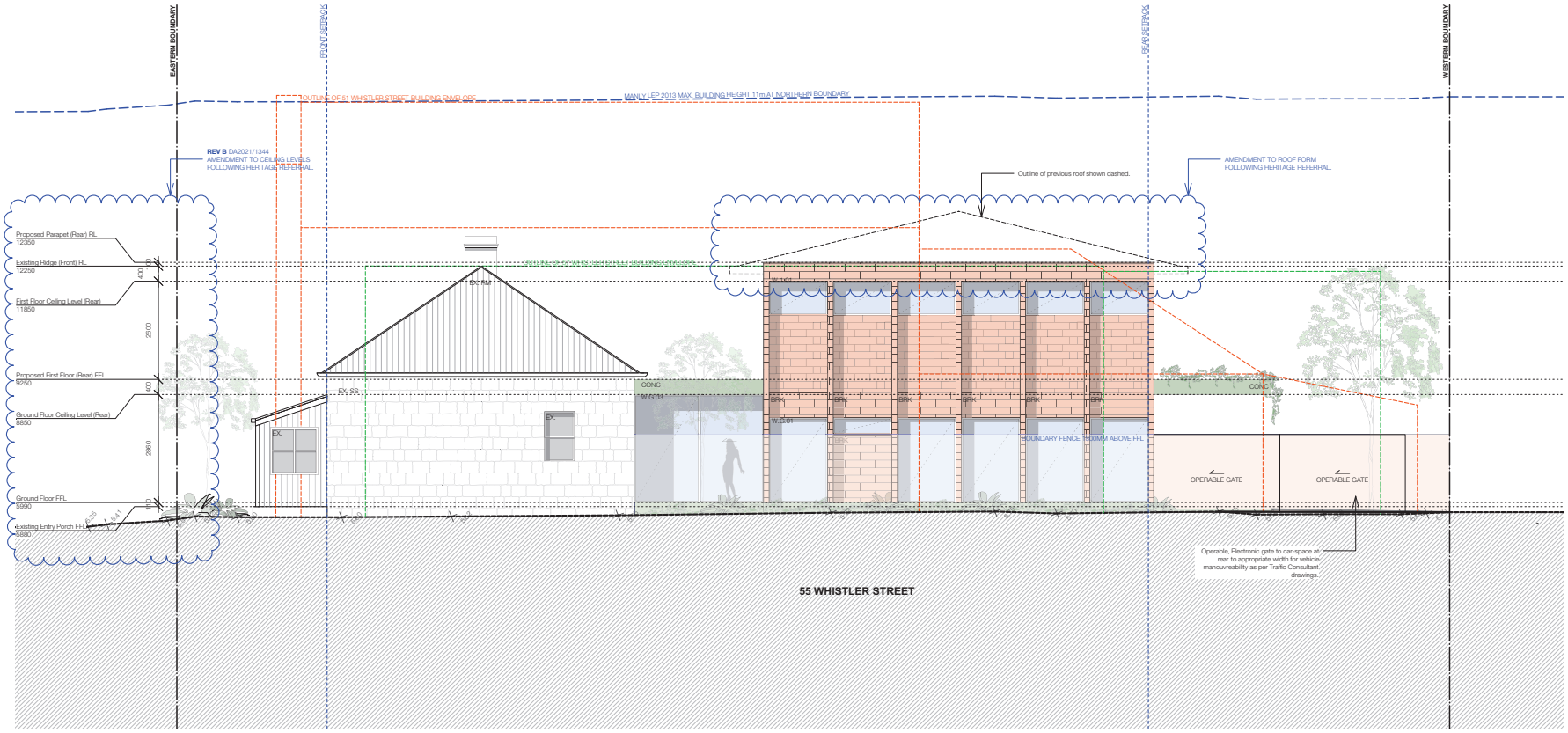
REV.	FOR		DATE
B	DEVELOPMENT APPLICATION AMENDMENTS	AP	16/12/21
A	FOR DEVELOPMENT APPLICATION	AP	1/4/21

Project
3090 - DAVIDSON NEWMAN MANLY RESIDENCES
53 & 55 WHISTLER STREET, MANLY
LOT 1 IN DP 1103720 & LOT 1 IN DP 742272

0 1 2 3 4 5 M

Drawing
PROPOSED ROOF PLAN

Scale 1:100@A3
Date DECEMBER 2021
Drawing **DA.312**
Rev. **B**



WALL TYPE, AREAS & MATERIALS LEGEND

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New masonry cut/elevation		Lanscaped area	EX	Existing
New steel cut/elevation		Open area	RM	Roof metal sheeting
		Site coverage	SS	Sandstone

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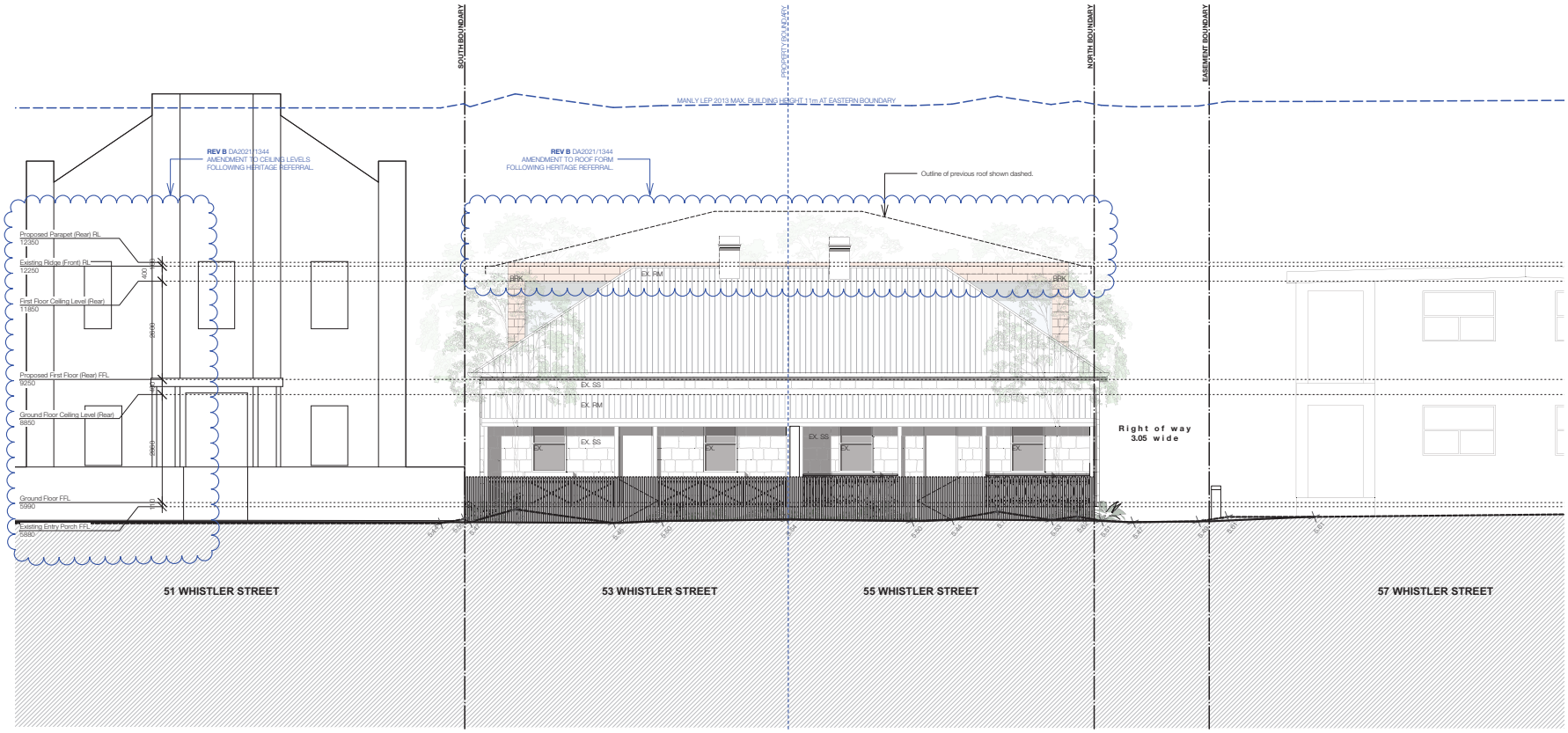
A	FOR DEVELOPMENT APPLICATION	AP	1/4/21

Project
3090 - DAVIDSON NEWMAN MANLY RESIDENCES
53 & 55 WHISTLER STREET, MANLY
LOT 1 IN DP 1103720 & LOT 1 IN DP 742272

0 1 2 3 4 5 M

Drawing
NORTH ELEVATION

Scale 1:100@A3 | Date DECEMBER 2021 | Drawing **DA.401** | Rev. **B**



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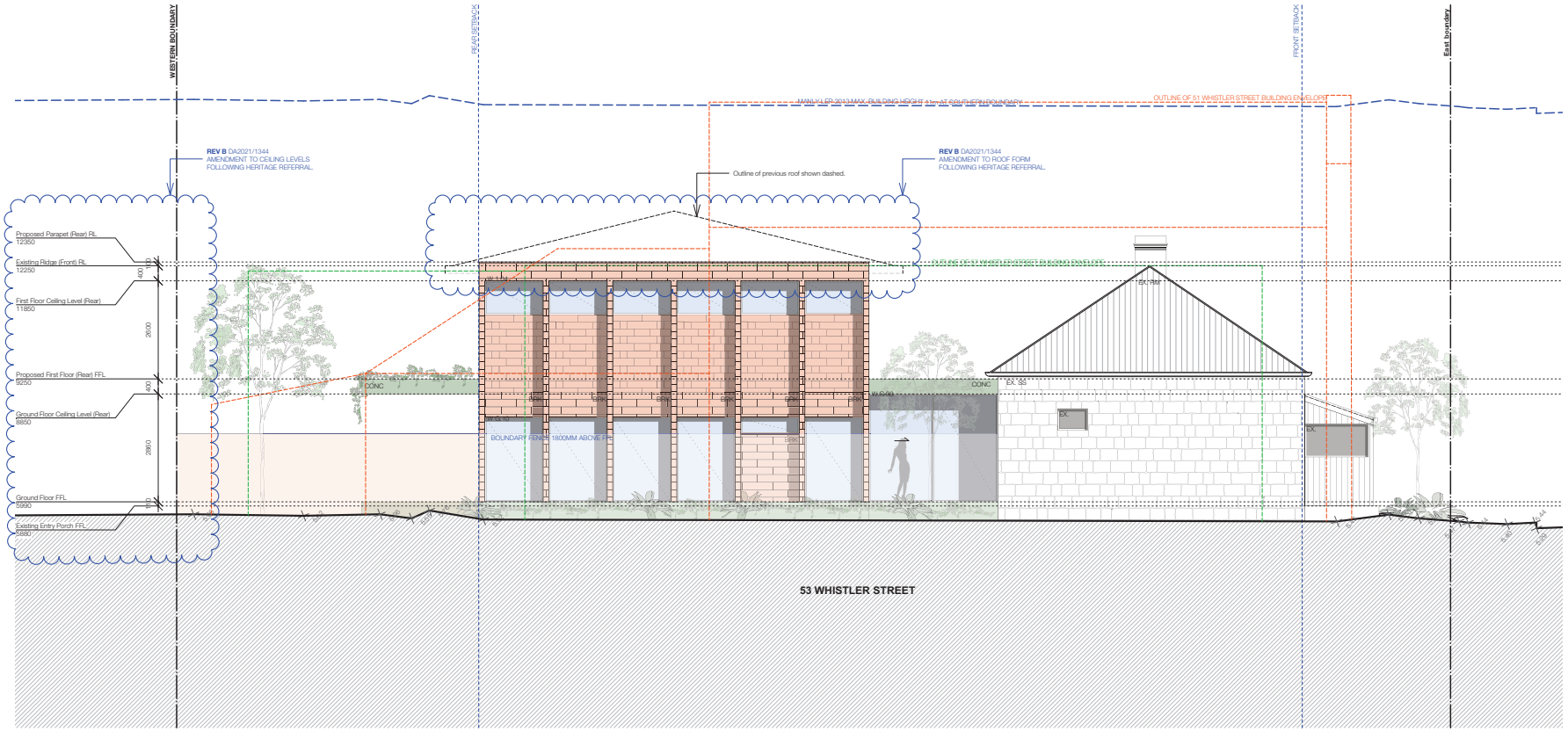
REV.	FOR	DRAWN	DATE

Project
3090 - DAVIDSON NEWMAN MANLY RESIDENCES
53 & 55 WHISTLER STREET, MANLY
LOT 1 IN DP 1103720 & LOT 1 IN DP 742272

0 1 2 3 4 5 M

Drawing
EAST ELEVATION - WHISTLER STREET

Scale 1:100@A3
Date DECEMBER 2021
Drawing **DA.402**
Rev. **B**



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REV.	FOR	DRAWN	DATE

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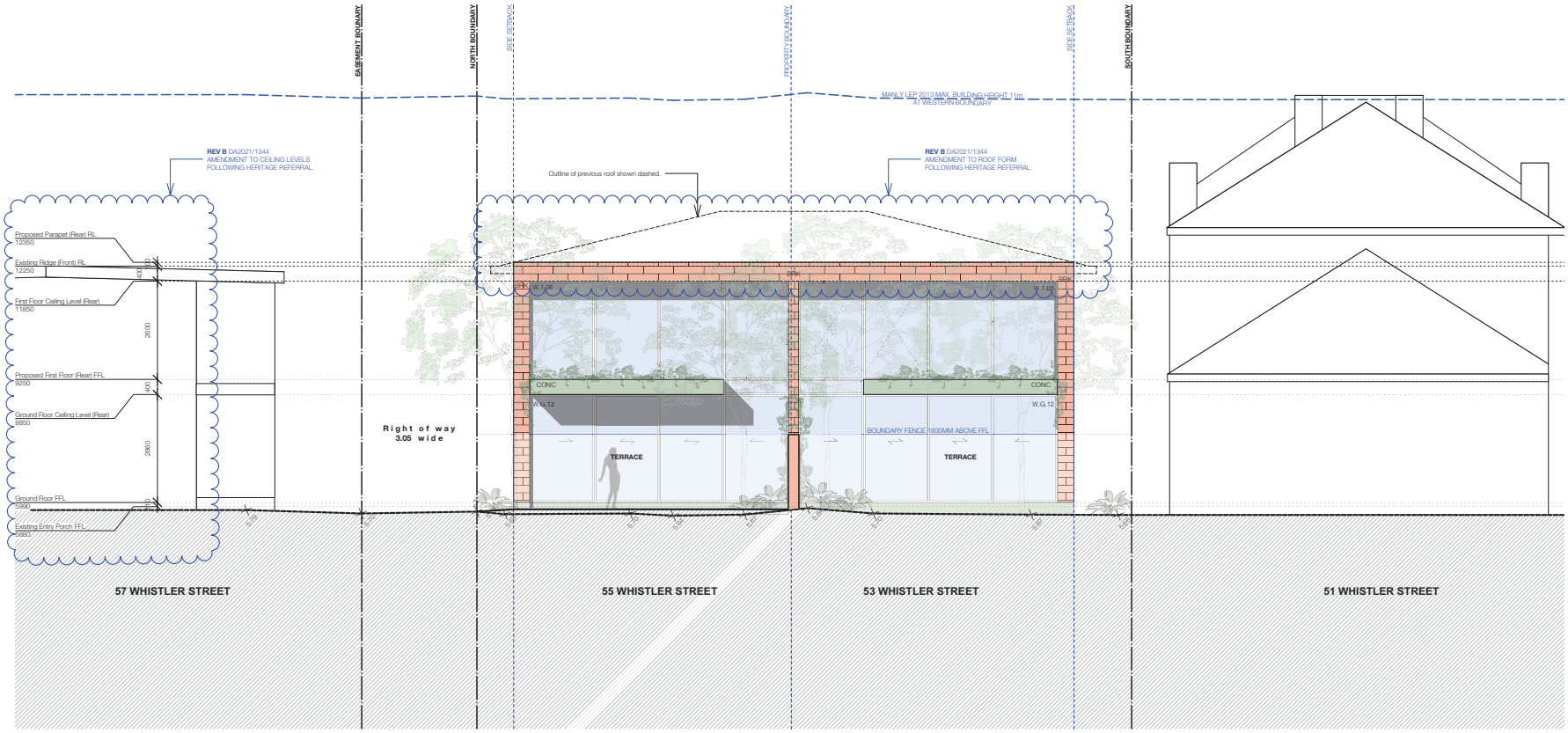
53 & 55 WHISTLER STREET, MANLY
LOT 1 IN DP 1103720 & LOT 1 IN DP 742272

0 1 2 3 4 5 M

Drawing
SOUTH ELEVATION

Scale 1:100@A3
Date DECEMBER 2021
Drawing **DA.403**
Rev. **B**



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53 & 55 WHISTLER STREET, MANLY
LOT 1 IN DP 1103720 & LOT 1 IN DP 742272

Drawing
WEST ELEVATION

Scale	Date	Drawing	Rev.
1:100@A3	DECEMBER 2021	**DA.404**	**B**

5.0 Non Public Meeting Items

ITEM 5.1	**DA2022/1200 - MANLY ART GALLERY & MUSEUM WEST ESPLANADE, MANLY - INSTALLATION OF A NEW ROOF MOUNTED BUILDING SIGN ON THE ART GALLERY AND MUSEUM BUILDING MANLY.**
AUTHORISING MANAGER	**Adam Richardson**
TRIM FILE REF	**2022/756408**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plans & Elevation**

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/1200 for the installation of a new roof mounted artwork on the Manly Art Gallery and Museum, located at Lot 7340 in DP 1144101, West Esplanade, Manly, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1200

Responsible Officer:	Ben Tesoriero Creative Planning Solutions Pty Limited (Independent Planning Consultant)
Land to be developed (Address):	Manly Art Gallery & Museum West Esplanade, Manly NSW 2095
Proposed Development:	Installation of a new roof and wall mounted art installation on the Art Gallery and Museum Building Manly
Zoning:	Manly LEP 2013 - RE1 Public Recreation
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Determination Level	NBLPP
Land and Environment Court Action:	No
Owner:	Northern Beaches Council
Applicant:	Northern Beaches Council

Application Lodged:	24/08/2022
Integrated Development:	No
Designated Development:	No
Notified:	30/08/2022 to 13/09/2022
Advertised:	Not Advertised
Submissions Received:	Two (2)
Clause 4.6 Variation:	No
Recommendation:	Approval, subject to conditions

Estimated Cost of Works:	$15,000

EXECUTIVE SUMMARY

Development Application (DA2022/1200) is for the installation of a new roof and wall mounted art installation on the Manly Art Gallery and Museum Building, located within the West Esplanade, Manly (Lot 7340 in DP 1144101). The site is zoned RE1 Public Recreation under the *Manly Local Environmental Plan 2013* (MLEP 2013) and the proposed development is permissible with consent as the art installation is ancillary to the existing art gallery.

The development application (DA) is referred to the Northern Beaches Local Planning Panel under the Local Planning Panels Direction made pursuant to section 9.1 of the *Environmental Planning and Assessment Act 1979*, as the Northern Beaches Council is the owner of the land.

The DA has been assessed against the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979), *Environmental Planning and Assessment Regulations 2021* (EP&A Regulations 2021), relevant environmental planning instruments (EPIs), and Council policies.

The DA was notified for a period of 14 days in accordance with Council's Community Participation Plan and two (2) submissions were received during that time.

The DA assessment recommends the application be approved subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The DA proposes the following:

- Construction
  - New illuminated art installation on the south side of the roof of the Manly Art Gallery and Museum. The art installation is to be 4200mm x 600mm and is to spell the phrase "STRANGE OASIS".
  - LED strip lighting beneath the existing yellow band of the building.

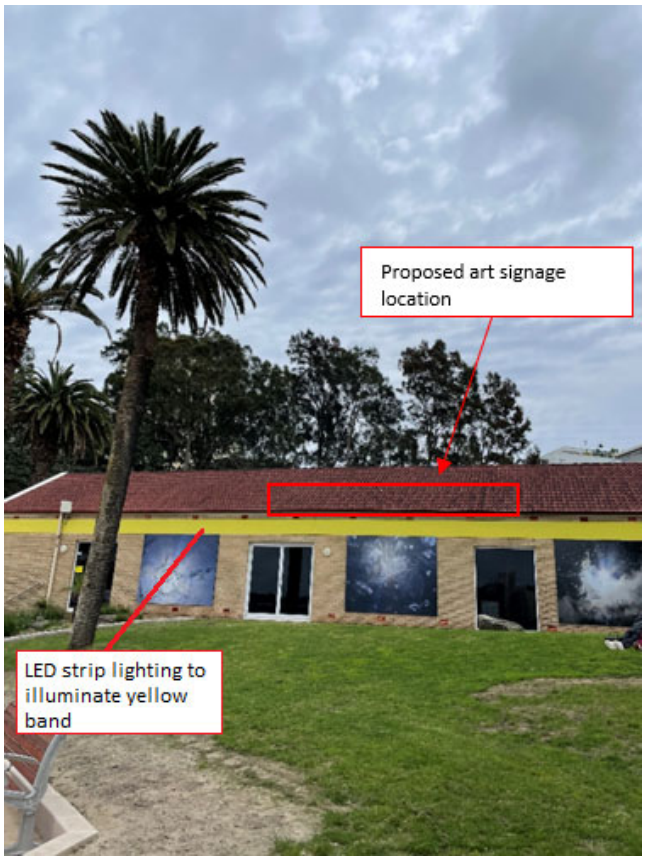


***Figure 1** – Photograph of existing Manly Art Gallery and Museum and location of where the illuminated art installation and LED strip lighting will be installed (southern side).*
Site Inspection - 21 September 2022

northern beaches council

Figure 2 *- Artist impression of the proposed art installation, as viewed from Fairlight Walk looking north west toward the southern elevation of the Manly Art Gallery & Museum.*

Figure 3 *– Artist impression of the proposed art installation illuminated at night time, as viewed from West Esplanade looking south west toward the Manly Art Gallery & Museum.*

Figure 4 *– Artist impression of the proposed art installation illuminated at night time, as viewed from Manly Wharf looking north west toward the Manly Art Gallery & Museum.*

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) considering all relevant provisions of the *Environmental Planning and Assessment Act 1979*, and the associated Regulations;
- A site inspection was conducted on 21 September 2022 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 has occurred, and a referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan has also been undertaken;
- Two (2) submissions were made by the public or 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

No issues have been identified that would warrant amendment or refusal of the proposal.

SITE DESCRIPTION

Property Description:	Lot 7340 in Deposited Plan 1144101. West Esplanade, Manly NSW 2095. Note: The site is owned by Crown Lands, with Northern Beaches Council as the reserve manager. Pursuant to Section 2.23 of the Crown Land Management Act 2016, the Minister is taken to have given written consent on behalf of the Crown to make the development application, by virtue of the lease between Council as reserve manager and Crown Lands.
Detailed Site Description:	The subject t site is commonly known as the Manly Art Gallery and Museum and is located within RE1 Public Recreation zoned land on West Esplanade to the north and Manly Cove to the south. The site is a single storey brick building with a tile roof. The land upon which the building is located experiences a slight slope towards Manly Cove Beach, south of the site. The Manly Art Gallery and Museum is situated within Esplanade Park which is a public open space that includes moderate tree and vegetation coverage. Medium and higher density residential developments are located to the north and east, within the adjoining R1 General Residential zone. The site is located within the heritage listed Esplanade Park at the western end of Manly Cove, as well as being adjacent to Heritage Item I250; being the Manly Cove amenities block. Given the minor scale of the proposed development, there is anticipated to be no adverse impacts on any nearby heritage items. Refer to the heritage referral response for more information.

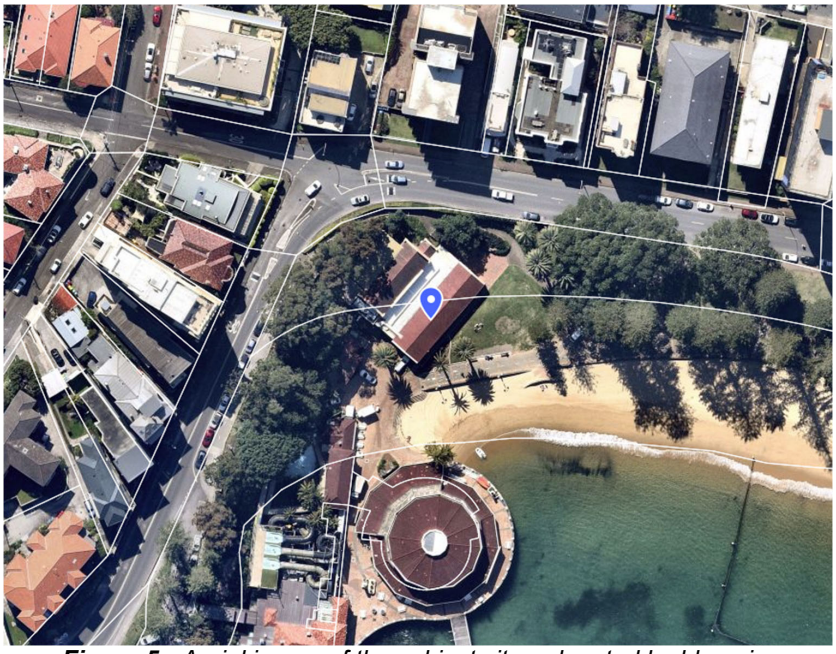


Figure 5 *- Aerial image of the subject site – denoted by blue pin.*

Detailed Description of Adjoining/Surrounding Development

The site is surrounded predominantly by medium to larger scaled residential developments located to the west and north within the R1 General Residential zoned area. Formalised tree and vegetation planting is characteristic of the surrounding streetscape and within Esplanade Park, with several additional public reserves and open spaces located nearby including Manly Cove Beach and Dalley Park. Additionally, B2 Local Centre zoned land is situated north-east of the subject site. The B2 zone is centred around The Corso and contains several business, retail, and food premises.

To the north, the site adjoins the West Esplanade and high-density residential developments. To the south, the site adjoins to the Manly Sea Life Sanctuary, Manly Waterworks and Manly Pavilion. To the east, the site adjoins the Esplanade Park which connects to Manly Cove Beach and Manly Wharf. To the west the site adjoins Commonwealth Parade and further medium-high density residential developments.

The site is approximately 420 metres to the west of Manly Corso and approximately 270 metres north-west of Manly Wharf, which contains ferry services and bus stops.

SITE HISTORY

A search of Council's records has revealed no relevant DA history for the subject site. However, online aerial imagery demonstrates the land has been used as an art gallery for an extended period.

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 2021* and the relevant Community Participation Plan.

As a result of the public exhibition process Council is in receipt of two (2) submissions from:

Name:	Address:
Geoff Bertram	405/95 West Esplanade
Ian Routledge	5 Careel Bay Crescent

One of the submissions was an objection to the DA, while the other was in support of the proposal. These are discussed in further detail below:

Concern is raised that the She Oaks trees are blocking views and causing foliage needles to drop on the public pathways. Furthermore, it is considered that the art installation is inappropriate as it obscures views towards the wharf and is out of character with the area by being on top of a heritage item.

Objections relating to nearby trees blocking views and causing foliage needles to drop on the pathways are not a matter for consideration in the assessment of the subject DA.

The proposed art installation is positioned below the roof ridge of the existing art gallery building, and is orientated to the south, meaning the installation will be largely indiscernible from surrounding residential buildings. In this respect, the installation is considered to have no impact on views.

The site is located within the West Esplanade Park, which is identified as a heritage item under the *Manly Local Environmental Plan 2013*. Council's Heritage Officer has undertaken an assessment of the proposal and raises no objection on heritage grounds, subject to one recommended condition regarding the sign's illumination.

An additional condition of consent has been recommended to ensure that the proposal complies with *AS/NZS 4282:2019 Control of the obtrusive effects of outdoor lighting*.

Given the art installation is in association with an art gallery, and the heritage impact of the proposal has been deemed acceptable by Council's Heritage Officer, the proposed development is considered compatible with the character of the local area.

Support is expressed for the proposal based on knowledge of the artist and their previous work.

This comment is noted.

REFERRALS

Internal Referral Body	Comments
Natural Environment Referral – Biodiversity Response	***Supported, subject to conditions*** Natural Environment Referral has no objection with this development application and notes compliance with the requirements of the *State Environmental Planning Policy (Resilience & Hazards) 2021, State Environmental Planning Policy (Biodiversity & Conservation) 2021*, MLEP 2013 and MDCP 2013. Conditions of consent are recommended to ensure the development is consistent with the National Light Pollution Guidelines for Wildlife.

Internal Referral Body	Comments
Natural Environment Referral – Coastal Response	***Supported, without conditions*** Natural Environment Referral has no objection with this DA. It has been supported without conditions.
Building Assessment Referral Response	***Supported, without conditions*** The Building Assessment Referral has no objection with this DA. It has been supported without conditions.
Parks, Reserves and Foreshores Referral Response	***Supported, without conditions*** The Parks, Reserves and Foreshores Referral has no objection for the DA and the proposal is supported without consent conditions.
Heritage Referral Response	***Supported, subject to conditions*** The Heritage Referral has no objection to the DA, subject to one condition of consent recommending the illumination levels of the art installation be limited to ensure the proposal is sympathetic to the West Esplanade Park heritage item. A similar condition has been imposed regarding the illumination levels of the proposed sign to ensure compliance with the relevant Australian Standard, this is: ***Illumination Control*** *The proposed development is to comply with Australian Standard AS/NZS 4282:2019 Control of the obtrusive effects of outdoor lighting. A verification report prepared by a suitably qualified engineer is to be prepared and submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate demonstrating compliance with AS/NZS 4282:2019 Control of the obtrusive effects of outdoor lighting has been achieved.* *Reason: To ensure compliance with the Australian Standards.*

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	***Supported, without conditions*** Ausgrid does not have any objections for the proposed development. The applicant is to note development requirements near existing electrical assets.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)

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	There are no current draft environmental planning instruments applicable to proposed development on the subject site.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29(1) of the EP&A Regulation 2021 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. Clauses 36 and 104 of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. Clause 61 (1) of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This clause is not relevant to this application. Clauses 64 of the EP&A Regulation 2021 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.

Section 4.15 'Matters for Consideration'	Comments
	Clause 69 (2) of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the *Home Building Act 1989*. This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 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.
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 Manly Development Control Plan 2013 section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact to the locality considering the minor nature of the of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the minor nature of the proposal.
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.

BUSHFIRE PRONE LAND

The site is not classified as bushfire prone land.

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 DA.

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 documents 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)

State Environmental Planning Policy (Resilience and Hazards) 2021 (RH SEPP)

The proposal has been assessed against the RH SEPP and determined that it complies with the relevant requirements. The subject site is identified as being within both the Coastal Use Area and Coastal Environment Area within the RH SEPP (***Figure 3*** and ***Figure 4***).

Figure 6 - *Coastal Use Area Map extract.*

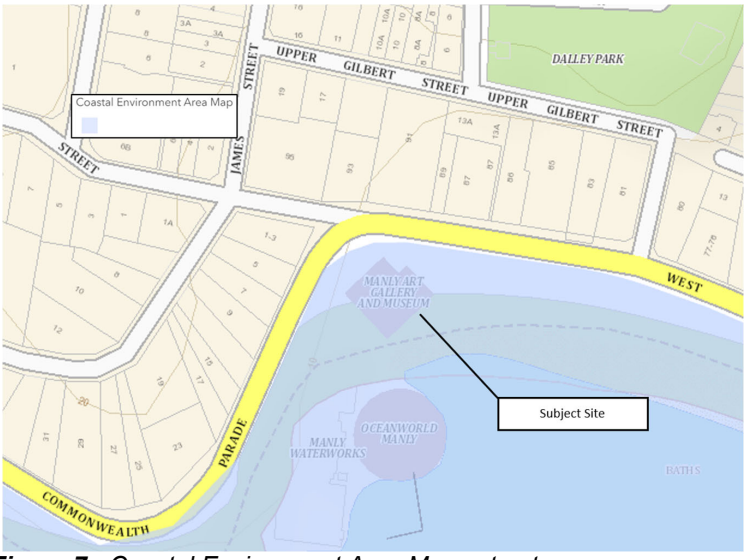


Figure 7 *- Coastal Environment Area Map extract.*

The proposed development therefore needs to comply with Clauses 2.9 and 2.10 of the RH SEPP. The proposed art installation is minor in nature and will not have any adverse impacts on the natural or built environment of the subject site or the surrounding area, subject to the recommended conditions of consent. As such, the proposal satisfies the relevant provisions with the RH SEPP.

State Environmental Planning Policy (Biodiversity and Conservation) 2021 (BC SEPP)

The proposal has been assessed against the BC SEPP and determined that it satisfies the relevant requirements. The proposed development will not result in any adverse impact to the natural environment subject to the recommended conditions of consent.

State Environmental Planning Policy (Transport and Infrastructure) 2021 (TI SEPP)

The Ausgrid Referral has assessed the proposal against the TI SEPP and determined that it satisfies the relevant requirements.

MANLY LOCAL ENVIRONMENTAL PLAN 2013

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

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	N/A – No demolition work is proposed.
4.3 Height of buildings	Yes - The structure is located approximately 4.56m above the existing ground level. However, the proposed development will not alter the maximum height of the building as the art installation is positioned below the roof ridge of the building. There is no maximum building height prescribed for the site per the height of buildings map under the MLEP 2013.
5.10 Heritage Conservation	Yes, the site is identified as being heritage item, and located within the vicinity of other heritage items. The Heritage Referral raises no objection to the proposal on heritage grounds.

Clause	Compliance with Requirements
5.11 Bush fire hazard reduction	N/A – site not identified as bushfire prone.
5.21 Flood planning	Yes, the site is identified as being partially flood prone under the MDCP 2013. Given the nature of the works being confined to the roof of the existing building, no impacts on flooding are anticipated.
6.1 Acid Sulfate Soils	Yes, the site is identified as being within Class 4 Acid Sulfate Soils. No earthworks are proposed. Further given the works are confined to the roof of the existing building, no impacts on acid sulfate soils are anticipated.
6.2 Earthworks	N/A – No earthworks proposed. The works are confined to the roof of the existing building.
6.5 Terrestrial Biodiversity	Yes, the site is identified as being within “biodiversity” land under the MLEP 2013. No significant impacts on the natural environment are anticipated from the development, subject to the inclusion of the recommended consent conditions.
6.8 Landslip Risk	Yes, the site is within landslip risk area. No earthworks are proposed and the landslip risk of the surrounding area will not be affected given the works are confined to the roof of the existing building.
6.9 Foreshore Scenic Protection Area	Yes, the site is within the foreshore scenic protection area. The proposal is minor in nature and is located below the existing building height. The art installation will not significantly add to the bulk of the building. While the sign is proposed to be illuminated, it is noted the surrounding area is already heavily illuminated with public lighting associated

Clause	Compliance with Requirements
	with West Esplanade and Fairlight Walk. Despite this a condition of consent requiring compliance with *AS/NZS 4282:2019 Control of the obtrusive effects of outdoor lighting* has been recommended to ensure the development remains compatible with the local area.

Permissibility of the development

The proposed art installation is ancillary to the Manly Art Gallery and Museum and therefore permissible with consent. It is noted that the primary building is a community facility which is a permissible form of development within the zone. It is noted that in being a local heritage item, the art installation cannot be characterised as exempt development.

Although the art installation comprises letters forming a phrase, the proposal does not meet the definition of 'signage.' Signage is defined in the Dictionary of the MLEP 2013 as:

> ***signage*** *means any sign, notice, device, representation or advertisement that advertises or promotes any goods, services or events and any structure or vessel that is principally designed for, or that is used for, the display of signage, and includes any of the following—*
>
> *(a) an advertising structure,*
> *(b) a building identification sign,*
> *(c) a business identification sign,*
>
> *but does not include a traffic sign or traffic control facilities.*

For reference:

> ***advertising structure*** *means a structure used or to be used principally for the display of an advertisement.*
>
> ***building identification sign*** *means a sign that identifies or names a building and that may include the name of a building, the street name and number of a building, and a logo or other symbol but does not include general advertising of products, goods or services.*
>
> ***business identification sign*** *means a sign—*
> *(a) that indicates—*
> *(i) the name of the person or business, and*
> *(ii) the nature of the business carried on by the person at the premises or place at which the sign is displayed, and*
> *(b) that may include the address of the premises or place and a logo or other symbol that identifies the business,*
> *but that does not contain any advertising relating to a person who does not carry-on business at the premises or place.*

The art installation does not constitute an 'advertising structure', and is not a 'building identification sign', or a 'business identification sign'. In this regard, the proposal does not constitute signage, and consequently *State Environmental Planning Policy (Industry and Employment) 2021* does not apply.

MANLY DEVELOPMENT CONTROL PLAN 2013

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
1.7 Aims and objectives of this plan	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5.7.1 Environmentally Sound Building Materials	Yes	Yes
4.4.3.2 Signage on Heritage listed items and in Conservation Areas	Yes	Yes
4.4.3.3 Controls for particular development types	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.3 Flood Prone Land	Yes	Yes

7.12 CONTRIBUTIONS

The proposal is not subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022 given the cost of the development is less than $100,000. As such, no contributions are payable for the development.

CONCLUSION

The site has been inspected and the DA 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 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan 2013;
- Manly Development Control Plan 2013; and
- Codes and Policies of Council.

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

- Consistent with the objectives of the MDCP 2013
- Consistent with the zone objectives of the MLEP 2013
- Consistent with the aims of the MLEP 2013
- 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 the Northern Beaches Local Planning Panel, as the consent authority, grant Development Consent to DA2022/1200 for the installation of a new roof mounted artwork on the Manly Art Gallery and Museum, located at Lot 7340 in DP 1144101, West Esplanade, 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 with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
Sign Letter Detail, DA03A, Rev A	October 2022	Building Assets-Planning Delivery NBC
Sign Letter Detail, DA04A, Rev A	October 2022	Building Assets-Planning Delivery NBC
Drawing register, location aerial photo – DA00C, Rev C	October 2022	Building Assets-Planning Delivery NBC
Roof Plan, Rev C	October 2022	Building Assets-Planning Delivery NBC
Elevations, Rev C	October 2022	Building Assets-Planning Delivery NBC

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

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

2. **Compliance with Other Department, Authority or Service Requirements**
The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	**EDMS Reference**	**Dated**
Ausgrid	Ausgrid Referral Response	n.d.

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

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities, or bodies.

3. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) 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 Certifier 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.

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

Reason: Legislative requirement.

4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) 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 an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) 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.

(e) 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.

(f) 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.

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

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

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

(j) 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.

(k) 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.

(l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

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

5. **Confirmation of best practice lighting design – operation**
Following construction, a suitably experienced lighting design practitioner is to confirm that the illuminated signage has been sited, constructed and installed in a manner which is consistent with Appendix A (Best Practice Lighting Design) of the National Light Pollution Guidelines for Wildlife (Department of Environment and Energy, Version 1.0, January 2020).

Reason: To mitigate potential light pollution impacts to wildlife.

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

6. **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 Principal Certifier prior to the issue of the Construction Certificate.

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

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 Certifier 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. **Dimming control to illuminated signage**
Dimming control is required to the illuminated signage in order to minimise the impact of the signage on the significance of the heritage items in the vicinity.

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

Reason: To ensure the impact of the illumination is minimised on the heritage items or their significance.

9. **Best Practice Lighting Design – pre construction**
The illuminated signage must be designed, located and constructed to achieve consistency with the objectives and principles outlined in Appendix A (Best Practice Lighting Design) of the National Light Pollution Guidelines for Wildlife (Department of Environment and Energy, Version 1.0, January 2020).

Compliance with this condition must be confirmed by a suitably experienced lighting design practitioner prior to issue of the Construction Certificate.

Reason: To ensure compliance with the National Light Pollution Guidelines for Wildlife 2020.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

10. **Protection of Council's Public Assets**
Any damage to Council's public assets shall be made good by the applicant, and/or the contractor, to the satisfaction of Council.

Council's public assets include, but is not limited to, the following: road, kerb and gutters, crossovers, crossings, paths, grass verge, open space and associated elements such as furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993.

Reason: To protect and/or restore any damaged public asset.

11. **Wildlife Protection**
If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

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

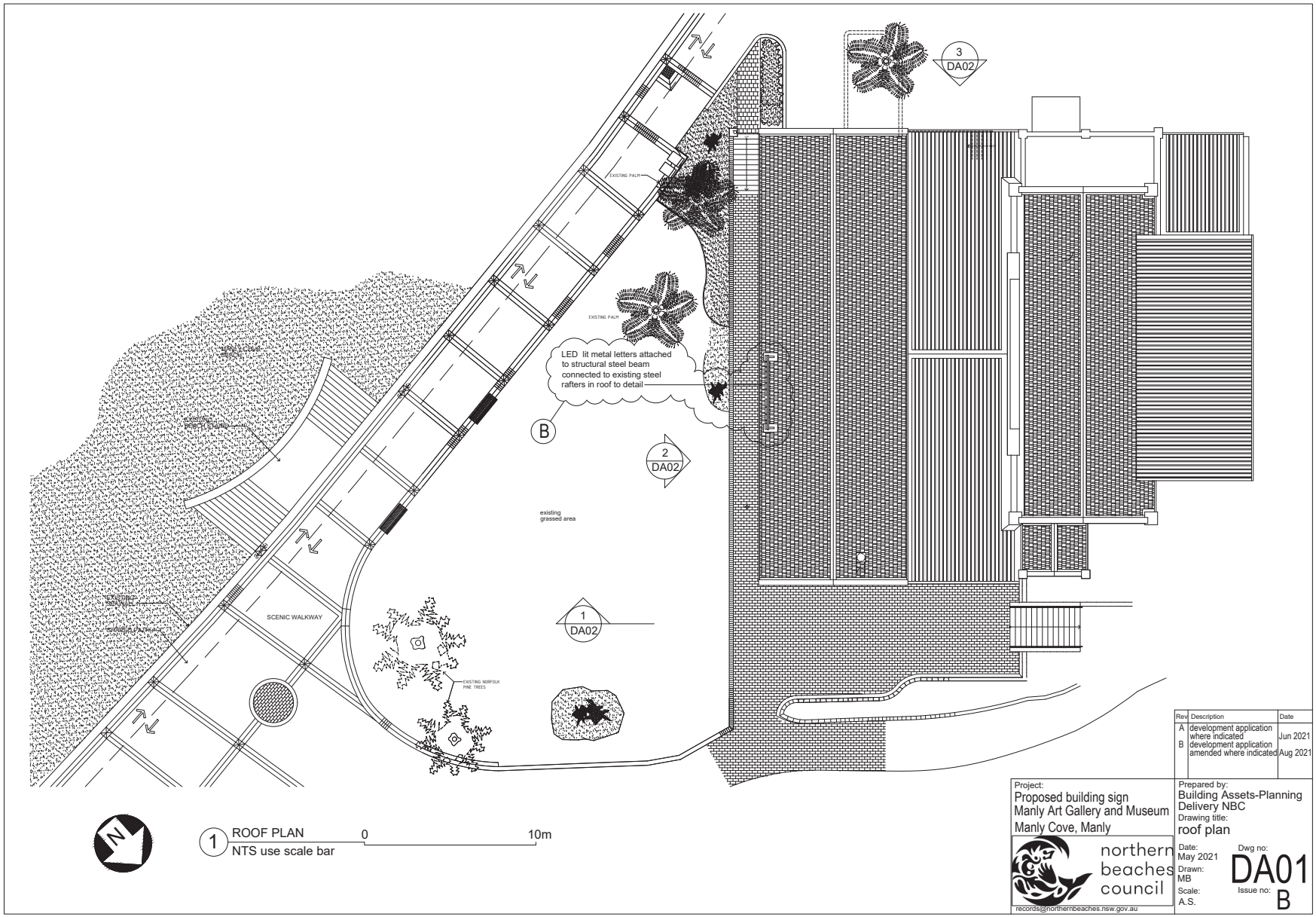
12. **Illumination Control**
The proposed development is to comply with *Australian Standard AS/NZS 4282:2019 Control of the obtrusive effects of outdoor lighting*. A verification report prepared by a suitably qualified engineer is to be prepared and submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate demonstrating compliance with *AS/NZS 4282:2019 Control of the obtrusive effects of outdoor lighting* has been achieved.

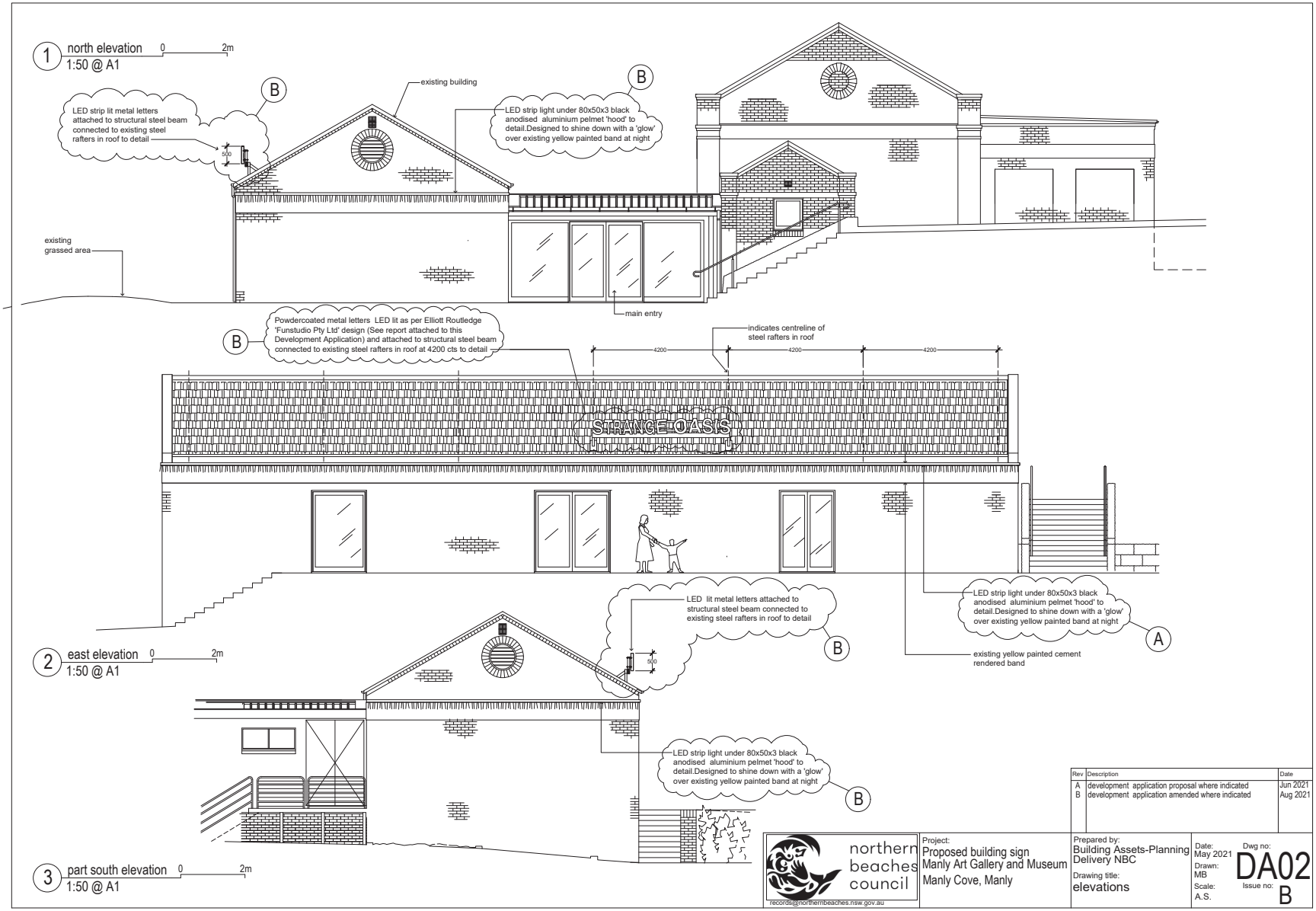
Reason: To ensure compliance with the Australian Standards.

FINAL DECLARATION

Consultant Name: Ben Tesoriero, Creative Planning Solutions Pty Limited

In submitting this report to Council, I declare that I do not have a conflict of interest in making this recommendation.


3
DA02
EXISTING PALM
EXISTING PALM
LED lit metal letters attached to structural steel beam connected to existing steel rafters in roof to detail
B
2
DA02
existing grassed area
SCENIC WALKWAY
1
DA02
EXISTING NORFOLK PINE TREES
N
1 ROOF PLAN
NTS use scale bar
0
10m
Rev Description Date
A development application where indicated Jun 2021
B development application amended where indicated Aug 2021
Project:
Proposed building sign
Manly Art Gallery and Museum
Manly Cove, Manly
Prepared by:
Building Assets-Planning Delivery NBC
Drawing title:
roof plan
northern beaches council
records@northernbeaches.nsw.gov.au
Date:
May 2021
Drawn:
MB
Scale:
A.S.
Dwg no:
DA01
Issue no:
B


1 north elevation 0 2m
1:50 @ A1
LED strip lit metal letters attached to structural steel beam connected to existing steel rafters in roof to detail
500
existing building
LED strip light under 80x50x3 black anodised aluminium pelmet 'hood' to detail.Designed to shine down with a 'glow' over existing yellow painted band at night
existing grassed area
main entry
Powdercoated metal letters LED lit as per Elliott Routledge 'Funstudio Pty Ltd' design (See report attached to this Development Application) and attached to structural steel beam connected to existing steel rafters in roof at 4200 cts to detail
indicates centreline of steel rafters in roof
4200
4200
4200
STRANGE FLASKS
2 east elevation 0 2m
1:50 @ A1
LED lit metal letters attached to structural steel beam connected to existing steel rafters in roof to detail
500
LED strip light under 80x50x3 black anodised aluminium pelmet 'hood' to detail.Designed to shine down with a 'glow' over existing yellow painted band at night
existing yellow painted cement rendered band
3 part south elevation 0 2m
1:50 @ A1
LED strip light under 80x50x3 black anodised aluminium pelmet 'hood' to detail.Designed to shine down with a 'glow' over existing yellow painted band at night
Rev
Description
Date
A development application proposal where indicated Jun 2021
B development application amended where indicated Aug 2021
northern beaches council
records@northernbeaches.nsw.gov.au
Project:
Proposed building sign
Manly Art Gallery and Museum
Manly Cove, Manly
Prepared by:
Building Assets-Planning Delivery NBC
Drawing title:
elevations
Date:
May 2021
Drawn:
MB
Scale:
A.S.
Dwg no:
DA02
Issue no:
B

ITEM 5.2	**DA2022/0530 - 18 PORTIONS LOVETT BAY, LOVETT BAY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A LIFT AND RETAINING WALLS.**
AUTHORISING MANAGER	**Steve Findlay**
TRIM FILE REF	**2022/756421**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plans & Elevations** **3 ⇩Clause 4.6**

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

A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Clause 7.8 Limited Development on Foreshore Area pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/0530 for Alterations and additions to a welling house including a lift and retaining walls on land at Lot 3 DP 20284, 18 Portions Lovett Bay, LOVETT BAY, Lot LIC 577755, 18 Portions Lovett Bay, LOVETT BAY subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0530

Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot 3 DP 20284, 18 Portions Lovett Bay LOVETT BAY NSW 2105 Lot LIC 577755, 18 Portions Lovett Bay LOVETT BAY NSW 2105
Proposed Development:	Alterations and additions to a dwelling house including a lift and retaining walls
Zoning:	C3 Environmental Management
Development Permissible:	Yes - Zone C3 Environmental Management Yes - Zone W1 Natural Waterways
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Kelly Jane Morrison
Applicant:	Jean Stewart Pty Ltd

Application Lodged:	07/04/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	21/04/2022 to 05/05/2022
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	7.8 Limited development on foreshore area
Recommendation:	Approval

Estimated Cost of Works:	$ 135,000.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house including a lift and retaining walls.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to the proposed variation to the non-numerical development standard contained within Clause 7.8 Limited Development on Foreshore Area of the Pittwater Local Environment Plan 2014 (PLEP 2014). Components of the proposed development that encroach into the foreshore area relate to the lift,

retaining walls, level terrace and access platforms.

The lift, retaining walls, level terrace and access platforms are not expressly excepted by Clause 7.8(2) and are considered to be a variation to the development standard contained within the clause and are supported by a written Clause 4.6 variation statement. The encroachments are attributed to the steep topography of the site and the servicing requirements of a foreshore property with a jetty and boatshed.

Two (2) submissions were received in relation to the application. The issues raised in the submissions relate to development within the C3 Environmental Management zone, preservation and protection of the remnant vegetation and potential adverse effects of lighting.

The critical assessment issue of the proposal related to the works within the foreshore area.

This report concludes with a recommendation that the NBLPP should grant **APPROVAL** to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks approval for the construction of an inclined lift and landscaping works. The proposal includes the following:

- Construction of a lift (also described as an inclinator or inclined lift) linking the waterway boundary to the existing dwelling and access platforms at the top and bottom of the lift

- Construction of sandstone-faced masonry garden retaining walls to form a terraced retaining system to stabilise the embankment between the lift and the south boundary

- Construction of a level lawn area immediately to the south of the existing dwelling, to assist in stabilising the existing foundations of the existing dwelling

In November 2022, in response to concerns raised by Council, the Applicant provided amended plans reducing the extent of the proposed excavation and reducing the extent of new built elements beyond the foreshore building line (including deletion of the terrace and retaining walls).

In accordance with Council's Community Participation Plan, re-notification of the amended plans was not required, as the proposed amendments result in a lesser environmental impact.

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C3 Environmental Management
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - C1.19 Incline Passenger Lifts and Stairways
Pittwater 21 Development Control Plan - D8.3 Building colours and materials

SITE DESCRIPTION

Property Description:	Lot 3 DP 20284 , 18 Portions Lovett Bay LOVETT BAY NSW 2105 Lot LIC 577755 , 18 Portions Lovett Bay LOVETT BAY NSW 2105
Detailed Site Description:	The subject site consists of one (1) allotment identified as Lot 3 DP 20284, 18 Portions Lovett Bay. The site is irregular in shape with a boundary along the mean high water mark of 24.9 meters adjoining the Pittwater Waterway. The site has a surveyed area of 1057m². The site is located within the C3 Environmental Management Zone and includes existing waterway development located within the W1 Natural Waterways Zone. Existing development within the subject site consists of a split level residential dwelling and an existing seawall, jetty and piles of the old boat shed is located within the waterway to the south of the site. The subject site falls steeply from north to south by approximately 24 meters. The site is identified as Geotechnical Hazard Area H1. Landscaping on site is characterised by native vegetation, small to medium shrubs and areas of lawn. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by one and two storey residential dwellings and associated waterway development primarily consisting of

	jetties and boatsheds. The subject site, and that within the vicinity, have no vehicle access and are only accessible via water. **Site Inspection** A site inspection was conducted 21 June 2022.

Map:

SITE HISTORY

A search of Council's records has revealed the following:

Application DA2020/1294
Construction of a jetty ramp and pontoon and restoration of the boat shed
Approved by NBLLP - 21/04/2021

The land has been used for residential purposes for an extended period of time.

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	There are no current draft environmental planning instruments.

Section 4.15 Matters for Consideration	Comments
instrument	
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to Clause 7.8 Limited development on foreshore area, A4.8 Lower Western Foreshores and Scotland Island Locality, Clause 7.6 - Biodiversity Protection of the PLEP. B4.22 Preservation of Trees and Bushland Vegetation, C1.1 Landscaping, C1.19 Incline Passenger Lifts, D8 Lower Western Foreshores and Scotland Island Locality, B4.7 - Pittwater Spotted Gum Forest Endangered Ecological Community (EEC). NSW Biodiversity Conservation Act 2016 (BC Act), NSW Biodiversity Conservation Regulation 2017 (BC Reg) and State Environmental Planning Policy (Coastal Management) 2018 - Coastal Environment Area. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
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 Pittwater 21 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	The site is considered suitable for the proposed development.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Sydney Bushfire Consultants, dated 14 February 2022) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 21/04/2022 to 05/05/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr Hans Stevelt	20 Portions Lovett Bay LOVETT BAY NSW 2105
Ms Jennifer Catherine Knox	PO Box 208 CHURCH POINT NSW 2105

The following issues were raised in the submissions:

- C3 Environmental Management Zone
- Remnant Vegetation
- Lighting

The above issues are addressed as follows:

- **C3 Environmental Management Zone and Limited Development on Foreshore Area**
  The submission raised concern regarding visual impact and the proposed level of works to

accommodate the inclinator within the C3 Environmental Management Zone.
Comment:
An assessment has been carried out of the objectives under the C3 Environmental Management zone within the PLEP 2014 and it is considered that the proposed development is consistent with these objectives. In summary, the proposal is considered to have minimal environmental impact as it retains existing significant canopy trees and signification vegetation on the site. The proposed landscaping and materials and finishes will help to screen and soften the proposal when viewed from the waterway and adjoining properties, whilst not having any unreasonable amenity impacts on the adjoining properties.

The proposed lift is situated at the front of the subject site and is not specifically expressed as permitted development within the Foreshore Area. However, the proposed lift will provide for safe access to and from the waterway to the dwelling. As the purpose of the lift is to provide access to the waterway, it is considered an alternative to waterway access stairs, which is permitted development under this clause.

As a result of the steepness of the slope, the lift requires excavation at the front of the site to provide appropriate transition grades for the lift to descend and climb the slope. The proposed retaining walls will also help to stabilise the above landscaped area. The amended plans, removes the deck at the base of the lift, the extensive excavation and retaining wall along the southern boundary and proposes to retain all significant vegetation (including Tree "T14") and the inclusion of additional vegetation to screen and soften the visual impact of the proposal when viewed from the waterway and adjoining properties. Councils referral bodies have reviewed the amended plans and are now supportive of the proposal, subject to conditions.

It is considered that the amended proposal meets the Objectives of the C3 Environmental Management zone.

- **Remnant Vegetation**
  The submission raised concern regarding the removal of the "Tree T14", which is a Red Mahogany of high retention value.
  Comment:
  No updated Arboricultural Impact Assessment was submitted with the amended plans regarding the retention of the existing Red Mahogany Gum identified as T14, however, Tree T14 is included in the Landscape Plan for retention. Councils Landscape Officer has imposed conditions to provide a sensitive tree root investigation which will assist with the structural engineering design of the proposed retaining walls and the retention of the Tree T14.

- **Lighting**
  The submissions requested that a condition regarding control of lighting as the western foreshore has minimal night lighting and to protect native animals.
  Comment:
  Conditions reducing light spill and light are generally only placed on sites located within wildlife corridors or known significant wildlife habitats. The location of proposed works are located at the front of the site and not a known wildlife corridor or area of significant habitat. However, conditions regarding lighting have been placed on other lifts within close proximity to the site. The condition will require the lift to have sensor lighting.

REFERRALS

Internal Referral Body	Comments

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	***Supported without conditions*** Inclinator and retaining walls to be constructed in Class 5 Acid Sulfate Soils. The proposal for minor excavation is low risk and does not trigger the need for acid sulfate soil investigations or management protocols according to the Acid Sulfate Soil Manual (1998). No objections.
Environmental Health (unsewered lands)	**Supported, subject to recommended conditions** Additional information has been received relating to the proposed location for wastewater disposal from the aerated wastewater treatment system. The concerns around whether there is sufficient land application area for wastewater disposal have not been elevated with the provided information with the spray irrigation line appearing to be pushed to the side of the lawn and within a newly landscaped area. There is no possible way that a wastewater system and disposal method could comply with the current Australian standard 1547 and buffer distance's set out in the guideline On-site Sewage Management for Single Household. Therefore it is acknowledged that the previous configuration could not comply and worked off a best fit approach previously. There are concerns with designating a landscaped area as effluent disposal based on the whether the will be sufficient capacity for evapotranspiration with the provided canopy cover. Given that there is no expected increase to equivalent population Environmental Health are of the opinion that the proposal could be conditioned to provide a spit subsurface drip or bed system within the newly defined lawn area and to designate spray irrigation into the rear of the property that operates off a Rota valve or sequencing valve. A condition has been applied requiring an application to amend the existing wastewater system through a section 68 application under the Local Government Act prior to CC and an approval to operate for the updated wastewater disposal system of on-site sewage management prior to OC. It is noted that the land is directly adjacent to class 1 acid sulfate soils in the Pittwater. Works do not appear to lower the water table but a precautionary conditions has been applied for unexpected finds. Existing site access should be maintained and a condition applied to the use of the inclinator to limit hours of use for able bodied persons.
Landscape Officer	***Supported, subject to recommended conditions*** The development application is for a proposed passenger incline lift, construction of garden retaining walls, and the construction of a level lawn area immediately adjoining the existing dwelling. Landscape works include retaining walling and no soft landscape works are proposed.

Internal Referral Body	Comments
	Council's Landscape Referral section have assessed the application against the Pittwater Local Environment Plan 2014 zone C3 Environmental Management, and the following Pittwater 21 Development Control Plan controls (but not limited to): • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • C1.19 Incline Passenger Lifts • D8 Lower Western Foreshores and Scotland Island Locality The site is within zone C3 Environmental Management, and the following objectives are to be achieved and/or maintained by development: protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values; provide for residential development of a low density and scale integrated with the landform and landscape, and not visually prominent; encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors; and ensure the continued viability of ecological communities and threatened species. All existing trees shall be preserved and protected, and conditions shall be satisfied. Subject to conditions, Landscape Referral raise no concerns.
NECC (Bushland and Biodiversity)	***Supported, subject to recommended conditions*** The proposed development has been assessed against the following applicable biodiversity-related provisions: • NSW Biodiversity Conservation Act 2016 (BC Act) • NSW Biodiversity Conservation Regulation 2017 (BC Reg) • State Environmental Planning Policy (Coastal Management) 2018 - Coastal Environment Area, • Pittwater LEP Clause 7.6 - Biodiversity Protection • Pittwater DCP Clause B4.7 - Pittwater Spotted Gum Forest Endangered Ecological Community (EEC) Native plant species that are characteristic of the Pittwater Spotted Gum Forest Endangered Ecological Community (EEC) vegetation occur on the lot and the surrounding locality, and impacts to the community should be avoided where feasible alternate design options exist. I note the revised plans indicating retention of all trees and extensive landscape softening to the foreshore including native trees and other native vegetation. The DCP control includes a control that any development shall ensure that at least 80% of any new planting incorporates native vegetation (as per species found on the site or listed in Pittwater Spotted Gum Endangered Ecological Community),. and a condition is provided to require amendments to the plant species list of the Landscape Plan.

Internal Referral Body	Comments
NECC (Coast and Catchments)	***Supported, subject to recommended conditions*** The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience & Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. **Coastal Management Act 2016** The subject site has been identified as being within the coastal zone and therefore *Coastal Management Act 2016* is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the *Coastal Management Act 2016.* **State Environmental Planning Policy (Resilience & Hazards) 2021** The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. <u>Comment:</u> On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Stewart Design Studios UNDATED, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. **Pittwater LEP 2014 and Pittwater 21 DCP** **Estuarine Risk Management** The subject property has been identified as being affected, among others, by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. The Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to proposed development of a new inclinator lift at the site.

Internal Referral Body	Comments
	In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL2.60m AHD has been adopted by Council for this property. A reduction factor (RF) based upon the distance from the foreshore of proposed development may also apply at a rate of 0.05m reduction to the EPL for every 5.00m distance from the foreshore edge up to a maximum distance of 40.00m. No further reduction is applicable The proposal is, among others, to construct an inclinator lift. On internal assessment and as assessed in the submitted Coastal Engineering Risk Management Report prepared by Cardno now Stantec dated 27 July 2022, the base of incline lift is located at 1.7m AHD and is below the derived EPL for the site. The report concludes that the landing area at the base of the inclinator will be inundated from time-to-time, increasingly so as the sea level rises. Hence, frequent wetting of the lower landing area and the pathway, albeit mainly gravel is likely. There is concrete 'station' pad that will need to be kept clean of algal growth to reduce the risks of slipping. Perhaps the surface can be finished with a slightly rough surface. The proposed development is therefore subject to conditions to satisfy the relevant estuarine risk management requirements of P21 DCP. **Development on Foreshore Area** A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area. The proposed works are considered to be located within the foreshore area. The proposed incline lift (inclinator) and the necessary proposed stabilising terraced retaining walls are deemed to meet the objectives of the planning control and satisfies the criteria in Clause 7.8(3). On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Stewart Design Studios UNDATED, the DA satisfies the objectives and requirements of the Pittwater LEP 2014.
NECC (Riparian and Land	

Internal Referral Body	Comments
Creeks)	***Supported, subject to recommended conditions*** No objections, subject to conditions.
Parks, reserves, beaches, foreshore	***Supported, subject to recommended conditions*** The development application is for a proposed passenger incline lift, construction of garden retaining walls, and the construction of a level lawn area immediately adjoining the existing dwelling, and extensive landscaping to the foreshore zone. The development site adjoins the Pittwater foreshore that is located downslope of the property. On review of the proposed Landscape Plan indicating extensive landscape softening to the foreshore including native trees and other native vegetation, the proposed development is not detrimental to the landscape character of the foreshore, and with public access to the foreshore not impacted by the proposed development, Parks, Reserves and Foreshores raise no concerns with the development proposal.

External Referral Body	Comments
Aboriginal Heritage Office	***Supported, subject to recommended conditions*** Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs 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 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 (Coastal Management) 2018

The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.

SEPP (Transport and Infrastructure) 2021

Ausgrid
Section 2.48 of Chapter 2 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 not referred to Ausgrid as it is not located within any of the above.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management
The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 3 Coastal environment area
2.10 Development on land within the coastal environment area

1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
    a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
    b) coastal environmental values and natural coastal processes,
    c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
    d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
    e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a

disability,

f) Aboriginal cultural heritage, practices and places,

g) the use of the surf zone.

Comment:
This clause has been assessed against the subject site and the proposed development and reviewed by Councils Environment and Climate Change teams. No issues have been raised in the relation to the proposed development and lands being within the coastal environment area.

2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or

b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:
The application has been reviewed by Councils Coast and Catchments division and are satisfied that the development is designed, sited and will be managed to avoid an adverse impact to that referred to in subclause 1.

Division 4 Coastal use area
2.11 Development on land within the coastal use area

1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:

a) has considered whether the proposed development is likely to cause an adverse impact on the following:

i) existing, safe access to and along the foreshore, beach, headland or rock
ii) platform for members of the public, including persons with a disability,
iii) overshadowing, wind funnelling and the loss of views from public places to
iv) foreshores,
v) the visual amenity and scenic qualities of the coast, including coastal headlands,
Aboriginal cultural heritage, practices and places,
cultural and built environment heritage, and

b) is satisfied that:

i) the development is designed, sited and will be managed to avoid an adverse
ii) impact referred to in paragraph (a), or
iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
if that impact cannot be minimised—the development will be managed to mitigate that impact, and

c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:
Council has considered whether the proposed development is likely to cause an adverse impact on that listed in (a) and is satisfied that the development has been designed, sited and will be managed to avoid any adverse impact. Council is also satisfied that the bulk, scale and size of the development

is appropriate when considering the surrounding coastal and built environment.

Division 5 General

2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:
Council is satisfied that the development is not likely to cause increased risk of coastal hazards on that land or other land.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone C3 : Yes Zone W1 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone C3 : Yes Zone W1 : Yes

Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings	E4 Zone - 8.5m W1 Zone - 4.0m*	4.6m Nil (above 1.17 AHD)	Yes Yes

*Pittwater Local Environment Plan 2014, Clause 4.3 (2) Height Of Buildings states "The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map".

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes

Clause	Compliance with Requirements
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C3 Environmental Management

Objectives of the Zone

- ***To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.***
- ***To provide for a limited range of development that 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, and not visually prominent.***
- ***To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.***
- ***To ensure the continued viability of ecological communities and threatened species.***

Comment:
The proposed lift, terraced lawn area and retaining walls will not adversely impact any natural vegetation or any wildlife corridors. The site slopes steeply down to the waterway frontage and the proposed new works will have minimal impact to the scale of the existing development when viewed from Lovett Bay and from any surrounding development. All existing mature trees are to be retained. The terracing of the proposed retaining walls provides space for planting so that vegetation remains the dominant feature when viewed from the waterway.

The proposed works are consistent with the objectives of the C3 Environmental Management Zone. The development will continue to have the appearance of a low intensity and scale development in a natural landscaped setting, integrated with the scenic land form and aesthetic values.

Overall, the proposal is consistent with the desired objectives and future character of the C3 Environmental Management zone.

4.6 Exceptions to development standards

Description of Non-compliance

Development standard:	Clause 7.8 - Limited Development on Foreshore Area
Requirement:	Building footprint must not extend further into

	the foreshore area
Proposed:	Non-numerical development standard - proposed dwelling footprint will extend further into the foreshore area
Percentage variation to requirement:	N/A - Non-numerical development standard

The works that encroach into the foreshore building line area are comprised of access platforms, level terraced lawn area and retaining walls and a lift. These works are not expressly excepted by Clause 7.8 (2) and are considered to be a variation to the development standard contained within the clause.

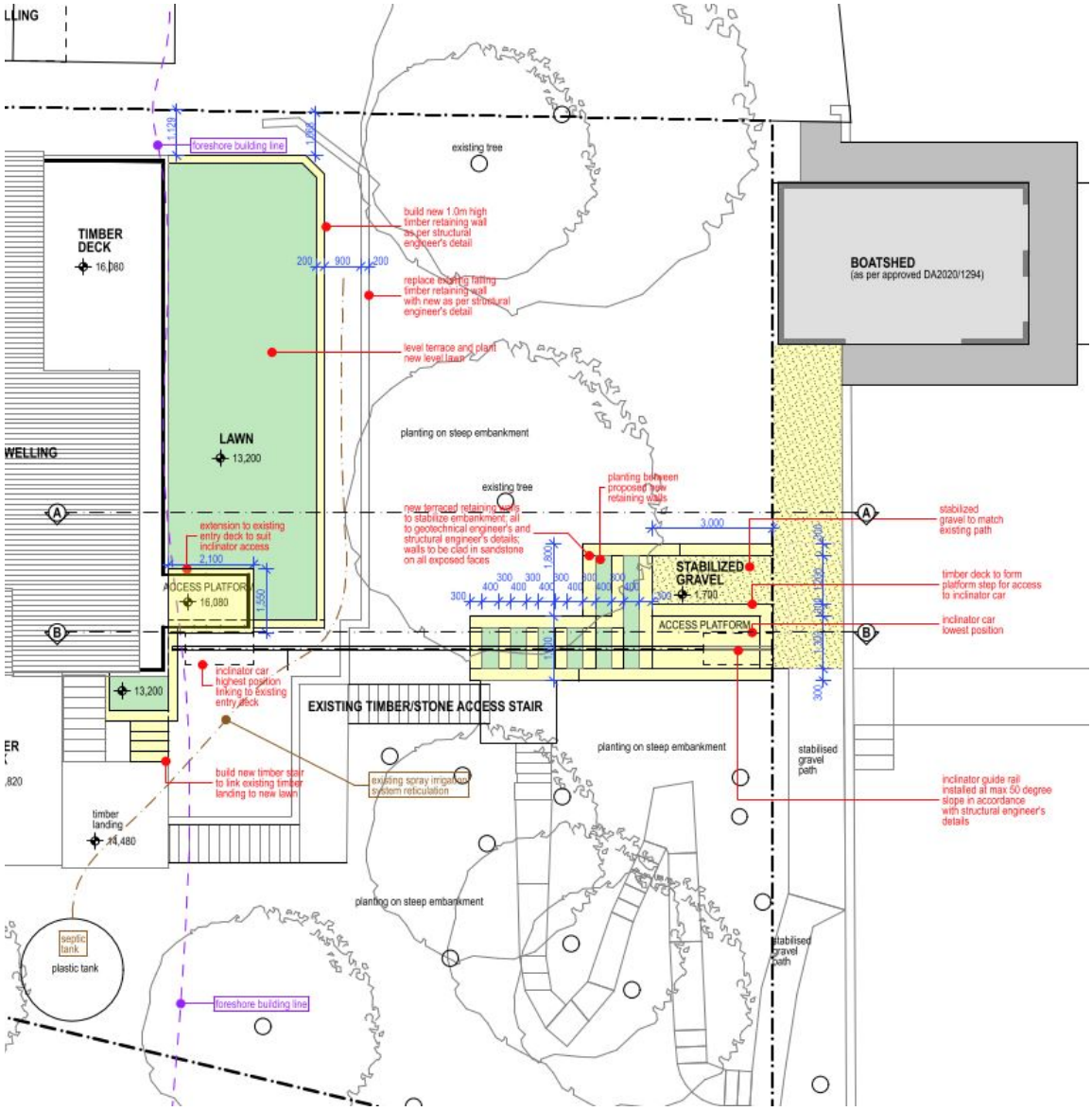


Figure 1: *Foreshore Building Line Encroachments*

Assessment of Request to Vary a Development Standard

The following assessment of the variation to 7.8 Limited development on foreshore area development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61,* and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to Development Standards

(1) The objectives of this clause are as follows:
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular

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

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

Comment:
7.8 Limited development on foreshore area development standard is not expressly excluded from the operation of this clause.

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

(4) Development consent must not be granted for development that contravenes a development standard unless:
(a) the consent authority is satisfied that:
(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
(b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:
The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that that there are sufficient environmental planning grounds to justify contravening the development standard:

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)
The objects of this Act are as follows:
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
(c) to promote the orderly and economic use and development of land,
(d) to promote the delivery and maintenance of affordable housing,
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
(g) to promote good design and amenity of the built environment,
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment.

Applicants Written Justification

The applicants written request argues, in part:

- *"The location of the incline lift and associated access platforms has been carefully designed to avoid impacts to any existing mature trees on the land and to have a close connection to the existing jetty.*
- *The proposed retaining walls directly adjacent to the south side of the dwelling are the only works in the proposal that are not directly related to the construction of an incline lift. The purpose of these low retaining walls is to form a level recreational lawn area. This area will also stabilize the land adjacent to the dwelling as noted in the geotechnical engineer's report.*
- *The proposed incline lift and associated terraced retaining walls will not adversely impact any natural vegetation or any wildlife corridors.*
- *The site slopes steeply down to the waterway frontage. The gradient is 1:1 for this part of the land. The proposed new works will have minimal impact to the scale of the existing development when viewed from Lovett Bay or from any surrounding development. All existing mature trees are to be retained. The terracing arrangement has been designed to accommodate the maximum gradient for the guiderail for the proposed lift.*
- *The terracing of the proposed stabilizing retaining walls provides for planting so that the vegetation remains as the dominant feature when viewed from the waterway.*

- *The proposed sandstone walls required for embankment stabilization will be partially hidden by the cascading vegetation.*
- *The proposed upper lift access platform is an extension of the existing deck on the south side of the existing dwelling. Since the new platform is directly in front of the existing dwelling and deck, it will not cause any new impacts when the development is viewed from the surrounding area or the waterway. The proposed incline lift and associated access deck platforms are consistent with similar development in the area.*
- *The proposed works will not cause any environmental harm. No natural habitat will be affected.*
- *No drainage patterns will be impacted.*
- *The proposal will not cause congestion or generate conflict between people using open space areas or the waterway. The incline lift and associated access platform is wholly on the subject site. The proposed 1200mm wide stabilised gravel area to the east of the waterway level lift access platform provides a waiting area on the site for people waiting for the lift to travel from the existing dwelling down the guide rail to the waterway level.*
- *There is no evidence that any cultural or historic relics are likely to be disturbed by the excavation. The land has not been identified as having cultural or heritage significance.*
- *The proposed work directly linked to the existing dwelling is an extension of the existing water-facing deck. The extension is required to provide an access platform for the proposed incline lift. The deck extension – which has an area less than 3m2 – is wholly contained within the existing width of the dwelling when viewed from the waterway (south façade). The front edge of the deck extension is set 12.85m back from the MHWM (horizontal dimension) and at an elevation of 14.3m relative to the top of the sea wall. The deck extension will not significantly affect the appearance of the existing dwelling when viewed from the waterway.*
- *Sea level rise, resulting from climate change, has been considered. The proposed incline lift base level platform and linked gravel waiting area may be inundated in a significant flood event, however – the lift car will generally 'park' at the top landing level which is at the entry level to the existing dwelling. That is approximately 14.3m above the top of the sea wall. The impacts of rising sea levels are discussed in the associated Coastal Risk Assessment report lodged with the development application.*
- *The 14.3m elevation difference between the existing dwelling entry and the top of the sea wall make access for anyone with mobility issues practically impossible without a lift. There are many instances of similar incline lifts in the locality."*

Planners Comments

The applicants justification is generally agreed with. The steep slope of the site constrains the developable area, when also considering the location of existing structures, protected trees and biodiversity protection areas. The elements encroaching into the foreshore area do not facilitate the loss of protected or significant vegetation nor would they impact foreshore processes or result in unreasonable amenity impacts. The design would allow for a functional access to the dwelling with minimal environmental impacts.

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

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

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

Clause 4.6 (4)(a)(ii) (Public Interest) Assessment

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

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

Comment:
In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Limited Development on Foreshore Area development standard and the objectives of the C3 Environmental Management zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to pursuant to Clause 7.8– 'Limited development on foreshore area' of the PLEP 2014 are:

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

(a) to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,
Comment:
The proposed works within the foreshore area are set above and away from the existing seawall to the south of the property. The work are not expected to impact upon the (already disturbed) foreshore processes. The works are well designed, providing enhances amenity to the users of the site. The proposed works within the foreshore building line do not result in any unreasonable impacts on the significance or amenity of the subject site, adjoining sites, or the foreshore area. The proposal was referred to Council's Parks, Reserves, Beaches, Foreshore; Coast and Catchments; Riparian Lands and Creeks and Bushland & Biodiversity Officers who raised no objection to the proposal with regards to impact on natural foreshore processes.

(b) to ensure continuous public access along the foreshore area and to the waterway.
Comment:
The proposed works are located entirely on private land and do not impact upon public access along the foreshore area or to the waterway.

Zone Objectives
The underlying objectives of the C3 Environmental Management zone are:

- ***To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.***
  Comment:
  The proposed dwelling house will remain a two storey, low density residential dwelling, which will not result in the removal of significant vegetation or require significant alteration to the landform. The proposal has been reviewed by Council's Coastal Officer, Landscape Officer, Riparian Lands Officer and Bushland & Biodiversity Officer who have raised no objection to the works and associated impacts to the surrounding natural environment. The proposed development is considered to be of an acceptable bulk, scale and size that is generally

compatible with the existing site and surrounding coastal and built environment.

- ***To provide for a limited range of development that does not have an adverse effect on those values.***
  Comment:
  As above, the proposal would not result in unreasonable impacts to the ecological, scientific or aesthetic values of the area.

- ***To provide for residential development of a low density and scale integrated with the landform and landscape, and not visually prominent.***
  Comment:
  The proposed works do not require unreasonable earthworks and are low-impact with respect to built form controls and amenity. The proposal does not result in the removal of significant vegetation and has been appropriately sited and designed to retain the prescribed trees on the site. The development sits below tree canopy height. The proposed landscaping, in conjunction with existing and required landscaping (by recommended conditions contained within this report), will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape. Overall, it is considered that the bulk and scale of the proposal would not be out of character with the existing site and wider locale.

- ***To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.***
  Comment:
  As above, the building has been appropriately sited and designed to retain most of the prescribed trees on the site. An Arboricultural Impact Assessment report has been submitted as part of the application which recommend a series of mitigation and management measures to protect retained vegetation. The proposal was referred to Council's Parks, Reserves, Beaches, Foreshore; Coast and Catchments; Landscaping, Riparian Lands and Creeks and Bushland & Biodiversity Officers who raised no objection to the proposal with regards to impact on riparian or natural foreshore processes.

- ***To ensure the continued viability of ecological communities and threatened species.***
  Comment:
  As above, the proposed works have been appropriately sited and designed to retain all of the prescribed trees on the site. An Arboricultural Impact Assessment report and a have been submitted as part of the application which recommend a series of mitigation and management measures to protect retained vegetation. The application is also supported by a landscaping plans, which demonstrates an enhancement of vegetation to ensure the continued viability of ecological communities. The proposal was referred to Council's Landscape Officer and Bushland & Biodiversity Officers who raised no objection to the proposal subject to conditions.

Conclusion:
For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C3 Environmental Management zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development

standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Limited development on foreshore area Development Standard is assumed by the Local Planning Panel.

7.2 Earthworks

The objective of Clause 7.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development
Comment:
The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

(b) the effect of the proposed development on the likely future use or redevelopment of the land
Comment:
The proposal will not unreasonably limit the likely future use or redevelopment of the land.

(c) the quality of the fill or the soil to be excavated, or both
Comment:
The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties
Comment:
The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

(e) the source of any fill material and the destination of any excavated material
Comment:
The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics
Comment:
The development was referred to the Aboriginal Heritage Office who provided comments and conditions that have been included in the consent.

(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area
Comment:
The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

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

Comment:

Conditions are included in the recommendation of this report that will minimise the impacts of the development.

(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.

Comment:

The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

7.6 Biodiversity protection

Before determining a development application for development on land to which this clause applies, this clause requires the consent authority to consider:

(a) whether the development is likely to have:
(i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and
(ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and
(iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and
(iv) any adverse impact on the habitat elements providing connectivity on the land, and

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. Council is also satisfied that the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

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

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

(a) the development is designed, sited and will be managed to avoid any significant adverse

environmental impact, or
(b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or
(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.
Comment:
The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development is designed, sited and will be managed to any significant adverse environmental impact.

7.7 Geotechnical hazards

The amended plans submitted in November 2022, reduce the scope of the development and the level of excavation required. A revised Geotchincal Report was not submitted with the amended plans. Due to the reduced geoechnical impacts, a condition is recommended requiring an amended Geotechincal Report to reference the amended plans and any updated recommendations of the report, are to be incorporated into the development.

7.8 Limited development on foreshore area

Under Clause 7.8 Limited Development on Foreshore Area, development consent must not be granted for development on land in the foreshore area except for the following purposes:

- *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
- *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

Comment:
Clause 7.8 of the Pittwater Local Environmental Plan 2014 stipulates that consent can be granted for development on land within the foreshore area for the purposes of a boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).

The proposed lift situated at the front of the subject site is not specifically expressed as permitted development within the foreshore area. However, the proposed lift will provide for safe access to and from the waterway and to the front of the dwelling. As the purpose of the lift is to provide access to the waterway, it is considered an alternative to waterway access stairs, which is permitted development under this clause.

Development consent must not be granted under this clause unless the consent authority is satisfied that:

- *the development will contribute to achieving the objectives for the zone in which the land is located, and*
- *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
- *the development will not cause environmental harm such as:*
    - *pollution or siltation of the waterway, or*
    - *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*

- *an adverse effect on drainage patterns, or*
- *the removal or disturbance of remnant riparian vegetation, and*

- *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
- *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
- *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.*

Comment:
The proposed development is consistent with the objectives of the C3 Environmental Management zone. The appearance of the proposed development is compatible with the surrounding area and meets the above objectives of Clause 7.8 Limited Development on Foreshore Area.

In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following:

- *continuous public access to and along the foreshore through or adjacent to the proposed development,*
- *public access to link with existing or proposed open space,*
- *public access to be secured by appropriate covenants,agreements or other instruments registered on the title to land,*
- *public access to be located above mean high water mark,*
- *the reinforcing of the foreshore character and respect for existing environmental conditions.*

Comment:
The proposed development will retain continuous public access to and along the foreshore. The proposed development does not impact upon any public access. The proposed development is acceptable in relation to the foreshore character and the existing environmental conditions.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	Complies
Front building line	6.5m	38m	Yes
Rear building line	Foreshore Building Line Applies	Within Foreshore Area (lift, landscaping and access decks)	**Yes Supported on Merit** (See Clause 7.8 under Pittwater Local Environmental Plan 2014)
Side building line	2.5m - Western	7.1m	Yes
	1.0m - Eastern	1.1m	Yes
Building	3.5m	Within envelope	Yes

envelope	3.5m	Within envelope	Yes
Landscaped area	Site Area >1000 = 230m^2	752.5m^2	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.8 Lower Western Foreshores and Scotland Island Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	No	Yes
D8.1 Character as viewed from a public place	Yes	Yes
D8.2 Scenic protection - General	Yes	Yes
D8.3 Building colours and materials	Yes	Yes
D8.5 Front building line	Yes	Yes
D8.6 Side and rear building line	Yes	Yes
D8.8 Building envelope	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D8.9 Landscaped Area	Yes	Yes
D8.13 Stormwater overflow	Yes	Yes
D8.15 Site disturbance	Yes	Yes
D15.1 Character as viewed from a public place	Yes	Yes
D15.2 Scenic protection - General	Yes	Yes
D15.3 Building colours and materials	Yes	Yes
D15.7 Side and rear building line	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.13 Lateral limits to development seaward of mean high water mark	Yes	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes

Detailed Assessment

C1.19 Incline Passenger Lifts and Stairways

Description of Non-compliance

The clause requires Inclined passenger lifts and stairways to be designed and located so they do not involve excessive excavation, or the removal of natural rock or trees, and be erected as near as possible to the ground level (existing) of the site, and shall not involve the erection of high piers or visible retaining structures.

The proposed lift requires excavation and retaining walls.

Merit Assessment

With regard to the consideration for a variation, the proposed development is considered against the underlying outcome of the control as follows:

- ***Incline passenger lifts and stairways that cause minimal visual and acoustic disturbance to the environment and neighbours.***
  Comment:
  The subject site is extremely steep and the house is setback 17m from the water's edge. Subsequent of this, occupants are required to traverse a series of steps and a trail from the jetty to the front door which run for a distance of approximately 45 metres and 69 degree grade up the hill. The necessity for an lift on this site is therefore warranted.

  The location of the lift is considered to be the most suitable on the site with regards to minimising excavation and the removal of vegetation.

  A condition is to be imposed which limits the maximum noise level associated with the lift to not exceed 5dB(A) when measured from the nearest residential receiver.

  Subject to the imposition of this condition, the lift and proposed landscaping is considered to have an acceptable impact upon the natural environment and neighbours, and will significant improve the quality of life for occupants of the site. The proposal is therefore found to comply

with the objectives of the control.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014/P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D8.3 Building colours and materials

A schedule of finishes and materials has not been provided with this application.

The Statement of Environmental Effects (SEE) notes that the inclinator will be muted in greys to 'reference' the colours of the existing dwelling house. To ensure this, a condition is recommended that will require the proposed external finishes to be of dark and earthy tones.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of $ 675 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of $ 135,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

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

PLANNING CONCLUSIONS

This proposal, for alterations to a dwelling house including the construction of a lift, level terrace area and retaining walls, has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to the proposed variation to the non-numerical development standard contained within Clause 7.8 Limited Development on Foreshore Area of the PLEP 2014.

Two submissions were received in relation to the application. The issues raised in the submissions relate to the C3 Environmental Management zoning, remnant vegetation and lighting and have been addressed in the report and via recommended conditions.

The critical assessment issues for the proposal was works within the foreshore building line. The matter is acceptable on merit for the reasons detailed throughout the assessment report.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment.

The proposal has therefore been recommended for **APPROVAL**. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2022/0530 for Alterations and additions to a dwelling house including a lift and retaining walls on land at Lot 3 DP 20284, 18 Portions Lovett Bay, LOVETT BAY, Lot LIC 577755, 18 Portions Lovett Bay, LOVETT BAY, 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**
202106/DA03Rev3 - Site Plan	22/11/22	Stewart Design Studio
202106/DA04Rev3 - Part Site Plan	22/11/22	Stewart Design Studio
202106/DA05Rev2 - Section AA	22/11//22	Stewart Design Studio
202106/DA06 - Section BB	22/11/22	Stewart Design Studio
202106/DA07Rev2 - South Elevation	22/11/22	Stewart Design Studio
202106/DA08Rev2 - East Elevation	22/11/22	Stewart Design Studio
202106/DA07Rev2 - West Elevation	22/11/22	Stewart Design Studio
202106/DA10Rev2 - Perspective View From Jetty	22/11/22	Stewart Design Studio
202106/DA11Rev2 - Aerial View From South West	22/11/22	Stewart Design Studio
202106/DA11Rev2 - Aerial View From South East	22/11/22	Stewart Design Studio

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Geotechnical Investigation: New Incline Lift and Landscaping at 18 Portions, Lovett Bay J3949	14th December, 2021	White Geotechnical Group
Arboricultural Impact Assessment Report	2nd March 2022	Blues Bros Arboriculture
Bushfire Assessment Report	14 February 2022	Sydney Bushfire Consultants

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**
L/01 - Key Features	No date	Aspect Designs
L/02 - Landscape Plan	18.07.22	Aspect Designs

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	03.02.2022	Jean Stewart 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.

2. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

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

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

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

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

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

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

A. the name of the owner-builder, and

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

3. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

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

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

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

(j) 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.

(k) 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.

(l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) 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 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

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

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

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

FEES / CHARGES / CONTRIBUTIONS

4. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of $675.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of $135,000.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council’s website at Northern Beaches Council - Development Contributions.

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

5. **Security Bond**

A bond (determined from cost of works) of $2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required 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, and details demonstrating payment are to be submitted to the Certifier 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. **No Clearing of Vegetation**
Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

7. **Amendment of Landscape Plans**
The submitted Landscape Plan (Aspect Designs 18.07.22) is to be amended to ensure that at least 80% of any new planting incorporates native vegetation (as per species found on the site or listed in Pittwater Spotted Gum Endangered Ecological Community). The Pennisetum and Grevillea cultivar are to be deleted from the Plans.

The amended Landscape Plan is to be certified by a qualified landscape architect and provided to the Certifying Authority prior to issue of the Construction Certificate.

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

8. **Delineation of Asset Protection Zones**
Prior to the commencement of any vegetation clearance/modification, the boundaries of the bushfire Asset Protection Zone (APZ) are to be surveyed and clearly marked by way of temporary fencing, flagging tape or markers. Clearing of vegetation for APZ establishment must only occur within the marked APZ boundaries and in accordance with the approved Bushfire Hazard Assessment. No trees are to be removed, and the modification of shrub and ground layer should focus on removal of weed species, and mowing and raking of ground fuels. The

10/50 vegetation clearing entitlement does not apply to the site.

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

Reason: To protect native vegetation and wildlife.

9. **Erosion and Sediment Control Plan**
An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: Protection of the receiving environment.

10. **Boundary Identification Survey**
A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

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

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

Reason: To ensure that any demolition and construction waste, including excavated material, is

reused, recycled or disposed of in an environmentally friendly manner.

12. **Approval to Install an On-site Sewage Management System**
Prior to the release of the Construction Certificate (CC), the applicant must receive an 'Approval to Install or amend an On-Site Sewage Management System' from Council.

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

Reason: To fulfil the requirements under Section 68 of the Local Government Act 1993

13. **Estuarine Hazard Design Requirements**
The following applies to all development:

All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes.

To ensure Council's recommended flood evacuation strategy of 'shelter-in-place', it will need to be demonstrated that there is safe pedestrian access to a 'safe haven' above the Estuarine Planning Level.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

14. **Compliance with Estuarine Risk Management Report**
The development is to comply with all recommendations of the approved Coastal Engineering Risk Management Report prepared by Cardno and now Stantec dated 27 July 2022 and these recommendations are to be incorporated into construction plans.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

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

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

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

16. **External Colours and Materials**
The external finish of the Incline Lift shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties.

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.

17. **External Lighting for Incline Lift**
Any lighting associated with the Incline Lift is to be low level, non-intrusive and operated as sensor lighting.

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

Reason: To minimise any likely adverse visual impact when viewed from the Pittwater Waterway and adjoining residences.

18. **Geotechnical Report**
The Geotechnical Report (prepared by White Geotechnical Group, dated 14th December, 2021) is to be updated to reference the approved amended plans. Any updated recommendations of the report are to be incorporated into the development.

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

Reason: Geotechnical safety.

19. **Amended Landscape Plan**
The Landscape Plan (prepared by Aspect Designs, dated 18/07/2022) is to be updated to reflect the approved plans.

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

Reason: Landscape Amenity.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

20. **Dead or Injured Wildlife**
If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

21. **Protection of Habitat Features**
All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

22. **Installation and Maintenance of Sediment and Erosion Control**
Prior to commencement of works on site, sediment and erosion controls must be installed along the immediate downslope of the works area in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period. Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

23. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
ii) all trees and vegetation located on adjoining properties,
iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:
i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the Arboricultural Impact Assessment, as contained in the following section:
i) section 5.3 Construction Recommendations
Note: section 5.2 Trees for removal, does not apply.

The Certifying Authority must ensure that:
d) The arboricultural works listed in c) are undertaken and certified by an Arborist as complaint to the recommendations of the Arboricultural Impact Assessment.

e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree (s) is prohibited.

Reason: Tree and vegetation protection.

24. **Installation and Maintenance of Sediment and Erosion Controls**
Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

25. **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.

26. **Requirement to notify about new Acid Sulfate Soils evidence**
Any new information revealed during excavation works that has the potential to alter previous conclusions about Acid Sulfate Soils shall be immediately notified to the Council and the Principal Certifier prior to further commencement.

Reason: protection of the environment.

27. **Aboriginal Heritage**
If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection.

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

28. **Condition of Retained Vegetation**
Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:
i) compliance to any Arborist recommendations for tree protection generally and during excavation works,
ii) extent of damage sustained by vegetation as a result of the construction works,
iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

29. **No Weeds Imported On To The Site**
No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) are to be imported on to the site prior to or during construction works.

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

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

30. **Priority Weed Removal and Management**
All Priority weeds as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) within the development footprint are to be removed.

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

Reason: To reduce the risk of site works contributing to spread of Priority weeds.

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

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

32. **Waste Water System**
Prior to the issuing of any interim / final occupation certificate, a copy of a s68 (Local Government Act 1993) approval to operate the Waste Water System, and the waste water system must be activated and effectively operating to the satisfaction of the Principal Certifier.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To ensure the premises a maintained in an appropriate manner in perpetuity.

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

33. **Protection of Habitat Features**
All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

34. **Incline Lift Noise**
The Incline Lift shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

35. **Inclinator hours of operation and maintenance of alternative access**
Use of the inclinator by able bodied persons is restricted to between the hours of;

- 7am to 10pm Monday to Friday
- 8am to 10pm Saturday, Sunday or public holiday

The inclinator may be used at any time in an emergency or when used by a less mobile person.

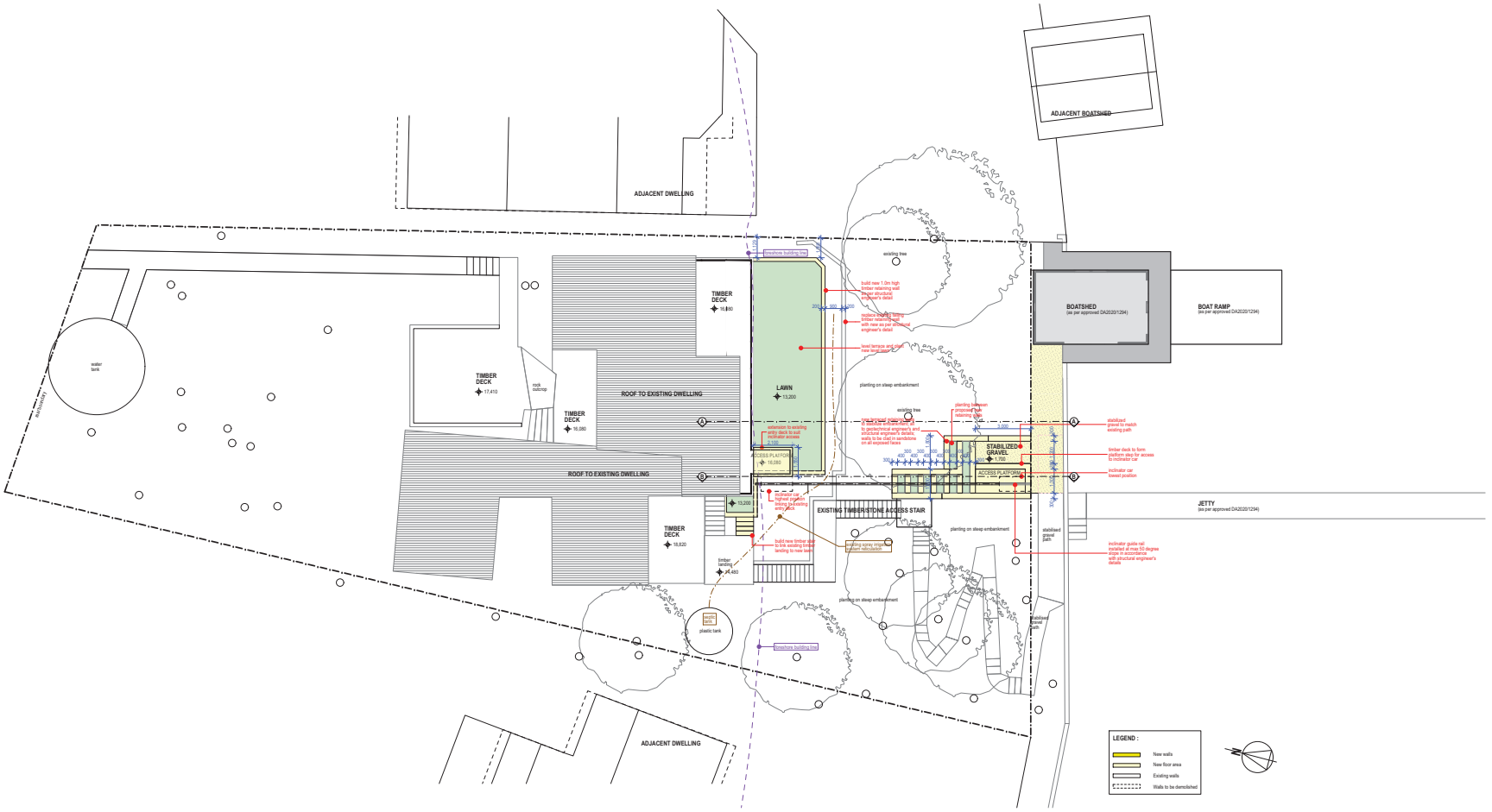
Alternative access shall be maintained for use outside of permissible hours.

Reason: To protect the amenity of adjacent residences during night hours and ensure the premise is accessible during restricted hours.

36. **Compliance with Estuarine Risk Management Report**
The development is to comply with all recommendations of the approved Coastal Engineering Risk Management Report prepared by Cardno and now Stantec dated 27 July 2022 and these recommendations are to be maintained over the life of the development.

Reason: To ensure preservation of the development and the estuarine environment

A3

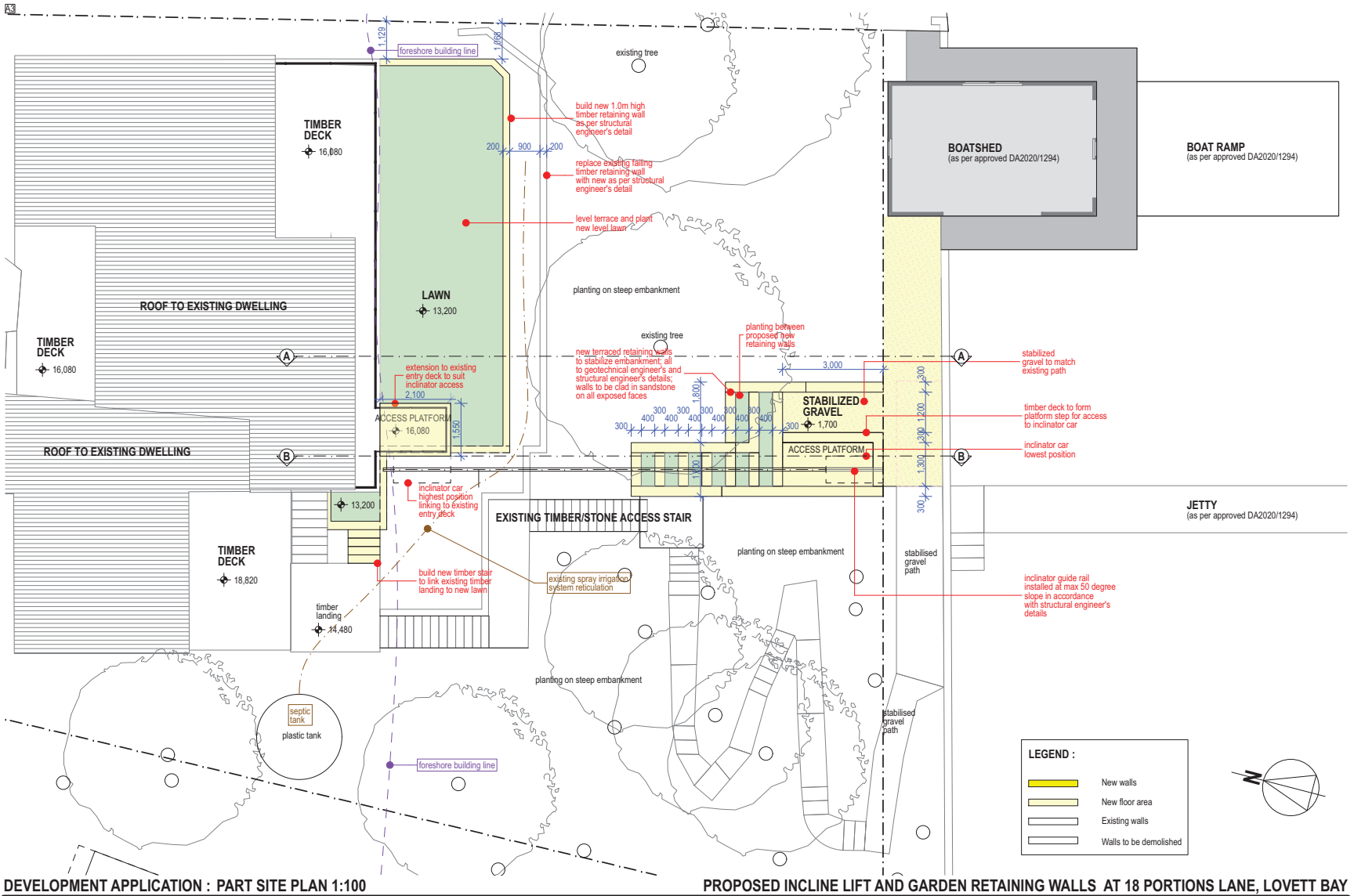


DEVELOPMENT APPLICATION : SITE PLAN 1:200

PROPOSED INCLINE LIFT AND GARDEN RETAINING WALLS AT 18 PORTIONS LANE, LOVETT BAY

Stewart DESIGN STUDIO
4 LA FRANCE COURT, MERMAID WATERS, QLD 4218 • TELEPHONE 0403069606 • EMAIL jsa@bigpond.net.au

Architect : Murray Stewart (NSW Reg No 11526)	Scale: 1:200	Drawing No: **202106/DA03Rev3**	Plot Date: 22/11/22



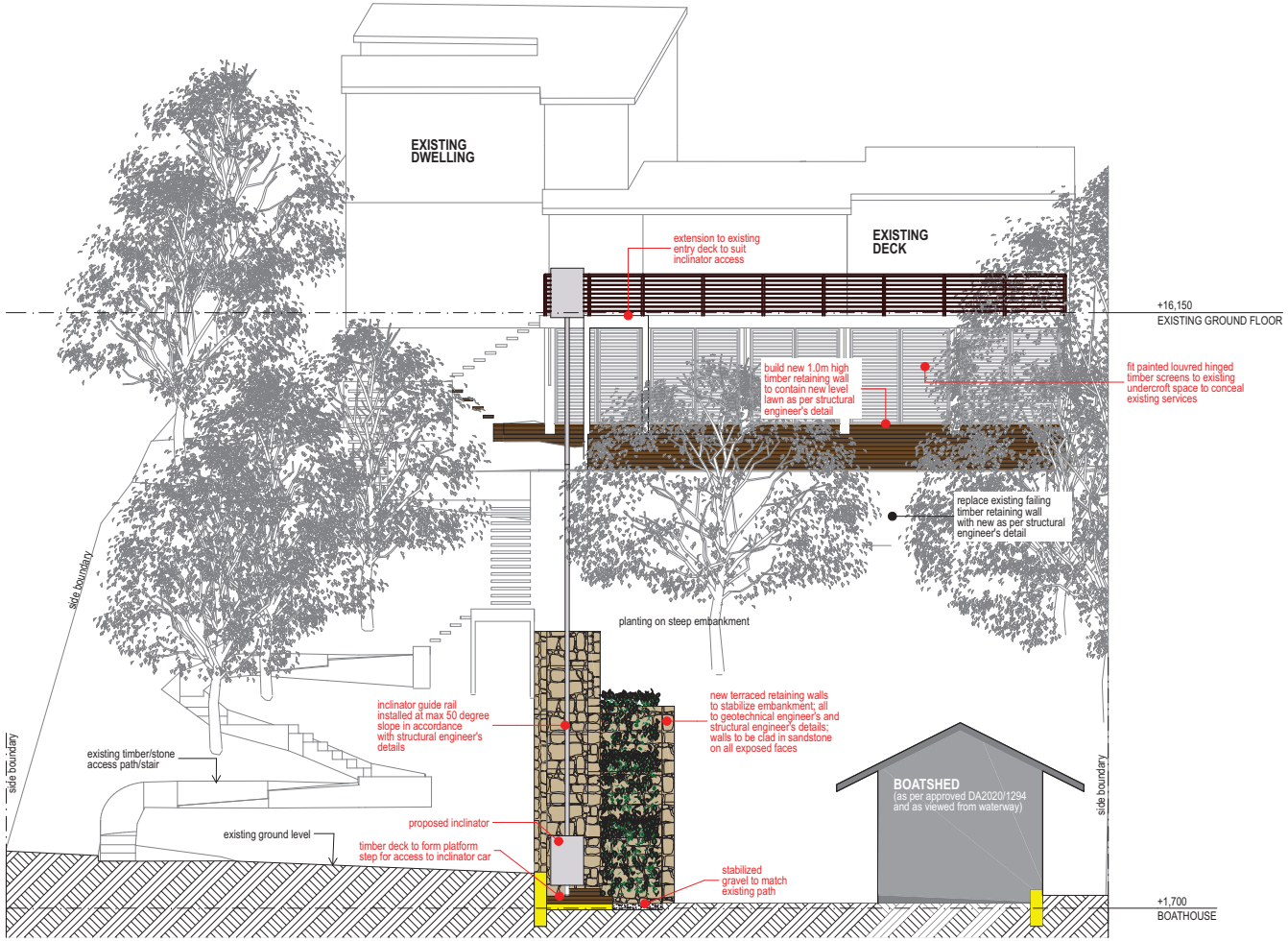
DEVELOPMENT APPLICATION : PART SITE PLAN 1:100

PROPOSED INCLINE LIFT AND GARDEN RETAINING WALLS AT 18 PORTIONS LANE, LOVETT BAY

Stewart DESIGN STUDIO
4 LA FRANCE COURT, MERMAID WATERS, QLD 4218 • TELEPHONE 0403069606 • EMAIL jsa@bigpond.net.au

Architect : Murray Stewart (NSW Reg No 11526)	Scale: 1:100	Drawing No: **202106/DA04Rev3**	Plot Date: 22/11/22

A3



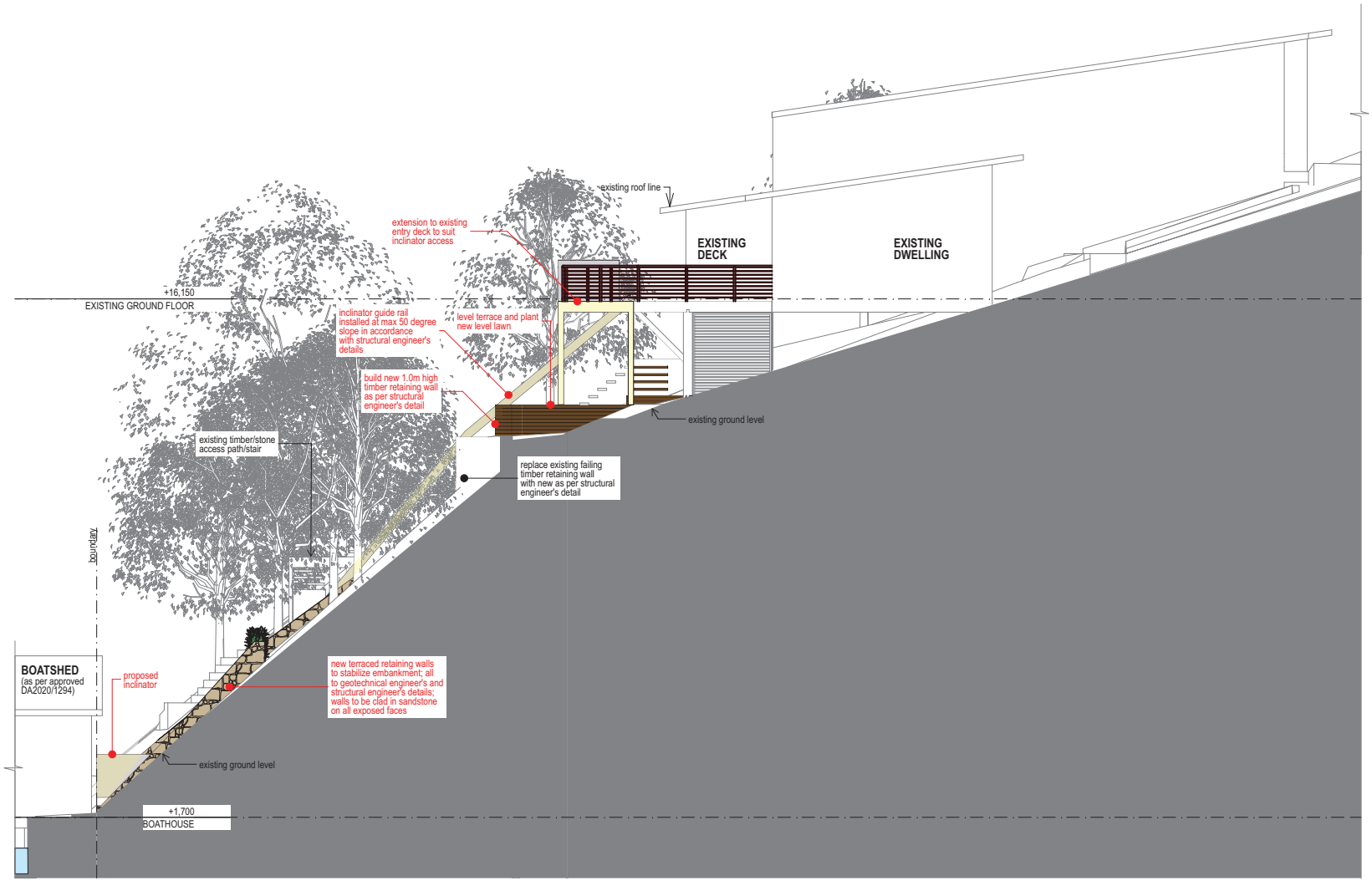
DEVELOPMENT APPLICATION : SOUTH ELEVATION

PROPOSED INCLINE LIFT AND GARDEN RETAINING WALLS AT 18 PORTIONS LANE, LOVETT BAY

Stewart DESIGN STUDIO
4 LA FRANCE COURT, MERMAID WATERS, QLD 4218 • TELEPHONE 0403069606 • EMAIL jsa@bigpond.net.au

Architect : Murray Stewart (NSW Reg No 11526)	Scale: 1:100	Drawing No: **202106/DA07Rev2**	Plot Date: 22/11/22

A3



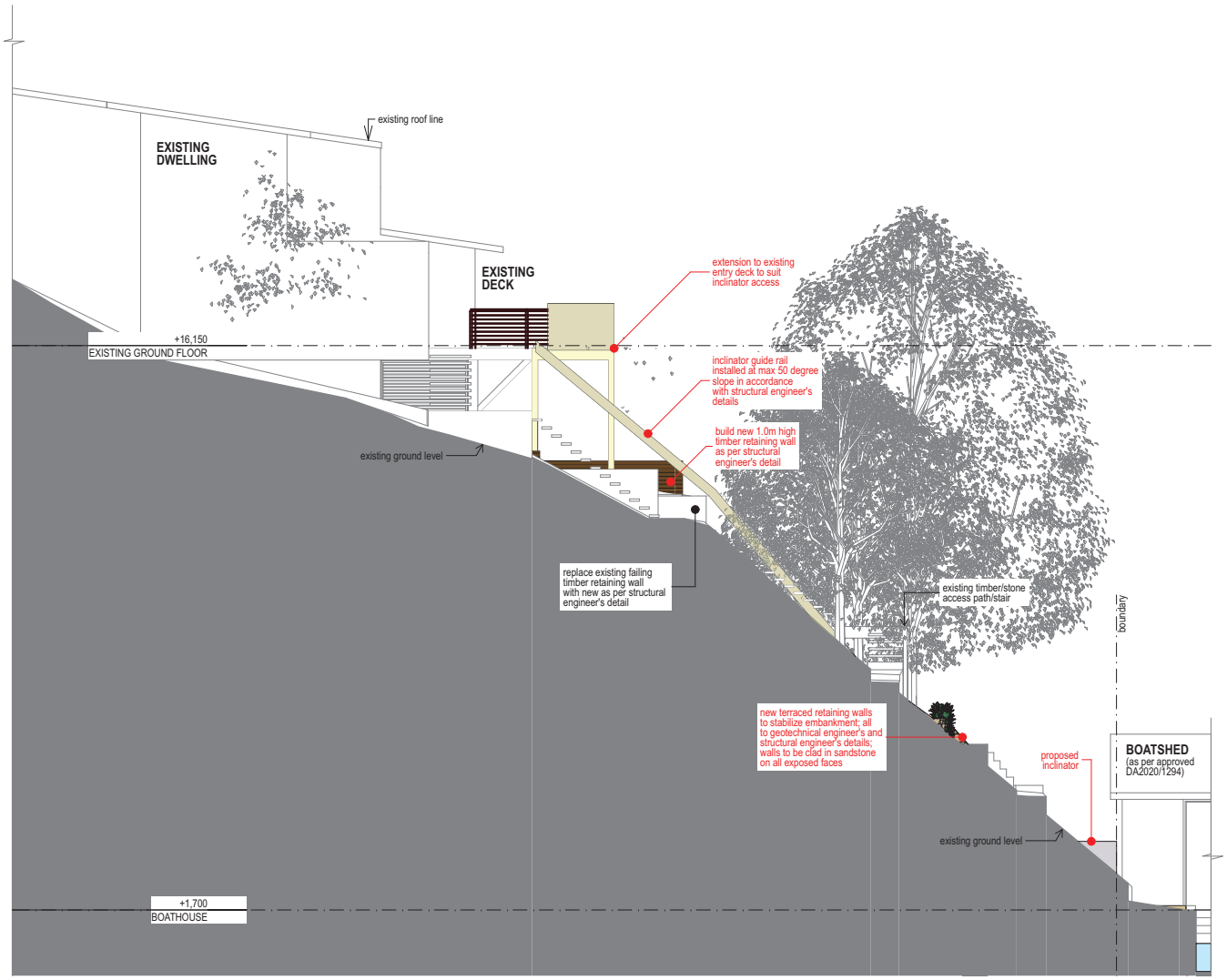
DEVELOPMENT APPLICATION : EAST ELEVATION

PROPOSED INCLINE LIFT AND GARDEN RETAINING WALLS AT 18 PORTIONS LANE, LOVETT BAY

Stewart DESIGN STUDIO
4 LA FRANCE COURT, MERMAID WATERS, QLD 4218 • TELEPHONE 0403069606 • EMAIL jsa@bigpond.net.au

Architect : Murray Stewart (NSW Reg No 11526)	Scale: 1:100	Drawing No: **202106/DA08Rev2**	Plot Date: 22/11/22

A3



DEVELOPMENT APPLICATION : WEST ELEVATION

PROPOSED INCLINE LIFT AND GARDEN RETAINING WALLS AT 18 PORTIONS LANE, LOVETT BAY

Stewart DESIGN STUDIO
4 LA FRANCE COURT, MERMAID WATERS, QLD 4218 • TELEPHONE 0403069606 • EMAIL jsa@bigpond.net.au

Architect : Murray Stewart (NSW Reg No 11526)	Scale: 1:100	Drawing No: **202106/DA09Rev2**	Plot Date: 22/11/22

REQUEST FOR EXCEPTION TO A DEVELOPMENT STANDARD : 18 PORTIONS, LOVETT BAY

AS PER CLAUSE 4.6 OF THE PITTWATER LOCAL ENVIRONMENTAL PLAN 2014 IN RELATION TO CLAUSE 7.8 – LIMITED DEVELOPMENT ON FORESHORE AREA

4.6 Variation request (revision1) prepared by Stewart Design Studio.

1. INTRODUCTION

This written request is made pursuant to the provisions of Clause 4.6 of the Pittwater Local Environmental Plan 2014 (the LEP). The variation request relates to a proposal for a new incline lift and garden retaining walls for an existing dwelling at 18 Portions, Lovett Bay. A variation is sought in relation to the Additional Local Provisions described in Clause 7.8 of the LEP. Clause 7.8 covers 'Limited development on foreshore area'.

Clause 4.6 Exceptions to development standards

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

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

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

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

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

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

(a) the consent authority is satisfied that :

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

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

(5) In deciding whether to grant concurrence, the Director-General must consider :

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

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if :

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note. When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E3 Environmental Management or Zone C4 Environmental Living.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following :

(a) a development standard for complying development,
(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
(c) clause 5.4.

2. THE DEVELOPMENT STANDARD AND THE VARIATION SOUGHT

Clause 7.8 – Limited development on foreshore area

The proposal includes the construction of an incline lift, platforms, associated retaining walls and landscaping which encroach the foreshore building line and sit within the foreshore area.

Pursuant to cl. 7.8(2) Limited development on foreshore area, inclinators and retaining walls (other than sea walls) and platforms (decks, terraces and the like) are not expressly permitted development and are therefore required to be supported by a cl. 4.6 Variation.

The foreshore area is described as the land between the foreshore building line and the mean high water mark (MHWM). The foreshore building line is approximately aligned with the existing front (south) edge of the existing elevated timber deck attached to the existing dwelling. For this property, the foreshore building line is generally between 15.0m and 15.5m north of the MHWM.

The objectives of Clause 7.8 (1) are as follows :

(a) to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,

Comment :
The proposed incline lift, associated access platforms and associated garden retaining walls are all located within the foreshore area. At the waterway boundary, an access platform (as a timber deck) for the incline lift is proposed with a stabilised gravel finish to the levelled ground area immediately adjacent to that access platform. The stabilised gravel area is a waiting area to link from the public walkway to the lift access platform. The location of the incline lift and associated access platforms has been carefully designed to avoid impacts to any existing mature trees on the land and to have a close connection to the existing jetty. The necessary excavation of the land to form the level area for the incline lift and associated access to the lift has triggered a requirement to stabilise the steep embankment. The geotechnical report notes that preliminary investigation indicates that the embankment consists mostly of weathered shale. A series of stepped masonry retaining walls, with a horizontal planting zone between each rise of wall, has been shown in the design as the best method to stabilize the embankment following the necessary excavation. The design is intended to allow for the terraced planting to trail over the wall structures in a similar manner to that in which planting trails down a steep embankment. The plants specified on the landscape drawing have been selected to achieve that aesthetic. The design intent is for the new walls to be aesthetically recessive and for the planting to dominate when viewed from the waterway. At the top of the incline lift guide rail, an extension to the existing elevated deck near the existing front entry door of the dwelling is proposed for the purpose of linking the incline lift from the water boundary to the existing entry door of the dwelling. The proposed deck extension is in front of the existing dwelling and at the same level as the dwelling and existing front deck. The small ($3m^2$) extension of the deck to provide an access platform for the proposed incline lift will not cause additional impacts in terms of the foreshore area.

The proposed development will not impact natural foreshore processes or affect the significance and amenity of the area.

(b) to ensure continuous public access along the foreshore area and to the waterway.

Comment : public access will not be impacted by the proposed works.

Clause 7.8(2) allows for consent to be granted for

(a) 'the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area' as long as 'the development will not result in the footprint of the building extending further into the foreshore area'
(b) development of 'boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors)'

Comment :
There is no proposal to extend the footprint of the existing dwelling. The proposed new works are all external to the existing dwelling. With respect to all works associated with provision of the incline lift : it is reasonable to provide good access to a dwelling, despite no specific mention of incline lifts in Clause 7.8(2)(b).

The proposed retaining walls directly adjacent to the south side of the dwelling are the only works in the proposal that are not directly related to the construction of an incline lift. The purpose of these low retaining walls is to form a level recreational lawn area. This area will also stabilize the land adjacent to the dwelling as noted in the geotechnical engineer's report.

Clause 7.8(3) notes that *development consent must not be granted under this clause unless the consent authority is satisfied that—*

(a) the development will contribute to achieving the objectives for the zone in which the land is located, and
(b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and
(c) the development will not cause environmental harm such as—
(i) pollution or siltation of the waterway, or
(ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or
(iii) an adverse effect on drainage patterns, or
(iv) the removal or disturbance of remnant riparian vegetation, and
(d) the development will not cause congestion or generate conflict between people using open space areas or the waterway, and
(e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and
(f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and
(g) in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and
(h) sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change, have been considered.

Comment :

(a) The site is zoned C3 (formerly E3). The objectives of the zone are :
- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that 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 and not visually prominent.
- To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.
- To ensure the continued viability of ecological communities and threatened species.

The proposed incline lift and associated terraced retaining walls will not adversely impact any natural vegetation or any wildlife corridors. The site slopes steeply down

to the waterway frontage. The gradient is 1:1 for this part of the land. The proposed new works will have minimal impact to the scale of the existing development when viewed from Lovett Bay or from any surrounding development. All existing mature trees are to be retained. The terracing arrangement has been designed to accommodate the maximum gradient for the guiderail for the proposed lift. The terracing of the proposed stabilizing retaining walls provides for planting so that the vegetation remains as the dominant feature when viewed from the waterway. The proposed sandstone walls required for embankment stabilization will be partially hidden by the cascading vegetation.

(b) As noted above - the terracing of the proposed stabilizing retaining walls provides for planting so that the vegetation remains as the dominant feature when viewed from the waterway. The proposed sandstone walls required for embankment stabilization to suit the lift will be partially hidden by the cascading/trailing vegetation. The proposed upper lift access platform is an extension of the existing deck on the south side of the existing dwelling. Since the new platform is directly in front of the existing dwelling and deck, it will not cause any new impacts when the development is viewed from the surrounding area or the waterway. The proposed incline lift and associated access deck platforms are consistent with similar development in the area.

(c) The proposed works will not cause any environmental harm. No natural habitat will be affected. No drainage patterns will be impacted.

(d) The proposal will not cause congestion or generate conflict between people using open space areas or the waterway. The incline lift and associated access platform is wholly on the subject site. The proposed 1200mm wide stabilised gravel area to the east of the waterway level lift access platform provides a waiting area on the site for people waiting for the lift to travel from the existing dwelling down the guide rail to the waterway level.

(e) For reasons discussed in (d) above, continuous public access along the foreshore and to the waterway will not be compromised.

(f) There is no evidence that any cultural or historic relics are likely to be disturbed by the excavation. The land has not been identified as having cultural or heritage significance.

(g) The proposed work directly linked to the existing dwelling is an extension of the existing water-facing deck. The extension is required to provide an access platform for the proposed incline lift. The deck extension – which has an area less than 3m^2 – is wholly contained within the existing width of the dwelling when viewed from the waterway (south façade). The front edge of the deck extension is set 12.85m back from the MHWM (horizontal dimension) and at an elevation of 14.3m relative to the top of the sea wall. The deck extension will not significantly affect the appearance of the existing dwelling when viewed from the waterway.

(h) Sea level rise, resulting from climate change, has been considered. The proposed incline lift base level platform and linked gravel waiting area may be inundated in a significant flood event, however – the lift car will generally 'park' at the top landing level which is at the entry level to the existing dwelling. That is approximately 14.3m above the top of the sea wall. The impacts of rising sea levels are discussed in the associated Coastal Risk Assessment report lodged with the development application.

3. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

As discussed above, the proposed changes to the existing development are consistent with the objectives of the standard despite the non-compliance with the numeric requirement of the standard. It is reasonable to allow for good access from the waterfront boundary up to the existing dwelling. The 14.3m elevation difference between the existing dwelling entry and the top of the sea wall make access for anyone with mobility issues practically impossible without a lift. There are many instances of similar incline lifts in the locality. Compliance with the development standard is unreasonable and unnecessary in the circumstances of this case.

4. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

Yes. As discussed, the proposal will be consistent with the relevant objectives and requirements of the development standard 7.8 as well as the objectives for the C3 zoning (environmental management – formerly known as E3). The proposal will result in the maintenance of existing amenity of surrounding properties and the public domain, including the linked waterway.

5. WILL THE PROPOSED DEVELOPMENT BE IN THE PUBLIC INTEREST?

In accordance with Clause 4.6(4)(a), development consent must not be granted to a development that contravenes a development standard unless Council is satisfied in relation to certain matters as follows:

Clause 4.6(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that :

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

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

The matters required to be addressed in sub clause (3) are addressed above. The objectives of the C3 residential zone (environmental management, formerly known as E3) are as follows :

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that 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 and not visually prominent.
- To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.
- To ensure the continued viability of ecological communities and threatened species.

The public interest is considered in terms of compliance and consistency with the objectives and planning controls, including State and Regional Planning Policies, applicable to a proposed development.

The objectives of the C3 Residential Zone (formerly known as E3) are addressed as described below:

> The proposed incline lift and associated terraced retaining walls will not adversely impact any natural vegetation or any wildlife corridors. The site slopes steeply down to the waterway frontage. The proposed new works will have minimal impact to the scale of the existing development when viewed from Lovett Bay or from any surrounding development. All existing mature trees are to be retained. The terracing of the proposed stabilizing retaining walls provides for planting so that the vegetation remains as the dominant feature when viewed from the waterway. The proposed retaining structures that are necessary to form a level access platform for the incline lift all need to be cut into the existing embankment. No part of the proposed retaining works associated with the lift will protrude above the existing ground level by more than is necessary to retain the existing ground level

6. IS THE EXCEPTION TO THE DEVELOPMENT STANDARD WELL FOUNDED?

The proposed development is appropriate in terms of compatibility with the scale, materiality and character of surrounding development in the locality.

The encroachment into the foreshore area for works associated with construction of the incline lift is unavoidable considering that the purpose of the proposed development is to provide access from the waterway boundary of the land up to the existing dwelling. Having better access between the waterway boundary and the existing dwelling to allow access to the dwelling for occupants with mobility challenges is considered a 'better outcome', as per Clause 4.6(1), for this site.

The formation of a level recreational lawn directly adjacent to the dwelling is allowable development in terms of Clause 7.8(2)(b). This lawn will provide private open space for the existing dwelling.

The proposed development will not impact on natural foreshore processes or affect the significance and amenity of the area.

For the reasons outlined in this submission, the objectives of the standard and the objectives of the C3 Residential Zone will be met. The proposed exception to the 'limited development on foreshore area' standard is considered well founded and Council as the consent authority can be satisfied for the reasons outlined, that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives of the zone.

ITEM 5.3	**DA2022/1330 - 20/7 THE CRESCENT, MANLY - ALTERATIONS AND ADDITIONS TO A UNIT WITHIN A RESIDENTIAL FLAT BUILDING INCLUDING A NEW SPA.**
AUTHORISING MANAGER	**Rod Piggott**
TRIM FILE REF	**2022/756436**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plans & Elevations** **3 ⇩Clause 4.6**

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

A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/1330 for Alterations and additions to a unit within a residential flat building including a new spa on land at Lot 20 SP 70727, 20 / 7 The Crescent, MANLY subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1330

Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot 20 SP 70727, 20 / 7 The Crescent MANLY NSW 2095
Proposed Development:	Alterations and additions to a unit within a residential flat building including a new spa
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Kieran Shane Warwick
Applicant:	Luke Horton

Application Lodged:	30/08/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	09/09/2022 to 23/09/2022
Advertised:	09/09/2022
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 155.4%
Recommendation:	Approval

Estimated Cost of Works:	$ 731,032.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a unit on the 8th level of a residential flat building including a new spa pool.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due variation of greater than 10% to Clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013 (MLEP) and is a Class 2 building. A 4.6 Exceptions to development standards request has been submitted with the application.

The 4.6 request is for the non-compliance with the height standard that arises from the works within the existing 8th level involving internal works, new windows, spa pool, balustrading and a retractable awning. The works will sit below the existing roof line and will be setback from the front elevation and

will not increase the visual bulk of the building. The proposal does not increase the existing non compliance of 155.4% above the building height standard.

Furthermore, the site is a listed heritage item in the MLEP: Hilder Lea (Item I98). The site is also within the vicinity of a number of heritage items, including Manly Cove amenities block - West Esplanade (item I250), Park - West Esplanade (Item I251), All stone kerbs - Manly municipal area (along Commonwealth Parade) (Item I2) and House - 10 The Crescent (Item I115). The application is accompanied by a Heritage Impact Statement and has been reviewed by Council's Heritage Advisor, who has raised no objections to the proposal.

The application was exhibited, including being advertised, in accordance with Council's Community Participation Plan and no submissions were received in response.

The proposal satisfies the relevant planning controls, enhances the heritage values of the relevant heritage items, enhances the amenity of the public open space, has no impact on the amenity of surrounding and nearby properties. This report concludes with a recommendation that the NBLPP grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks alteration and additions to an existing residential flat building, specifically Unit 20 at 7 Commonwealth Parade, Manly. The proposed development is for internal alterations, the replacement of existing windows and doors and a new retractable awning.

The alterations and additions will be made up as follows:

- New walls, windows and doors to the dining and living room,
- A new entry door,
- Demolish the existing kitchen and WC and construct a new kitchen,
- Convert the existing master ensuite to a combined bathroom and laundry,
- Reconfigure the master bedroom layout and convert the existing study to a WIR and ensuite,
- Convert the existing bathroom and laundry to a guest bedroom,
- Convert bedroom 2 to a study.
- New clear glazed balustrades to the front balcony,
- New fluted glazed balustrades to the rear balcony,
- Remove existing terrace pavers (retaining the concrete slab),
- A new spa on the terrace,
- Replace the existing windows.

In November 2022, in response to concerns raised by Councils Heritage Adviser, the Applicant provided amended plans and a revised heritage statement providing the amendments requested by the Heritage Adviser. In accordance with Council's Community Participation Plan, re-notification of amended plans was not required, as the proposed amendments result in a lesser or same environmental impact.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

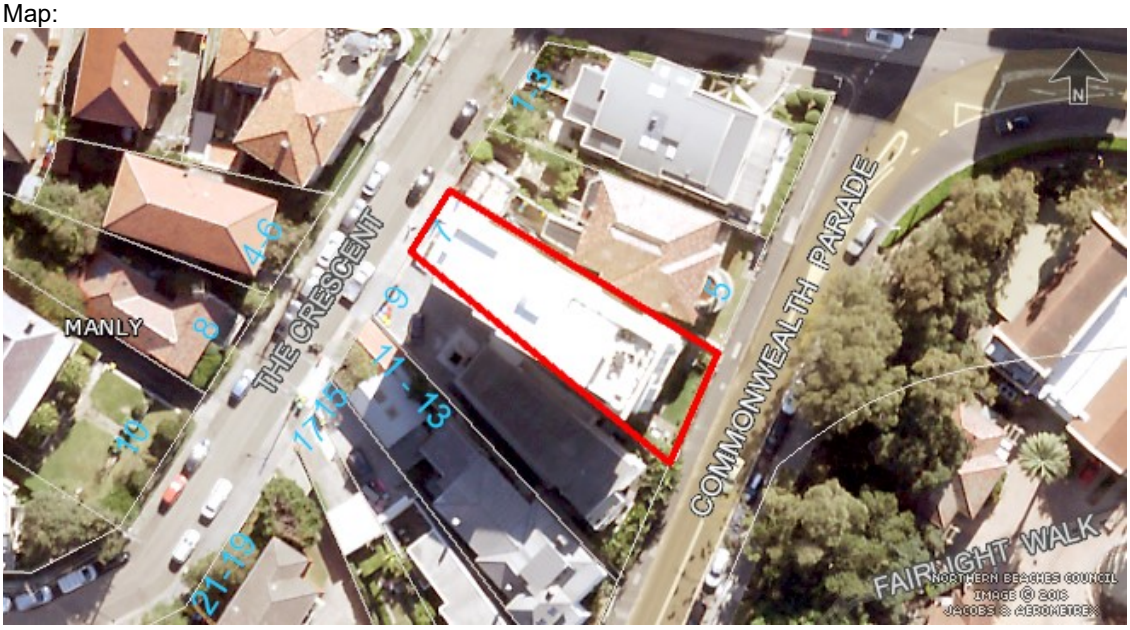
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 20 SP 70727 , 20 / 7 The Crescent MANLY NSW 2095
Detailed Site Description:	The subject site consists of one allotment with two street frontages to The Crescent and Commonwealth Parade. The unit subject to this application is number 20, the penthouse and located on the top level of the building. The site is irregular in shape with a front boundary of 15.26m to Commonwealth Parade and 9.15m to The Crescent and a depth of 38.76m along the northern side boundary and 41.46 m along the southern boundary. The site has a surveyed area of 482m². The site is located within the R1 General Residential zone and accommodates a 7-storey, rendered residential flat building with a tile roof, comprising of 20 units. Vehicular access is via The Crescent and pedestrian access from Commonwealth Parade. The site is a listed heritage item in the MLEP: Hilder Lea (Item I98). The site has minimal landscaping and there are no known threatened species on the site. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by residential dwellings and residential flat buildings to the

	north south and west. Manly Cove and Manly Wharf are located across the road from the site to the east. It is located in close proximity to shops and services in Manly.

Map:



SITE HISTORY

A search of Council's records has revealed the following:

Development Application No. 345/00
Strata Subdivision & Refurbishment of Residential Flat Building
Endorsement Date: 20 November 2000

The land has been used for residential purposes for an extended period of time.

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	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the	Part 4, Division 2 of the EP&A Regulation 2021 requires

Section 4.15 Matters for Consideration	Comments
Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to issues raised by Councils Heritage Advisor. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.. Clauses 62 and/or 64 of the EP&A Regulation 2021 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. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.. Clause 69 of the EP&A Regulation 2021 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.
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 Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would

Section 4.15 Matters for Consideration	Comments
	justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 09/09/2022 to 23/09/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	***Supported, subject to recommended conditions*** 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. 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.
Strategic and Place Planning (Heritage Officer)	***Supported without conditions*** The proposal has been referred to Heritage as the subject property is a heritage item and within the vicinity of a number of heritage items: • **Item I98** - Residential flat building, “Hilder Lea” - 7 Commonwealth Parade • **Item I250** - Manly Cove amenities block - West Esplanade • **Item I251** - Park - West Esplanade • **Item I2** - All stone kerbs - Manly municipal area (along Commonwealth Parade) • **Item I115** - House - 10 The Crescent Details of the items as contained within the Manly inventory are as follows:

Internal Referral Body	Comments
	Item I98 - Residential flat building, "Hilder Lea" Statement of significance: The Hilder Lea block of flats is of significance for the local area for historical and esthetic reasons, and as a representative example of early "Chicagoesque" style architecture applied to residential flats. The building is one of the earliest high rise apartment buildings built in the Manly district and in the Sydney area. The building has local landmark qualities and makes a major contribution to the townscape of Manly. Physical description: • A seven storey rendered flat building with elaborate parapet. The southern façade is an example of an advanced architectural style in an American inspired idiom, though executed on a tight budget for investment. The building which dominates its immediate surroundings is a familiar landmark in the Manly Cove area. • A seven storey rendered flat building with elaborate parapet. The southern façade is an example of an advanced architectural style in an American inspired idiom, though executed on a tight budget for investment. The building which dominates its immediate surroundings is a familiar landmark in the Manly Cove area. **Item I250 - Manly Cove amenities block** Statement of significance: The amenities building is considered to have historical, Aesthetic, social, technical significance. It is also noted as being rare externally intact example of the work of Kaberry and Chard. The amenities building is part of the 1930s development of Manly Cove as an area of recreational leisure and a tourist attraction created by the Port Jackson Steamship Company. The building is an ornate externally intact example of the Inter-war Mediterranean Style designed by the prominent architectural firm Kaberry And Chard. The Interior has been modified in accordance with its ongoing use. Physical description: • The existing building is a single storey, inter-war era, painted masonry amenities building. The building has a hipped, multicoloured terracotta tile roof with gable vents and boxed eaves. • The protruding middle bay of the principal elevation has a blue and cream glazed tiled frieze depicting wave and water lily motifs. The protruding bay is separated into a series of three bays divided horizontal piers decorative to appear as simple columns. The external bays contain a glazed tile set within a panel above which is a timber framed louvred window. The central bay has a larger decorative glazed panel bearing a "M"

Internal Referral Body	Comments
	for Manly set below a decorative arched frieze. • Also noted to the exterior of the building are the timber framed double hung obscure glass window and the entries to the male and female toilets accessed via a set of stairs and a pair of small timber pergolas supported by 4 Doric columns. • The north, south and west elevations are constructed of plain rendered brick with timber framed windows. • A single storey flat roofed structure has been added to the exterior of the building to provide accessible facilities. • The interior of the building contains male and female public toilets which have been modernised. **Item I251 - Park** Statement of significance: Part of earliest cultural treatment of Manly landscape and provision of designed open space. High visual significance. Physical description: • Open space, beach, sandstone retaining wall, pavings, grassed surfaces, monument, structures and cultural plantings of Norfolk Island pine, Moreton Bay Figs, Port Jackson figs and Canary Island Palms. Raised planting beds, with spilt stone edging of Edwardian period characterise the eastern part of the Park. Recent paving detracts from the Edwardian character. Other relevant heritage listings • *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 - No* • *Australian Heritage Register - No* • *NSW State Heritage Register - No* • *National Trust of Aust (NSW) Register - No* • *RAIA Register of 20th Century Buildings of Significance - No* • *Other - No* **Consideration of Application** The proposal seeks consent for internal alterations, the replacement / repair of existing windows and doors and a new retractable awning,. including new walls, windows and doors to the dining and living room along the eastern elevation, a new entry door, new clear glazed balustrades to the front balcony, new fluted glazed balustrades to the rear balcony ,- - fixed to internal side of the existing parapet wall on the roof terrace with replaced pavers and an addition of a new spa to the terrace. The property is a significant heritage item, located in a highly prominent location and within the Foreshore Scenic Protection

Internal Referral Body	Comments
	Area. The proposed internal alterations and the replacement of the external windows and doors are mainly confined to the later alterations of the early 2000s. However, the retractable awning, extending 4m along the eastern elevation, is a new addition. The extent is required to be limited to 3m and the colour must be changed to a recessive colour rather than black. The details of the external blinds (profile and colour, as black is a dominant colour and is not considered acceptable) should also be provided as to understand the extent of the visibility of the proposed blinds that may have a visual impact on the heritage item. The elevational drawings (south elevation) are showing an extension to the rear/western facing balcony. This should be corrected before any approval, as currently there is no extended portion on this balcony. The proposed glass balustrade to the eastern facing roof terrace is required to be maximum 1050mm, in order to reduce the visibility. **Amended plans - 23 November 2022** Further to reviewing the amended plans and the letter from Watermark Planning, it is considered that the impact of the proposal (based on the architectural drawings Revision B, dated 23/11/22) upon the significance of the heritage item and the items within the vicinity will be negligible. Therefore, no objections are raised on heritage grounds and no conditions required. <u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> *Is a Conservation Management Plan (CMP) Required? No* *Has a CMP been provided? No* *Is a Heritage Impact Statement required? Yes* *Has a Heritage Impact Statement been provided? Yes*

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs 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 and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational

provisions which the proposal is considered to be acceptable against.

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

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

SEPP 65 - Design Quality of Residential Apartment Development

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

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

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

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

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

As previously outlined the proposed development is for alterations and additions to a unit within a residential flat building. The scope of works is not considered to constitute a substantial redevelopment or substantial refurbishment, and therefore as per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are not applicable to the assessment of this application.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A453876 dated 12 July 2022).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid
Section 2.48 of Chapter 2 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.

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

Comment:
The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land
Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	Existing maintained - 28.1m	155.4%	No
Floor Space Ratio	FSR: 1:0.75	No change	N/A	No Change

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes

Clause	Compliance with Requirements
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	11m
Proposed:	28.1m
Percentage variation to requirement:	155.4%

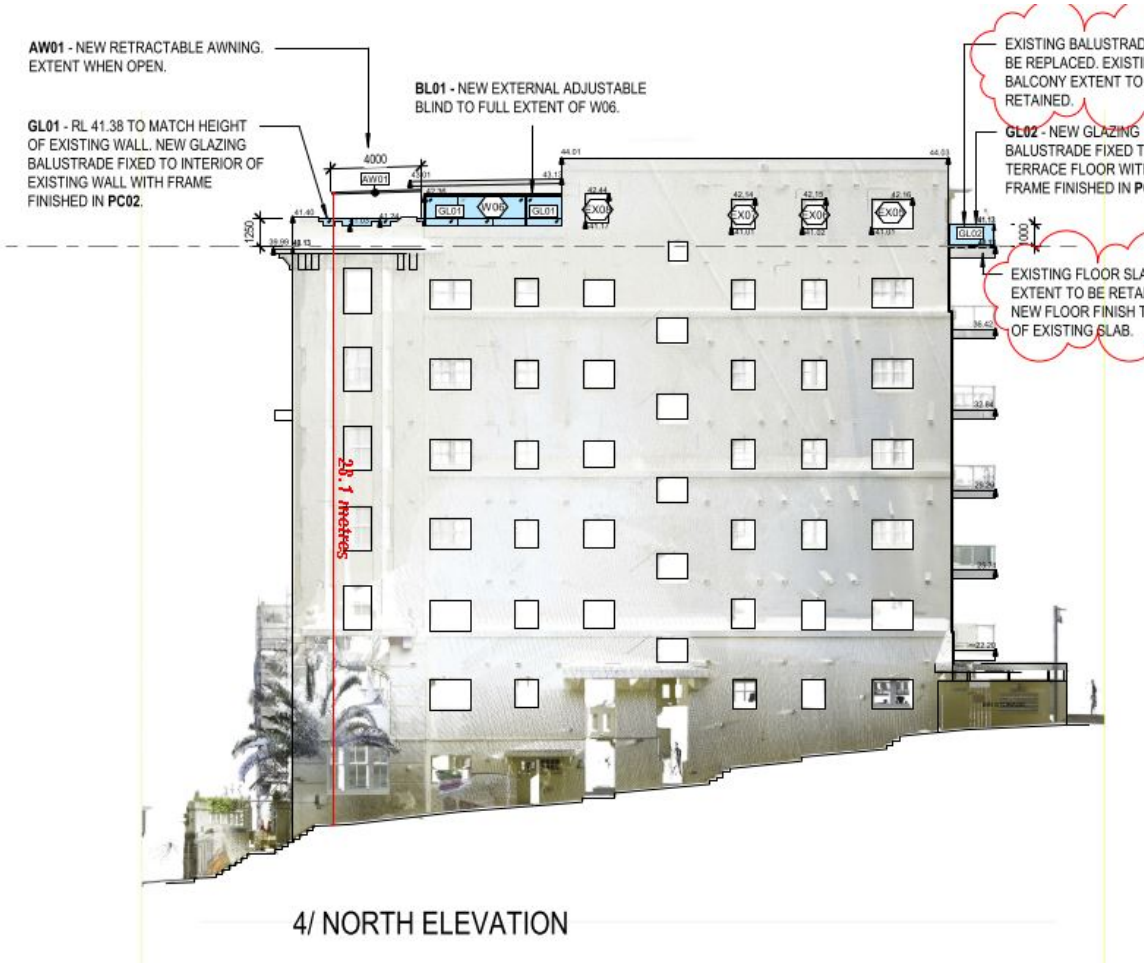

Figure 1. *Building height non-compliance*

Assessment of request to vary a development standard:
The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size OR Clause 4.3 – Height of Buildings OR Clause 4.4 - Floor space ratio OR 7.8 Limited development on foreshore area development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61,* and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:
(1) The objectives of this clause are as follows:
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

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

Comment:
Clause 4.3 – Height of Buildings development standard is not expressly excluded from the operation of this clause.

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

(4) Development consent must not be granted for development that contravenes a development standard unless:
(a) the consent authority is satisfied that:
(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
(b) the concurrence of the Secretary has been obtained.

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

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
Comment:
The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.
Comment:
In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v

Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:
1.3 Objects of Act(cf previous s 5)
The objects of this Act are as follows:
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
(c) to promote the orderly and economic use and development of land,
(d) to promote the delivery and maintenance of affordable housing,
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
(g) to promote good design and amenity of the built environment,
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

- *The existing building has a non-compliant building height of 28.7 metres and the development will not increase the existing maximum height,*
- *There will be no change to the apparent bulk and scale of the existing building,*
- *The development is located within the existing maximum building height and building envelope,*
- *Compliance with the height control would unreasonably limit the refurbishment of the existing unit, accordingly compliance with the development standard in this instance is unreasonable,*
- *The development will not have any solar access impacts, due to the minor scale and location on the top floor of the existing building, accordingly, compliance with the development standard based on this would be unreasonable,*
- *The height variation has no impact on privacy for neighbours, accordingly, the variation is reasonable in the circumstances of the case,*
- *It would be unreasonable to require compliance with the current development standard, when works are located within an existing building with a non-compliant height. As such the minor variation allows for the orderly and economic use of the site and allows for an ecologically sustainable development satisfying Cl1.3(g) and (f),*
- *Strict numerical compliance with the height control would not result in a better urban design outcome as the architectural and historical character of the building is maintained,*
- *The development will not have a detrimental impact on the visual amenity of the area, as it is located on the 7th floor, remaining barely visible from the street and surrounding foreshore. Compliance with the development standard based on this would be unreasonable,*
- *The extent of the variation is considered to be in the public interest as the proposal remains consistent with the objectives of the zone, ensuring that the appropriate refurbishment of the site can be carried out. Compliance with the development standard based on this would be unreasonable,*
- *The numerical height variation has no impact on the natural environment. No landscape area is lost or impacted satisfying Cl1.3(b),*

- *The natural environment is unaffected by the small departure to the development standard and it would be unreasonable for the development to be refused on this basis,*
- *The proposal represents an environmentally sustainable design allowing for the refurbishment of an existing unit satisfying Cl1.3(f). Compliance with the development standard based on this would be unreasonable,*
- *The variation to height as detailed above will have no social impacts for the site or local area satisfying Cl1.3(b)and accordingly refusal of the development based on this reason would be unreasonable,*
- *The variation to height as detailed above will have no economic impacts for the site or the local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable,*
- *The development proposed is not an over development of the site and satisfies the objectives of the zone and the development standard,*
- *The development will not result in an increase to the existing maximum building height and the minor alterations will be compatible within the context in which it sits and is reasonable in the circumstances of the case satisfying Cl1.3(c). Compliance with the development standard based on this would be unreasonable.*

This assessment generally agrees with the above, that strict compliance with the building height development standard is unreasonable in the circumstances as the proposed non-compliance is for a retractable awning over the existing outdoor terrace and will sit below the existing roof. Council generally agrees with the applicant, that the area of non-compliant building height does not result in unreasonable amenity impact when considered against the MLEP and MDCP. The area of non-compliant building height does not have a direct view impact.

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

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

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

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

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

Comment:
In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard
The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP

2013 are:

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

a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,
Comment:
The development will not result in an increase in the existing non-compliant building height. The proposed retractable awning is minor in scale and located 0.6m below the existing maximum height. The proposal is considered to be generally consistent with the topographic landscape, the prevailing building height and the streetscape character of the locality.

b) to control the bulk and scale of buildings,
Comment:
The proposed development will not alter the existing, bulk, scale or maximum height of the building.

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:
No views or vistas are expected to be unreasonably impacted as a result of the development, as works are located on the top floor of the existing residential flat building.

d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,
Comment:
The proposed development is largely contained within the existing footprint with only a marginal increase on the existing building height in a small section, however, this is still below the maximum height of the existing dwelling. The proposed variation to height will not unreasonably impact on the solar access of public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings.

e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.
Comment:
No applicable as the subject site is not located in a recreation or environmental protection zone.

Zone objectives
The underlying objectives of the R1 General Residential zone are:

- ***To provide for the housing needs of the community.***
  Comment:
  The proposal is for alterations and additions to an existing residential flat building and will provide a modern floor plan for the residents.

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

Comment:
The proposed development retains the existing unit, within the residential flat building.

- ***To enable other land uses that provide facilities or services to meet the day to day needs of residents***
  Comment:
  Not relevant. The proposal is for alterations and additions to a residential dwelling.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

Manly Development Control Plan

Built Form Controls
Change

Built Form Controls - Site Area: 482.8m^2	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	N: 10m (based on gradient 1:5.8)	No change	N/A	Yes
	S:10.2m (base on gradient 1:5.2)	No change	N/A	Yes
4.1.2.2 Number of Storeys	3	7 - Existing	N/A	Yes - no change
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	3 - 3.2m - No change, consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	9.2m (based on wall height)	No change	N/A	Yes
	Windows: 3m	South - 1.6m	46.67%	No
	Secondary street frontage: Prevailing setback	5.1m, consistent with prevailing setback	N/A	Yes
4.1.5.3 Private Open Space	12m^2 per dwelling	47.8m^2	N/A	Yes
4.1.9 Swimming Pools, Spas and Water	1m height above ground	1.1m above FFL/ 26.8m above natural ground	10%+	No

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Features		level		
	1m curtilage/1.5m water side/rear setback	Side setback - 3.3m Secondary street frontage - 7m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	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
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

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

Description of non-compliance
Clause 4.1.4.6 of the DCP stipulates that all new windows from habitable dwellings of dwellings that face the side boundary are to be setback at least 3m from side boundaries. The proposed replacement window to the Dining room is setback 1.6m from the southern side boundary, which is non-compliant with the control.

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 development is consistent with the character of the existing residential flat building and other dwellings observed in the immediate vicinity. The proposal will retain all existing vegetation to maintain the landscape character of the streetscape.

- ***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 proposed additions are within the footprint of the existing building and will result in a minor change to the built form. As such the proposal , is not anticipated to result in any adverse amenity impacts to adjoining neighbours in regards to solar access, view sharing, or privacy.

  The proposed window that is non-compliant with the 3m setback requirement, will replace an existing window and is limited in width and offset from the windows and private open space of the adjacent dwelling house to limit opportunities for overlooking and ensure adequate privacy is maintained between buildings. Therefore, the proposal will not result in any detrimental impacts on local amenity.

- ***Objective 3) To promote flexibility in the siting of buildings.***
  Comment:
  The proposed addition is limited in height and dimensions and is a continuation of the existing

built form. Given the lack of adverse amenity impacts, the proposed location is acceptable in this case.

- ***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 is located on the 7th floor of a residential flat building and there will be no change to landscaping on the site.

- ***Objective 5) To assist in appropriate bush fire asset protection zones.***
  Comment:
  The site is not bushfire prone.

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.

4.1.9 Swimming Pools, Spas and Water Features

Description of Non-compliance
Clause 4.1.9.1 Height above ground stipulates that swimming pools should not be elevated more than 1m above natural ground level

Consideration of any exception to exceed the height above ground must demonstrate that the swimming pool/ spa pool and their curtilage and/or concourse more than 1m above natural ground level:

i) would not detract from the amenity or character of the neighbourhood; and
ii) is a minimum distance from any side boundary equivalent to the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level.

The proposed swimming pool is approximately 26.8m above existing ground level or 1.3m above the FFL of the seventh floor.

Merit Consideration
With regard to the consideration of a variation, the proposed development is considered against the underlying objectives of the control as follows:

- ***Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;***
  Comment:

The proposed spa pool is within the footprint of the existing building and will not be visible from surrounding properties due tot he existing parapet wall that surrounds the roof terrace. As such the proposal, is not anticipated to result in any adverse amenity impacts to adjoining neighbours in regards to solar access, view sharing, or privacy.

- ***Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;***
  Comment:
  The spa pool is located on the seventh floor, behind the existing parapet wall. The proposal will not be visible from the streetscape and will maintain the established character of the locality.

- ***Objective 3) To integrate landscaping; and***
  Comment:
  The proposed spa pool is located on the seventh floor roof terrace and will be screened from view by the existing parapet wall.Existing landscaping on the site will be retained.

- ***Objective 4) To become an emergency water resource in bush fire prone areas.***
  Comment:
  The site is not located within a bushfire prone area, therefore this objective is not deemed relevant.

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 affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of $7,310 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $731,032.

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 2021;
- 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

Council is satisfied that:

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

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a unit within a residential flat building including a new spa pool has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to a variation of greater than 10% to Clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013, is a Class 2 building and a listed Heritage Item in the Manly Local Environment Plan 2013.

No public submissions were received during the notification period.

This assessment has concluded that the non-compliances are reasonable and the Clause 4.6 variation to the height of buildings development standard can be supported based on the applicants written request

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2022/1330 for Alterations and additions to a unit within a residential flat building including a new spa on land at Lot 20 SP 70727, 20 / 7 The Crescent, 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 with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
DA101 - Rev: B - Site Analysis Plan	19.08.2022	Hot Black
DA102 - Rev: A - Site Plan	19.08.2022	Hot Black
DA200 - Rev: D - Floor Plan	23.11.2022	Hot Black
DA210 - Rev: C - Roof Plan	19.08.2022	Hot Black
DA300 - Rev: B - Existing Conditions & Demo Plan	19.08.2022	Hot Black
DA310 - Rev: B - Existing Conditions & Demo RCP	19.08.2022	Hot Black
DA500 - Rev: C - Reflected Ceiling Plan	19.08.2022	Hot Black
DA800 - Rev: D - External Elevations	23.11.2022	Hot Black
DA801 - Rev: C - External Elevations	19.08.2022	Hot Black
DA810 - Rev: B - Sections	23.11.2022	Hot Black
DA811 - Rev: B - Sections	23.11.2022	Hot Black
DA812 - Rev: A - Section Details	23.11.2022	Hot Black
DA830 - Rev: B - Digital Finishes Board	23.11.2022	Hot Black

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate Certificate number: A453876	12 July 2022	Hot Black
Unit 20, 7 Commonwealth Parade, Manly Hard Floor Specification	21/03/2022	Acoustic Logic

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:

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	11/07/2022	Luke Horton

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

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

2. **Compliance with Other Department, Authority or Service Requirements**
The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	14/09/2022

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

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

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 Certifier 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 Certifier 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 Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

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

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

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

- 7.00 am to 5.00 pm inclusive Monday to Friday,

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) 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 an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) 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.

(e) 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.

(f) 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.

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

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

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

(j) 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.

(k) 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.

(l) A “Road Opening Permit” must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) 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 2018
(iv) Australian Standard AS1926 Swimming Pool Safety
(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of $7,310.32 is payable to Northern Beaches Council for the provision

of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of $731,032.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

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

6. **Security Bond**

A bond (determined from cost of works) of $2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required 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, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

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

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

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

7. **Building Code of Australia Fire Safety Requirements**

The Building Code of Australia fire safety requirements for the building as detailed and recommended in the BCA Assessment Report prepared by BCA Logic dated 23/5/2022, Ref No.1156-BCA-r2, are to be considered including any Performance Engineered Solutions as part of the assessment of the Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority, prior to the issue of the Construction Certificate..
Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

8. **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 Certifier 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.

9. **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 Certifier prior to the issue of the Construction Certificate.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

10. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

11. **Demolition Works - Asbestos**
Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

12. **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 Certifier.

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

13. **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 Principal Certifier prior to the issue of an 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 of the Environmental Planning and Assessment Regulation 2021.

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

14. **Swimming Pool/Spa Motor Noise**
The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

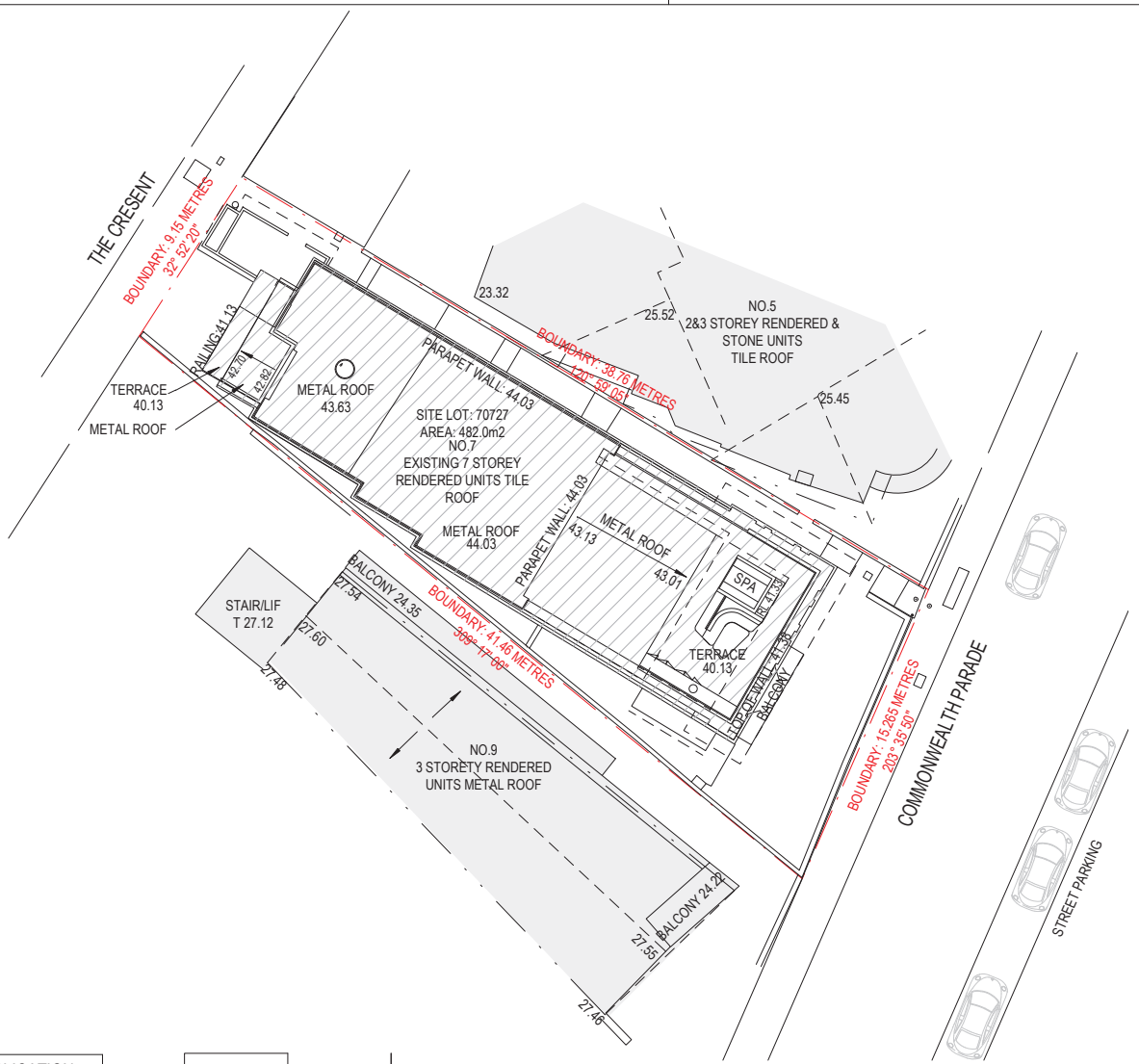
In signing this report, I declare that I do not have a Conflict of Interest.

Signed

The application is determined on //, under the delegated authority of:

Rodney Piggott, Manager Development Assessments

Peter Robinson, Executive Manager Development Assessment



DEVELOPMENT APPLICATION

0 10m

SITE PLAN

HOT BLACK
NOMINATED ARCHITECT | Kirsty Ball
NSW ARB 8729 | VIC ARB 23551

Melbourne Office | Level 4, 333 Flinders Lane | Melbourne, VIC 3000 | T: +61 3 9096 0424 | E: hello@hotblack.design | W: hotblack.design

Sydney Office | Level 6, 112 Castlereagh St | Sydney, NSW 2000 | T: +61 2 8091 1000 | E: hello@hotblack.design | W: hotblack.design

REV.	DESCRIPTION	DATE
A	FOR DEVELOPMENT APPLICATION	19.08.2022

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ADDRESS:
20/7 COMMONWEALTH PARADE, MANLY

LOT NUMBER:
70727

STRATA PLAN NUMBER:
SP0727

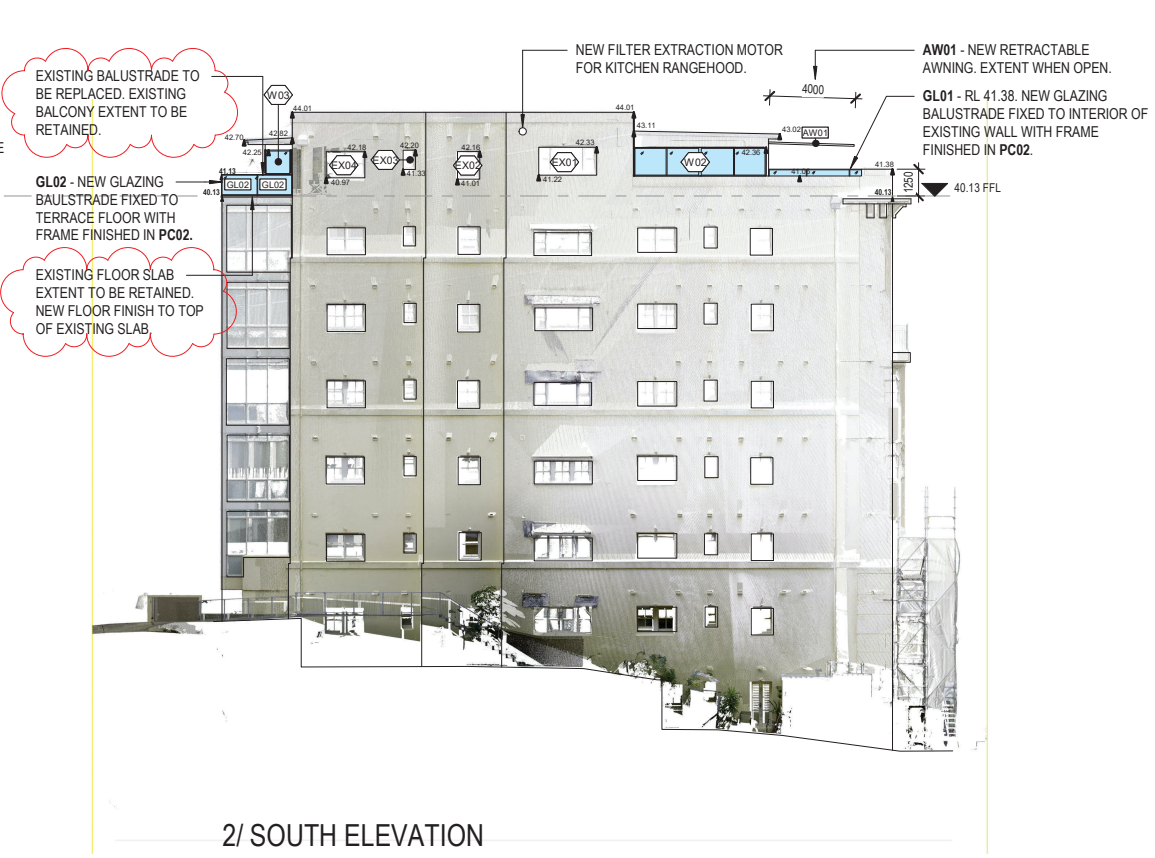
NORTH:

DATE: 19.08.2022
SCALE: 1 : 200 @ A3
PROJECT No. 21541

REV: A
DWG No: DA102

LEGEND	
	EXISTING TO REMAIN
	NEW PLASTERBOARD - SLAB TO U/S CEILING (METAL STUD)
	NEW GLAZING (WINDOW OR BALUSTRADE)

1/ EAST ELEVATION



2/ SOUTH ELEVATION

DEVELOPMENT APPLICATION

0 10m

EXTERNAL ELEVATIONS

HOT BLACK
NOMINATED ARCHITECT | Kirsty Ball NSW ARB 8729 | VIC ARB 23551

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W: hotblack.design	W: hotblack.design

REV.	DESCRIPTION	DATE
P1	DRAFT / FOR REVIEW	03.03.2022
P2	FOR REVIEW	29.03.2022
P3	FOR REVIEW	18.04.2022
A	FOR DEVELOPMENT APPLICATION	01.05.2022
B	FOR DEVELOPMENT APPLICATION	16.06.2022
C	FOR DEVELOPMENT APPLICATION	19.08.2022
D	FOR DEVELOPMENT APPLICATION	23.11.2022

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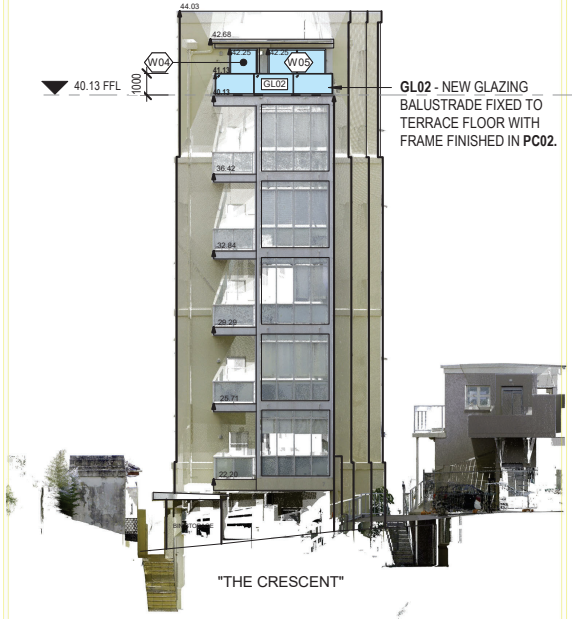
ADDRESS: 20/7 COMMONWEALTH PARADE, MANLY
LOT NUMBER: 70727
STRATA PLAN NUMBER: SP0727

NORTH:

DATE: 23.11.2022
SCALE: 1:200 @ A3
PROJECT No.: 21541
REV.: D
DWG No.: DA800

LEGEND	
	EXISTING TO REMAIN
	NEW PLASTERBOARD - SLAB TO U/S CEILING (METAL STUD)
	NEW GLAZING (WINDOW OR BALUSTRADE)



GL02 - NEW GLAZING BALUSTRADE FIXED TO TERRACE FLOOR WITH FRAME FINISHED IN **PC02.**

3/ WEST ELEVATION

AW01 - NEW RETRACTABLE AWNING. EXTENT WHEN OPEN.

GL01 - RL 41.38 TO MATCH HEIGHT OF EXISTING WALL. NEW GLAZING BALUSTRADE FIXED TO INTERIOR OF EXISTING WALL WITH FRAME FINISHED IN **PC02**.

BL01 - NEW EXTERNAL ADJUSTABLE BLIND TO FULL EXTENT OF W06.

EXISTING BALUSTRADE TO BE REPLACED. EXISTING BALCONY EXTENT TO BE RETAINED.

GL02 - NEW GLAZING BALUSTRADE FIXED TO TERRACE FLOOR WITH FRAME FINISHED IN **PC02**.

EXISTING FLOOR SLAB EXTENT TO BE RETAINED. NEW FLOOR FINISH TO TOP OF EXISTING SLAB.

4/ NORTH ELEVATION

DEVELOPMENT APPLICATION

0 10m

EXTERNAL ELEVATIONS

HOT BLACK
NOMINATED ARCHITECT | Kirsty Ball NSW ARB 8729 | VIC ARB 23551

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W: hotblack.design	W: hotblack.design

REV.	DESCRIPTION	DATE
P1	DRAFT / FOR REVIEW	03.03.2022
P2	FOR REVIEW	29.03.2022
P3	FOR REVIEW	18.04.2022
A	FOR DEVELOPMENT APPLICATION	01.05.2022
B	FOR DEVELOPMENT APPLICATION	16.06.2022
C	FOR DEVELOPMENT APPLICATION	19.08.2022

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ADDRESS: 20/7 COMMONWEALTH PARADE, MANLY
LOT NUMBER: 70727
STRATA PLAN NUMBER: SP0727

NORTH:

DATE: 19.08.2022
REV: C
SCALE: 1:200 @ A3
DWG No: DA801
PROJECT No. 21541

Appendix One - Clause 4.6 *Exceptions to Development Standards – Height*

Clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP 2013) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979 (EP&A Act) being:*

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

(c) to promote the orderly and economic use and development of land,

(d) to promote the delivery and maintenance of affordable housing,

(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

(g) to promote good design and amenity of the built environment,

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

The aims and objectives of Manly LEP 2013 Clause 4.6 are as follows:

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

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

Under Clause 4.6(3) and (4) of the MLEP 2013, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

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

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

(4)(a)(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,

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

1. Environmental Planning Instrument Details (Manly LEP 2013)

1.1 What is the name of the environmental planning instrument that applies to the land?

Manly Local Environmental Plan 2013

1.2 What is the zoning of the land?

R1 – General Residential

1.3 What are the objectives of the zone?

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

1.4 What is the development standard being varied?

Cl 4.3 - Height of Buildings

1.5 Under what clause is the development standard listed in the environmental planning instrument?

Cl 4.3 of the Manly Local Environmental Plan 2013

1.6 What are the objectives of the development standard?

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

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

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

(c) to minimise disruption to the following—

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

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

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

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

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

1.7 What is the numeric value of the development standard in the environmental planning instrument?

The numeric value of the height of buildings development standard applicable to the subject site is a maximum of 11m.

1.8 What is proposed numeric value of the development standard in your development application?

The existing building has a non-compliant maximum height of 28.7 metres and a new retractable awning is proposed at a height of 28.1 metres.

1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation sought is 87.47% or 17.1 metres (no increase to existing maximum building height).

2. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

2.1 Wehbe v Pittwater [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater [2007] NSW LEC 827, (*expanded on the findings in *Winten v North Sydney Council),* identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

*1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Way**).*

*2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Way**).*

*3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Way**).*

*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 (**Fourth Way**).*

*5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Way**).*

In the Micaul decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in Wehbe) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

2.2 Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater [2007] NSW LEC 827* and demonstrate the following:

1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7

In Randwick City Council v Micaul Holdings, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

4 Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;

2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and

3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the

circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone objectives by considering whether the development was antipathetic to the objectives.

In contrast to four2five, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

5. Action Pty Ltd v Woollahra Municipal Council [2018]

In Action Pty Ltd v Woollahra Municipal Council, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.

3. Consideration

The following section addresses the provisions of clause 4.6 of the MLEP 2013 together with principles established in the NSW Land and Environment Court Case Law outlined above.

Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in Winten v North Sydney Council and expanded by Justice Preston in Wehbe v Pittwater [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

3.1 Five (5) Part Test - Wehbe v Pittwater

1. ***The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).***

The objectives of the standard are:

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

Comment

The development will not result in an increase in the existing non-compliant building height, with the new retractable awning minor in scale and located 0.6 metres below the existing maximum height.

It is considered this objective is met, despite the numerical variation.

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

Comment

The proposed development will not alter the existing, bulk, scale or maximum height of the building.

It is considered this objective is met, despite the numerical variation.

(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

A site visit has been undertaken and it is considered the proposed development will not result in any view loss impacts, as works are located on the top floor of the existing residential flat building.

It is therefore considered this objective is met, despite the numerical variation.

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

Comment

The proposed variation to height will not alter the existing shadowing of the residential flat building.

(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:

No applicable as the subject site is not located in a recreation or environmental protection zone.

2. ***The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).***

This exception to development standards request does not rely on this reason.

3. ***The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).***

This exception to development standards request does not rely on this reason

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 (Fourth Way).***

This exception to development standards request does not rely on this reason.

5. ***The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).***

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height of buildings control pursuant to the First Way outlined in Wehbe.

Thus it is considered that compliance with Clause 4.6(3)(a) is satisfied.

3.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of *environmental planning grounds*. In particular:

Detail of Variation

- The existing building has a non-compliant building height of 28.7 metres and the development will not increase the existing maximum height.

- The development proposes alteration works and a new retractable awning on the terrace, at a maximum height of 28.1 metres. There will be no change to the apparent bulk and scale of the existing building, satisfying Cl1.3(g).

Neighbour Amenity

Fulfillment of each of the criteria below demonstrates a development satisfying Cl1.3(g).

- The development is located within the existing maximum building height and building envelope,

- Compliance with the height control would unreasonably limit the refurbishment of the existing unit, accordingly compliance with the development standard in this instance is unreasonable.

- The development will not have any solar access impacts, due to the minor scale and location on the top floor of the existing building, accordingly, compliance with the development standard based on this would be unreasonable.

- The height variation has no impact on privacy for neighbours, accordingly, the variation is reasonable in the circumstances of the case.

Site Constraints

- It would be unreasonable to require compliance with the current development standard, when works are located within an existing building with a non-compliant height. As such the minor variation allows for the orderly and economic use of the site and allows for an ecologically sustainable development satisfying Cl1.3(g) and (f).

Design and Streetscape Appeal

- Strict numerical compliance with the height control would not result in a better urban design outcome as the architectural and historical character of the building is maintained.

- The development will not have a detrimental impact on the visual amenity of the area, as it is located on the 7th floor, remaining barely visible from the street and surrounding foreshore. Compliance with the development standard based on this would be unreasonable.

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest as the proposal remains consistent with the objectives of the zone, ensuring that the appropriate refurbishment of the site can be carried out. Compliance with the development standard based on this would be unreasonable.

Natural Environment

- The numerical height variation has no impact on the natural environment. No landscape area is lost or impacted satisfying Cl1.3(b).

- The natural environment is unaffected by the small departure to the development standard and it would be unreasonable for the development to be refused on this basis.

Environmentally Sustainable Development

- The proposal represents an environmentally sustainable design allowing for the refurbishment of an existing unit satisfying Cl1.3(f). Compliance with the development standard based on this would be unreasonable.

Social and economic welfare

- The variation to height as detailed above will have no social impacts for the site or local area satisfying Cl1.3(b)and accordingly refusal of the development based on this reason would be unreasonable.

- The variation to height as detailed above will have no economic impacts for the site or the local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard.

- The development will not result in an increase to the existing maximum building height and the minor alterations will be compatible within the context in which it sits and is reasonable in the circumstances of the case satisfying Cl1.3(c). Compliance with the development standard based on this would be unreasonable.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the height variation.

3.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A). An assessment of consistency with the objectives of the Zone is provided below:

Zone – R1 General Residential

Objectives of zone

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

Consistent. The proposal is for alterations and additions to an existing residential flat building and will provide a modern floor plan for the residents.

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

Consistent. The proposed development retains the existing unit, within the residential flat building.

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

Not relevant. The proposal is for alterations and additions to a residential dwelling.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.

Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The non-compliance will not raise any matter of State or Regional Significance.

Clause 4.6(5)(b) the public benefit of maintaining the development standard,

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence

How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

(c) to promote the orderly and economic use and development of land,

(d) to promote the delivery and maintenance of affordable housing,

(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

(g) to promote good design and amenity of the built environment,

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

Strict compliance with the 11 metre height development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment* and *promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

Conclusion

The proposed development is for alterations and additions to an existing residential flat building on land zoned R1 – General Residential.

As stated above the development will not increase the existing non-compliant building height of 28.7 metres. The minor addition of a retractable awning at 28.1 metres allows for the appropriate refurbishment of the existing unit.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation of which have been reasonably satisfied under the provisions of Clause 4.6.

The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance.

The sufficient environmental planning grounds stipulated within this request, demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the height variation.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.3, and therefore the merits of the proposed variation are considered to be worthy of approval.

ITEM 5.4	**DA2022/1131 - 5/7 PARKVIEW ROAD, FAIRLIGHT - ALTERATIONS AND ADDITIONS TO A RESIDENTIAL FLAT BUILDING INCLUDING THE CONSOLIDATION OF UNITS 5 AND 6 INTO A SINGLE DWELLING.**
AUTHORISING MANAGER	**Rod Piggott**
TRIM FILE REF	**2022/763141**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plans & Elevations** **3 ⇩Clause 4.6** **4 ⇩SEPP 65**

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

A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/1131 for Alterations and additions to a residential flat building including the consolidation of Units 5 and 6 into a single dwelling on land at Lot 6 SP 80349, 6 / 7 Parkview Road, FAIRLIGHT, Lot 5 SP 80349, 5 / 7 Parkview Road, FAIRLIGHT subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1131

Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 6 SP 80349, 6 / 7 Parkview Road FAIRLIGHT NSW 2094 Lot 5 SP 80349, 5 / 7 Parkview Road FAIRLIGHT NSW 2094
Proposed Development:	Alterations and additions to a residential flat building including the consolidation of Units 5 and 6 into a single dwelling
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Timothy Benjamin Behrens Kathleen Tarplee
Applicant:	Timothy Benjamin Behrens

Application Lodged:	09/08/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	18/08/2022 to 01/09/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 25%
Recommendation:	Approval

Estimated Cost of Works:	$ 148,500.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing residential flat building including the consolidation of two units into a single unit, internal alterations and construction of two new balconies.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to a breach of the floor space ratio (FSR) development standard by more than 10% and involves a Class 2 building.

The FSR of the proposed development has been measured at 0.94:1 which represents a variation of 25% to the maximum prescribed FSR of 0.75:1.

The 4.6 request for the non-compliance with FSR standard arises from the existing gross floor area on the site. The proposal does not add or remove any existing gross floor area. As such, the proposed FSR is a technical non-compliance as it does not alter the existing FSR. The bulk and scale of the existing building is generally maintained with the balcony additions being of a lightweight design that minimises any perceived increase in building bulk.

The application was notified in accordance with Council's Community Participation Plan to the adjoining properties. No submissions were received during the public exhibition of the application.

Critical assessment issues included matters relating to dwelling density, building setbacks, privacy and parking. The proposed non-compliant elements are generally minor and are acceptable in this case.

This report concludes with a recommendation that the NBLPP grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to the existing residential flat building including the consolidation of units 5 & 6 on the third storey into a single unit, internal layout changes, alterations to existing window openings and the construction of two cantilevered balconies, one at the front of the building and another at the rear of the building.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size
Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)

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 6 SP 80349 , 6 / 7 Parkview Road FAIRLIGHT NSW 2094 Lot 5 SP 80349 , 5 / 7 Parkview Road FAIRLIGHT NSW 2094
Detailed Site Description:	The site consists of one (1) allotment located on the western side of Parkview Road. The strata lots subject to the application are Lots 5 and 6 on the top floor of the building. The site is generally regular in shape with a frontage of 13.71m along Parkview Road and a depth of 32.915m. The site has a surveyed area of 447.2m². The site is located within the R1 General Residential zone and accommodates a three-storey residential flat building containing six dwellings and five hardstand parking spaces at the front. The site falls approx. 2m from the west towards the east. The site is mostly built upon with small garden areas along the northern and southern sides of the building and rear boundary. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by a mix of residential types, including dwelling houses, semi-detached dwellings and residential flat buildings.

Map:

SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

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	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Section 4.15 Matters for Consideration	Comments
	Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to an assessment of the proposal against the provisions of SEPP 65 and a design verification certificate. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 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.
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 Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 18/08/2022 to 01/09/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	***Supported, subject to conditions*** <u>Further Comments- Review of Amended Reports</u> The application has been further reviewed with respect the amended reports and 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. 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. <u>Original Comments</u> The BCA Compliance Report (including marked up copy by Stukel Architecture) both dated 31/1/2022 and the BCA Performance Solution Report dated 20/4/2022, prepared by the AED Group are stamped as **Draft** copies. The final completed reports are required to be provided for review prior to further consideration being given by this Section.
Strategic and Place Planning (Heritage Officer)	***Supported without condition*** HERITAGE COMMENTS Discussion of reason for referral The proposal has been referred to Heritage as the subject property adjoins a heritage item **I2 Stone Kerbs** Details of heritage items affected Details of the item as contained within the Manly inventory is as follows:

<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
<tr><td></td><td>
<u>Statement of significance:</u>
Stone kerbs: Stone kerbs are heritage listed.

<u>Physical description:</u>
Stone kerbs: Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth
century. Mostly located within Manly Village area and adjacent lower slopes of Eastern Hill and Fairlight.

<table>
<tr><th colspan="3">Other relevant heritage listings</th></tr>
<tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr>
<tr><td>Australian Heritage Register</td><td>No</td><td></td></tr>
<tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr>
<tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr>
<tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr>
<tr><td>Other</td><td>N/A</td><td></td></tr>
</table>
<table>
<tr><th>Consideration of Application</th></tr>
<tr><td>The proposal seeks consent for alterations and additions to an existing residential flat building, including the combining of two units into one. There is a listed heritage item outside the property being stone kerbs which extends along the western side of Parkview Road. There are no stone kerbs outside the subject property, only a wide concrete driveway crossover and car parking. As there is no stone kerbs adjoining the property, the proposal is considered to not impact upon the heritage item or its significance.

Heritage raises no objections and requires no conditions.

Consider against the provisions of CL5.10 of MLEP.

Is a Conservation Management Plan (CMP) Required? No
Has a CMP been provided? No
Is a Heritage Impact Statement required? No
Has a Heritage Impact Statement been provided? No</td></tr>
</table>
</td></tr>
<tr><td>Strategic and Place Planning (Urban Design)</td><td>Unsupported. See Planner Comment below

This advice is provided as an internal referral from the Urban Design Unit to the Development Assessment Officer for consideration and</td></tr>
</table>

Internal Referral Body	Comments
	coordination with the overall assessment. The application seeks consent for alterations and additions to an existing residential flat building including the consolidation of two units into a single unit, internal alterations and construction of two new balconies. Urban Design cannot support the proposal because of the following issues: 1. SEPP 65 and the Apartment Design Guide apply to residential flat buildings that are three or more storeys that have four or more dwellings and where the development consists of substantial refurbishment of an existing building. The proposal does not comply with: • Objective 4E-1 Apartments provide appropriately sized private open space and balconies to enhance residential amenity - 3+ bedroom apartments requires balcony of 12sqm minimum area, 2.4m minimum depth. The minimum balcony depth to be counted as contributing to the balcony area is 1m • Objective 4M-1 Building facades provide visual interest along the street while respecting the character of the local area...Building facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale... Design solutions may include: - well composed horizontal and vertical elements - variation in floor heights to enhance the human scale - elements that are proportional and arranged in patterns - public artwork or treatments to exterior blank walls - grouping of floors or elements such as balconies and windows on taller building. 2. The proposal comprises of two new balconies as additions to the building facades. The existing building has no existing balcony so the proposed balconies are new elements which are not 'proportional and arranged in patterns' or 'grouped elements'. The proposed balcony on the west elevation will breach the rear setback of 8m. The return balcony proposed facing the south elevation will breach the side setback (Requirement is one third of the height of the adjacent external wall of the building). 3. The new enlarged opening facing south might need to be fire-rated as the existing wall is less than 3m from the boundary. 4. A suggestion to mediate the above-mentioned issues will be to delete the return balcony facing south so that the front and rear balconies proposed are more similar as repeated facade elements. The proposed enlarged opening to the return balcony area should be left unchanged, i.e. it should remain as an existing window.

Internal Referral Body	Comments
	Planner Comment: Based on the above comments and amendment suggestion by Urban Design, a condition is recommended to delete the front balcony return along the southern elevation and for door "D03" be retained as a window. This is expected to improve the urban design of the proposal through providing symmetrical built elements that better complement the existing architectural form of the building.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

SEPP 65 - Design Quality of Residential Apartment Development

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

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

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

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

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

As previously outlined the proposed development is for the substantial redevelopment of an existing three-storey residential flat building containing six dwellings to consolidate Units 5 & 6 on the top floor into an single unit containing four (4) bedrooms.

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

As previously outlined within this report Clause 29 of the Environmental Planning and Assessment Regulation 2021 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

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

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

DESIGN REVIEW PANEL

Northern Beaches Council has an appointed Design Review Panel, known as the Design Sustainability Advisory Panel (DSAP). While the proposed development involves the substantial redevelopment of the existing building through the consolidation of two units on the top floor of the residential flat building, most works are internal and, excluding the proposed balconies, are contained within the existing built form. As such, the application does not require referral to DSAP.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

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

Comment:

The area around the site contains several examples of three or more storey residential flat buildings. The bulk of the works are internal and are not readily perceivable from the public domain. Some external works located on the front and rear elevations through the addition of balconies. They are considered to be sympathetic to the architectural style of the existing building. As such, the proposed development is considered to generally maintain consistency with the prevailing neighbourhood character.

Principle 2: Built Form and Scale

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

Comment:

The overall bulk and scale of the building is to remain generally as existing. The proposed balconies and the front and rear of the building are not considered to cause an increased visual perception of additional building bulk. The existing building footprint and roof ridge is maintained. No unreasonable impacts to the site, adjacent properties or the public domain are expected as a result of the proposed development.

Principle 3: Density

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

Comment:

The proposal results in a reduction of density on the site due to the consolidation of two units into one. The proposal will result in five units being located on the site. This represents a dwelling density of approx. one dwelling per 89.4m^2 of site area; a reduction from the existing dwelling density of one dwelling per 74.5m^2 of site area.

Principle 4: Sustainability

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

Comment:

The design of the alterations is considered to achieve sustainability requirements. A BASIX Certificate has been provided.

Principle 5: Landscape

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

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar

access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long-term management.

Comment:

No change to the existing landscaped setting of the site is proposed.

Principle 6: Amenity

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

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

Comment:

The proposed development is considered to improve the amenity of the existing building and dwellings by reducing the dwelling density on the site and providing a larger apartment while being contained within the footprint of the building. The addition of balconies and the front and rear of the building will improve upon the variety of living space able to be used by occupants of the apartment.

Principle 7: Safety

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

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

Comment:

Existing levels of safety are not expected to be compromised by the proposed development. The proposal includes the addition of a balcony on the front elevation which can assist in providing casual surveillance of the street.

Principle 8: Housing Diversity and Social Interaction

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

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

Comment:

The proposed development provides a larger apartment style of dwelling while generally maintaining

the existing built form of the building.

Principle 9: Aesthetics

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

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

Comment:

The proposed development is generally sympathetic to the architectural style of the existing building. The addition of the balconies to the front and rear elevations are of a minor scale and not considered to unreasonably impact upon the design aesthetics of the existing building.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	The siting of the existing building is unaltered.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Orientation of the existing building is unchanged. The addition of the front and rear balconies and associated doors and windows allows for more internal solar access.
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	The transition between public and private domains is unaltered. The amenity of the public domain is maintained.
Communal and Public Open Space	Appropriate communal open space is to be provided as follows: 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)	No change to the existing communal areas are proposed.
Deep Soil Zones	Deep soil zones are to meet the following	No change to the existing

<table>
<tr>
<td></td>
<td>minimum requirements:

<table>
<tr><th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr>
<tr><td>Less than 650m^2</td><td>-</td><td rowspan="4">7%</td></tr>
<tr><td>650m^2 – 1,500m^2</td><td>3m</td></tr>
<tr><td>Greater than 1,500m^2</td><td>6m</td></tr>
<tr><td>Greater than 1,500m^2 with significant existing tree cover</td><td>6m</td></tr>
</table>
</td>
<td>landscaped setting.</td>
</tr>
<tr>
<td>Visual Privacy</td>
<td>Minimum required separation distances from buildings to the side and rear boundaries are as follows:

<table>
<tr><th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr>
<tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr>
<tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr>
<tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr>
</table>

Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.

Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</td>
<td>Despite the existing building not being compliant with the minimum 3m and 6m side boundary separation requirements, the proposal does not alter the built form of the existing building. Proposed window/door alterations are not expected to unreasonably impact upon the visual privacy between dwellings.

The proposed front balcony has a separation of 2.9m to the northern boundary and a separation of 1.8m to the southern adjacent building. It is noted that the return element of the front balcony is conditioned to be deleted, thereby increasing the southern boundary separation to 3m.

The proposed rear balcony has a separation of 2.8m to the northern boundary and a separation of 3m to the southern adjacent building.</td>
</tr>
</table>

		Despite the proposed balconies not being compliant with the minimum boundary separation requirements, it is considered the extent of privacy impact is reasonable in the context of the site. The separation between the balconies and adjacent buildings is greater than 6m. The adjacent buildings also incorporate balconies that don't comply with the separation requirements. Overall, it is considered that any additional visual privacy impact caused by the proposal is reasonable in the context of the site and surrounds.
Pedestrian Access and entries	Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify? Large sites are to provide pedestrian links for access to streets and connection to destinations.	No change to the existing building access points is proposed.
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	No change to the existing vehicle access is proposed.
Bicycle and Car Parking	For development in the following locations: • On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or • On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street.	No change to the existing parking is proposed.

<table>
<tr><td></td><td>Parking and facilities are provided for other modes of transport.

Visual and environmental impacts are minimised.</td><td></td></tr>
<tr><td colspan="3">Part 4 Designing the Building</td></tr>
<tr><td colspan="3">Amenity</td></tr>
<tr><td>Solar and Daylight Access</td><td>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:

• Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.</td><td>The proposed development achieves suitable solar access.</td></tr>
<tr><td></td><td>• A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.</td><td>N/A</td></tr>
<tr><td>Natural Ventilation</td><td>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:

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

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

2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr>
<tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr>
<tr><td>If located in</td><td>3.3m for ground and first floor to</td></tr>
</table>
</td><td>The existing ceiling heights are unaltered.</td></tr>
</table>

	mixed used areas: promote future flexibility of use	
Apartment Size and Layout	Apartments are required to have the following minimum internal areas: **Apartment type** / **Minimum internal area** Studio: 35m^2 1 bedroom: 50m^2 2 bedroom: 70m^2 3 bedroom: 90m^2 The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m^2 each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m^2 each.	Minimum requirement - 107m^2 Proposed - 131.45m^2
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	Complies
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Complies
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Complies
	Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space).	Complies
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	Complies
	Living rooms or combined living/dining rooms have a minimum width of: • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments	Complies
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	N/A
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: **Dwelling Type** / **Minimum** / **Minimum**	The proposed balconies have total area of 23.5m^2 which complies with the minimum area requirement. However, the

<table>
<tr><td></td><td><table>
<tr><th></th><th>Area</th><th>Depth</th></tr>
<tr><td>Studio apartments</td><td>4m^2</td><td>-</td></tr>
<tr><td>1 bedroom apartments</td><td>8m^2</td><td>2m</td></tr>
<tr><td>2 bedroom apartments</td><td>10m^2</td><td>2m</td></tr>
<tr><td>3+ bedroom apartments</td><td>12m^2</td><td>2.4m</td></tr>
</table>
The minimum balcony depth to be counted as contributing to the balcony area is 1m</td><td>condition recommending deletion of the front balcony return reduces the total balcony area to 18.7m^2.

While compliant in terms of area, the balconies do not comply with the minimum depth requirement. Despite this, it is considered the proposal improves upon the existing amenity situation of the units on the top floor as the existing building does not contain any balconies.

The intention of the requirement is considered to be adequately addressed by the proposed development.</td></tr>
<tr><td></td><td>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m^2 and a minimum depth of 3m.</td><td>N/A</td></tr>
<tr><td>Common Circulation and Spaces</td><td>The maximum number of apartments off a circulation core on a single level is eight.</td><td>N/A</td></tr>
<tr><td></td><td>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</td><td>N/A</td></tr>
<tr><td>Storage</td><td>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:

<table>
<tr><th>Dwelling Type</th><th>Storage size volume</th></tr>
<tr><td>Studio apartments</td><td>4m^2</td></tr>
<tr><td>1 bedroom apartments</td><td>6m^2</td></tr>
<tr><td>2 bedroom apartments</td><td>8m^2</td></tr>
<tr><td>3+ bedroom apartments</td><td>10m^2</td></tr>
</table>
At least 50% of the required storage is to be located within the apartment.</td><td>Complies</td></tr>
<tr><td>Acoustic Privacy</td><td>Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at</td><td>Complies</td></tr>
</table>

<table>
<tr><td></td><td>least 3m away from bedrooms.</td><td></td></tr>
<tr><td>Noise and Pollution</td><td>Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.</td><td>Complies</td></tr>
<tr><td colspan="3">Configuration</td></tr>
<tr><td>Apartment Mix</td><td>Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.</td><td></td></tr>
<tr><td>Ground Floor Apartments</td><td>Do the ground floor apartments deliver amenity and safety for their residents?</td><td>N/A</td></tr>
<tr><td>Facades</td><td>Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.</td><td>The facade of the existing building is generally unaltered. The proposed balconies are not expected to detract from the building.</td></tr>
<tr><td>Roof Design</td><td>Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features.
Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused using the roof top.</td><td>The roof of the existing building is maintained.</td></tr>
<tr><td>Landscape Design</td><td>Was a landscape plan submitted and does it respond well to the existing site conditions and context.</td><td>No change to the existing landscaped setting.</td></tr>
<tr><td>Planting on Structures</td><td>When planting on structures the following are recommended as minimum standards for a range of plant sizes:
<table>
<tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr>
<tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m^3</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr>
<tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m^3</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr>
<tr><td>Small trees</td><td>6-8m high, up to 4m crown</td><td>9m^3</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr>
</table></td><td>N/A</td></tr>
</table>

		spread at maturity				
	Shrubs			500-600mm		
	Ground Cover			300-450mm		
	Turf			200mm		
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features					N/A
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.					N/A
Mixed Use	Can the development be accessed through public transport, and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.					N/A
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.					N/A
Performance						
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?					Complies
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?					Complies
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?					Complies
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?					Complies

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

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

(1) If an application for the modification of a development consent or a development application for the

carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

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

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

Comment:

The proposed development does not warrant refusal based on the above matters

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

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

(3) To remove doubt:

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

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

Comment:

The proposed development is considered to appropriately respond to the design quality principles and the objectives of the ADG. As such, the proposed development demonstrates consistency with the requirements of SEPP 65.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A463213, dated 21/06/2022). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Biodiversity and Conservation) 2021

Chapter 10 – Sydney Harbour Catchment

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

An assessment of the proposal against Section 10.1(1) (aims of the Chapter), Section 10.10 (nominated planning principles) and Section 10.19 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of this Chapter.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	10.4m	N/A	Yes
Floor Space Ratio:	0.75:1 (335.4m^2)	0.94:1 (419.3m^2)	25% (83.9m^2)	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.75:1 (335.4m^2)
Proposed:	0.94:1 (419.3m^2)
Percentage variation to requirement:	25%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61,* and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

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

(2) Development consent may, subject to this clause, be granted for development even though the

development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

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

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

(4) Development consent must not be granted for development that contravenes a development standard unless:
(a) the consent authority is satisfied that:
(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
(b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's

written request has adequately demonstrated that that there are sufficient environmental planning grounds to justify contravening the development standard:

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)
The objects of this Act are as follows:
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
(c) to promote the orderly and economic use and development of land,
(d) to promote the delivery and maintenance of affordable housing,
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
(g) to promote good design and amenity of the built environment,
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

The following environmental planning grounds are relevant:

- *The non-compliance with the standard is 83m^2 which is equivalent to a 25% noncompliance. It is numerically significant, however, it is a historical non-compliance.*
- *The proposal does not alter the existing non-compliance.*
- *A requirement to comply with the standard, by demolishing a substantial component of the existing building to comply would be unreasonable.*
- *A requirement for a clause 4.6 submission is a result of the consolidation of refurbishment of 2 units into one and the addition of the balconies to the building and therefore it is a technical requirement.*
- *The consolidation of 2 dwellings into one reduces the density of the development on the site and the provision of balconies on the second floor will enhance the amenity of the dwelling for the future occupants without any unreasonable impact on the amenity of adjoining and nearby properties. Furthermore, the proposed balconies are compatible with the character of the existing building and the streetscape and subsequently will provide an appropriate exemplar for future balconies for the remaining floors of the building, which are desirable features on residential flat buildings as a result of the enhanced amenity they provide for the occupants.*
- *The proposal is an appropriate design for the site and appropriately balances the broader envelope controls having regard to the topography of the site. The proposal provides an improved standard of amenity for the future occupants - particularly in terms of views and*

outlook without unreasonably compromising the amenity of adjoining and nearby residents and the locality generally.

- *The proposal is in keeping with the bulk, scale and mass of surrounding development, particularly the newer development and evolving character of the locality.*
- *The proposal will not have any unreasonable impacts on adjoining and nearby properties in terms of shading and privacy impacts.*

Council generally concurs with the applicant's justification to vary the floor space ratio development standard. The proposal will not increase the existing non-compliant floor space on the site and not substantially alter the built form of the existing residential flat building. The proposal is unlikely to cause unreasonable impact upon adjacent properties or the public domain.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor space ratio development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

Apart from the proposed balconies and the front and rear of the building, the overall bulk and

scale of the existing building is to remain unchanged. The proposed balconies are a lightweight design and are not expected to cause any unreasonable additional bulk to the building. The proposal is consistent with the prevailing and desired streetscape character.

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

Comment:

As above, the proposal does not introduce any unreasonable building bulk. The proposal reduces the overall dwelling density on the site by consolidating two units into one unit. The proposal will not unreasonably obscure any important landscape and townscape features.

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

Comment:

It is considered the proposal demonstrates and acceptable visual relationship with the existing general residential character and landscape of the area.

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

Comment:

It is demonstrated that the proposed development is designed in a manner that minimises impact on adjacent properties and the public domain.

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

Comment:

Not applicable.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

  Comment:

  The proposal adds diversity to the housing stock in the Fairlight area and provides the option of a family-sized apartment within close proximity to the Manly town centre.

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

  Comment:

  The proposal introduces additional housing variety on the site by providing a four bedroom

apartment in an existing building containing two bedroom apartments.

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

  Comment:

  The proposal does not alter the existing residential land use of the site.

Conclusion:

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

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Floor space ratio Development Standard is assumed by the Local Planning Panel.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 447.2m^2	**Requirement**	**Proposed**	**% Variation**	**Complies**
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling/150m^2	1 dwelling/89.4m^2	40.4%	No
	Dwelling Size: 107m^2	131.45m^2	N/A	Yes
4.1.2.1 Wall Height	N: 9.5m (based on gradient 1:12)	7.8m	N/A	Yes
	S: 9.5m (based on gradient 1:12)	9.1m	N/A	Yes
4.1.2.2 Number of Storeys	3	3	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	Unaltered	N/A	Yes
	Pitch: maximum 35 degrees	Unaltered	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line (4m)	Building - 6m	N/A	Yes
		Balcony - 4.5m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N: 2.6m (based on wall height)	Building - 2.7m	N/A	Yes
		Balcony - 2.8m	N/A	Yes
	S: 3m (based on wall height)	Building - 3.1m	N/A	Yes
		Balcony - 1.8m	40%	No

	Windows: 3m	2.7m	Existing	Acceptable, as existing
4.1.4.4 Rear Setbacks	8m	Building - 7.8m	Existing	Acceptable, as existing
		Balcony - 6.6m	17.5%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS2	Open space 50% of site area (223.6m^2)	19.9% (88.8m^2)	Existing	Acceptable, as existing
4.1.5.2 Landscaped Area	Landscaped area 30% of open space (26.6m^2)	22.4% (19.9m^2)	Existing	Acceptable, as existing
4.1.5.3 Private Open Space	12m^2 per dwelling	17.8m^2 per dwelling	N/A	Yes
Schedule 3 Parking and Access	RFB 8 spaces, incl 1 visitor	5 spaces, no visitor	Existing	Acceptable, as existing

Compliance Assessment

Clause	**Compliance with Requirements**	**Consistency Aims/Objectives**
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	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)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Description of non-compliance

In consideration of the potential privacy impacts of the proposed balconies upon adjacent properties, a merit assessment of the proposal is provided below.

Merit consideration:

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

Objective 1) To minimise 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 balconies are modest is size with the depth of the front balcony being 1.5m and the depth of the rear balcony being 1.2m measured from the building facade. This depth restricts the ability of the balconies to be used by a large number of people at any one time. The balconies are expected to be primarily used by occupants as small areas of outdoor recreation space.

The northern adjacent building also contains an elevated front balcony with a privacy screen on its southern side. This, along with the greater than 6m separation between balconies, will assist in maintaining acceptable levels of privacy between dwellings.

The floor level of the proposed front balcony is above the wall height of the southern adjacent building meaning privacy view corridors from the front balcony will be over the top of that building. Additionally, screens are installed on some of the windows on the northern elevation of the southern adjacent building, assisting is managing privacy between dwellings.

The proposed rear balcony does not overlook any habitable windows of the adjacent buildings and is setback from the rear boundary to ensure adequate spatial separation to rear adjacent properties is achieved.

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 will provide appropriate privacy measures without compromising access to light and air. The proposal will balance outlook and views from habitable rooms and private open space.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development will allow for the casual surveillance of the street.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in s1.3 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 site is located in the residential density area D2, which requires a minimum 150m^2 of site area per dwelling.

The proposal would result in five dwellings being located on the site with a density of 89.4m^2, which represents a 40.4% variation.

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 two-bedroom apartments and one four-bedroom apartment within the existing residential flat building. This adds to the dwelling diversity on the site and provides choice of a range of apartment sizes in Manly. The proposal is considered to be 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 does not alter the existing building footprint on the site. No additional impact to existing vegetation, waterways, riparian land or topography is expected.

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 4.1.1.1(d). This ensures there would be an acceptable level of internal amenity.

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

Comment:

The proposal does not substantially alter the built form of the existing residential flat building. The proposal is not considered to have a detrimental impact upon the streetscape character.

Objective 5) To maximise the use of existing infrastructure.

Comment:

The proposal will maintain the use of existing infrastructure where appropriate.

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

with the relevant objectives of MDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.3 Floor Space Ratio (FSR)

Description of non-compliance

The proposed development has a floor space ratio of 0.94:1 (419.3m^2), which represents a variation of 25% to the prescribed 0.75:1 (335.4m^2) FSR requirement.

Refer to Clause 4.6 Exceptions to Development Standards of MLEP 2013 for a detailed assessment.

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

Description of non-compliance

4.1.4.2 Side setbacks and secondary street frontages

Setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building.

The setbacks of the existing residential flat building are not proposed to be altered.

The proposed front balcony is setback a minimum of 1.8m from the southern side boundary, which encroaches into the side setback area.

4.1.4.4 Rear Setbacks

The distance between any part of a building and the rear boundary must not be less than 8m.

The proposed rear balcony is setback a minimum of 6.6m from the rear boundary, representing a variation of 17.5%.

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 development is consistent with the bulk and scale of the existing building and surrounding development. No adverse impact to the streetscape is expected.

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 proposed development will result in no unreasonable impacts in relation to privacy, sunlight access, views, streetscape character or traffic conditions.

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

Comment:

The proposed development is considered to be appropriately sited and integrates well into the existing building.

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 does not alter the existing deep soil areas and planting provided on the site.

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

Comment:

Not applicable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in s1.3 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

4.1.5.1 Minimum Residential Total Open Space Requirements

The site is located in the OS2 area, which requires a minimum 50% of site area (223.6m^2) to be classified as Total Open Space (TOS).

The proposed development incorporates 19.9% of site area (88.8m^2) as TOS. It is noted that the proposed development does not alter the existing amount of TOS provided on the site.

4.1.5.2 Landscaped Area

The control requires sites is area OS2 to contain at least 30% of landscaped area calculated from the actual TOS provided (26.6m^2).

The proposed development incorporates 22.4% of TOS (19.9m^2) as landscaped area, representing a variation of 25.2% (6.7m^2). It is noted that the proposed development does not alter the existing amount of landscaped area provided on the site.

Merit consideration

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

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

Comment:

The proposed development does not result in the removal of any significant or native vegetation.

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 does not alter the existing amount of soft surface landscaping provided onsite.

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

Comment:

The proposed development is not expected to result in unreasonable amenity impact to adjacent properties by way of solar access, privacy and view loss.

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

Comment:

The proposed development does not alter the existing amount of landscaped area. Existing site conditions will be maintained.

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

Comment:

The proposal will not lead to a significant spread of weeds.

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

Comment:

The proposal will not compromise potential wildlife habitat within the locality.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in s1.3 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

Based on the parking rates for residential flat buildings in Schedule 3 of MDCP, the site requires a minimum of eight parking spaces, including one visitor space.

The site contains five onsite parking spaces forward of the building. Two of these spaces are associated with the existing units subject to this application. The proposed development does not include the provision of any additional onsite parking spaces.

It is considered that while no parking spaces are provided, the proposed development does not increase the existing parking demand of the site. Additionally, due to the siting and layout of the existing building, it is impractical to provide the required parking spaces without significant site alterations, which would likely lead to a detrimental impact upon the character of the building and the streetscape.

As such, the provision of additional onsite parking is not considered reasonable in this instance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of $ 743 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of $ 148,500.

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 2021;
- 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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2022/1131 for Alterations and additions to a residential flat building including the consolidation of Units 5 and 6 into a single dwelling on land at Lot 6 SP 80349, 6 / 7 Parkview Road, FAIRLIGHT, Lot 5 SP 80349, 5 / 7 Parkview Road, 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 with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
2127 DD006 Rev C	14/06/2022	Stukel Architecture
2127 DD007 Rev C	14/06/2022	Stukel Architecture
2127 DD008 Rev C	14/06/2022	Stukel Architecture
2127 DD009 Rev C	14/06/2022	Stukel Architecture
2127 DD010 Rev C	14/06/2022	Stukel Architecture
2127 DD011 Rev C	14/06/2022	Stukel Architecture
2127 DD012 Rev C	14/06/2022	Stukel Architecture
2127 DD013 Rev C	14/06/2022	Stukel Architecture
2127 DD014 Rev C	14/06/2022	Stukel Architecture
2127 DD015 Rev C	14/06/2022	Stukel Architecture
2127 DD016 Rev C	14/06/2022	Stukel Architecture
2127 DD017 Rev C	14/06/2022	Stukel Architecture
2127 DD018 Rev C	14/06/2022	Stukel Architecture
2127 DD019 Rev C	14/06/2022	Stukel Architecture
2127 DD020 Rev C	14/06/2022	Stukel Architecture
2127 DD021 Rev C	14/06/2022	Stukel Architecture
2127 DD022 Rev C	14/06/2022	Stukel Architecture
2127 DD023 Rev C	14/06/2022	Stukel Architecture
2127 DD024 Rev C	14/06/2022	Stukel Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate No. A463213	21/06/2022	Brian Teplicanec Consultancy
Building Code of Australia Compliance Assessment Report (Ref: 11866)	07/09/2022	AED Group
Building Code of Australia Performance Solution Report (Ref: 11866-PS-Rev2)	07/09/2022	AED Group

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

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

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	17/07/2022	Tim Behrens

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

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

2. **Compliance with Other Department, Authority or Service Requirements**
The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	01/09/2022

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

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. **Approved Land Use**
Nothing in this consent shall authorise the use of the site beyond the definition of a *residential flat building*, in accordance with the Dictionary of the Manly Local Environmental Plan 2013.

Any variation to the approved land use 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.

4. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifier 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 Certifier 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 Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

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

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

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

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

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

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

Reason: Legislative requirement.

5. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) 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 an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) 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.

(e) 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.

(f) 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.

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

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council’s footpaths, roadways, parks or grass verges without Council Approval.

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

(j) 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.

(k) 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.

(l) A “Road Opening Permit” must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) 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 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

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

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

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

residents and the community.

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of $742.50 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of $148,500.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

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

7. **Security Bond**

A bond (determined from cost of works) of $2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required 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, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

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

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

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

8. **Amendments to the approved plans**

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

- The return element of the front balcony beyond the southern elevation is to be deleted
- The proposed door "D03" must be retained as a window

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

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

9. **Boundary Identification Survey**
A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

10. **Building Code of Australia Fire Safety Requirements**
The Building Code of Australia fire safety requirements for the building as detailed and recommended in the BCA Compliance Assessment Report prepared by AED Group, dated 7/9/2022, Report No.11866 including any Fire Engineered Performance Solutions, are to be considered as part of the assessment of the Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority, prior to the issue of the Construction Certificate..
Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

11. **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 Certifier prior to the issue of the Construction Certificate.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;

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

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

13. **Survey Certificate**
A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

Reason: To demonstrate the proposal complies with the approved plans.

14. **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 Certifier.

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

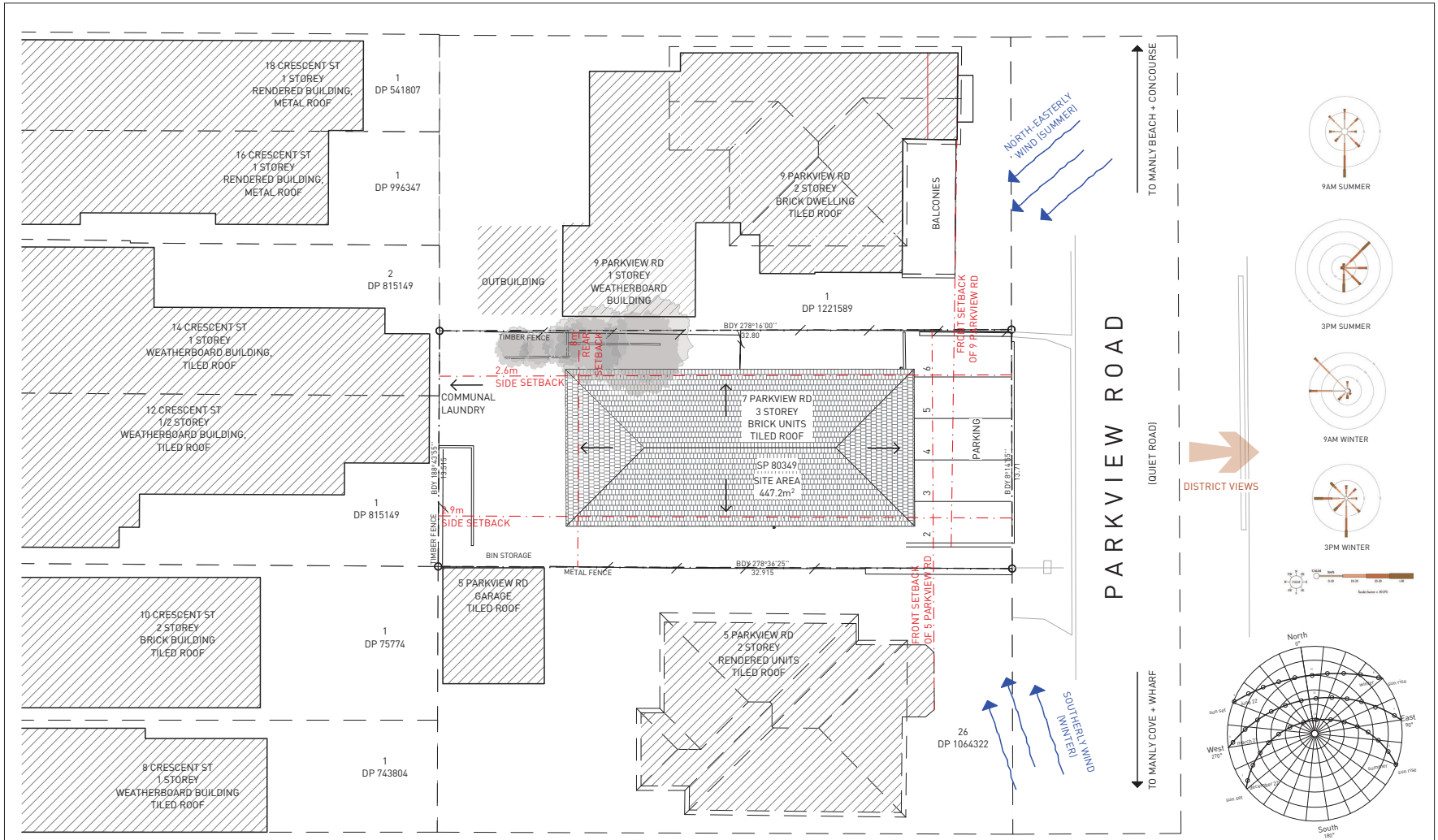
CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

15. **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.



STUKEL ARCHITECTURE
LEVEL 1, 1-5 LINK ROAD
ZETLAND NSW 2017
WWW.STUKEL.COM.AU
02 9698 2591
NOMINATED ARCHITECT DANIEL BEASLY
REG. No. 7680 NSW 5217 QLD

DRAWING TITLE
EXISTING SITE & SITE ANALYSIS PLAN

CLIENT
TIMOTHY BEHRENS & KATHLEEN TARPLEE
SP 80349

PROJECT NAME
FAIRLIGHT UNITS

UNITS 5 & 6, 7 PARKVIEW ROAD
FAIRLIGHT NSW 2094

APPROX NORTH

STATUS	ISSUED FOR DA
PROJECT	2127
DRAWN	PC
APPROVED	DB
DATE	14/06/2022
SCALE	1:200 @A3
DRAWING	DD006
REVISION	C

1 NORTH ELEVATION
1:100

1 2 3 4m

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LEVEL 1, 1-5 LINK ROAD
ZETLAND NSW 2017
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02 9698 2591
NOMINATED ARCHITECT DANIEL BEASLY
REG. No. 7680 NSW 5217 QLD

DRAWING TITLE
PROPOSED NORTH ELEVATION

CLIENT
TIMOTHY BEHRENS & KATHLEEN TARPLEE
SP 80349

PROJECT NAME
FAIRLIGHT UNITS

UNITS 5 & 6, 7 PARKVIEW ROAD
FAIRLIGHT NSW 2094

STATUS	ISSUED FOR DA		
PROJECT	2127	DRAWN PC	APPROVED DB
DATE	14/06/2022	SCALE	1:100 @A3
DRAWING	DD018	REVISION	C

1 SOUTH ELEVATION
1:100

1 2 3 4m

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ZETLAND NSW 2017
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NOMINATED ARCHITECT DANIEL BEASLY
REG. No. 7680 NSW 5217 QLD

DRAWING TITLE
PROPOSED SOUTH ELEVATION

CLIENT
TIMOTHY BEHRENS & KATHLEEN TARPLEE
SP 80349

PROJECT NAME
FAIRLIGHT UNITS

UNITS 5 & 6, 7 PARKVIEW ROAD
FAIRLIGHT NSW 2094

STATUS	ISSUED FOR DA		
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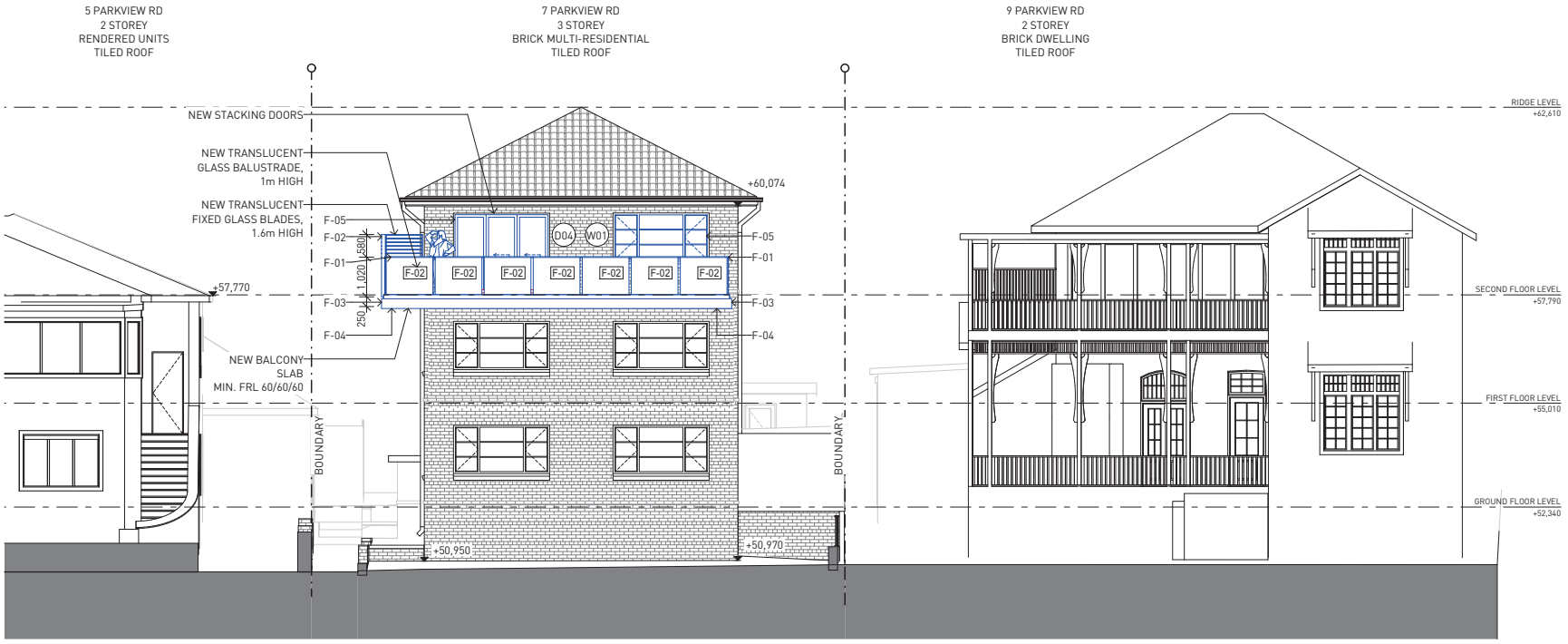
DATE	14/06/2022	SCALE	1:100 @A3
DRAWING	DD019	REVISION	C



1 EAST ELEVATION
1:100

1 2 3 4m

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ZETLAND NSW 2017
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REG. No. 7680 NSW 5217 QLD

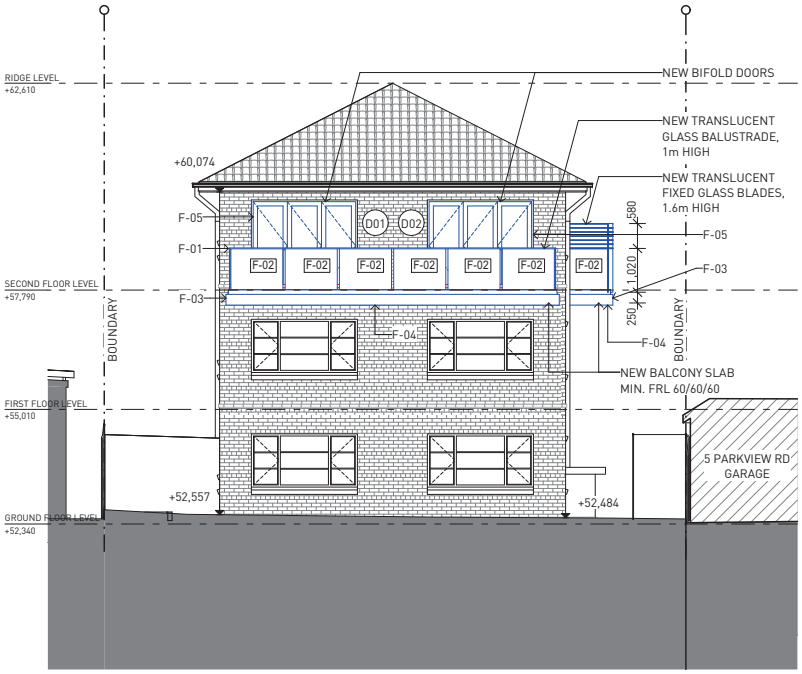
DRAWING TITLE
PROPOSED EAST ELEVATION

CLIENT
TIMOTHY BEHRENS & KATHLEEN TARPLEE
SP 80349

PROJECT NAME
FAIRLIGHT UNITS

UNITS 5 & 6, 7 PARKVIEW ROAD
FAIRLIGHT NSW 2094

STATUS	ISSUED FOR DA		
PROJECT	2127	DRAWN PC	APPROVED DB
DATE	14/06/2022	SCALE	1:100 @A3
DRAWING	DD020	REVISION	C



1 WEST ELEVATION
1:100

1 2 3 4m

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REG. No. 7680 NSW 5217 QLD

DRAWING TITLE
PROPOSED WEST ELEVATION

CLIENT
TIMOTHY BEHRENS & KATHLEEN TARPLEE
SP 80349

PROJECT NAME
FAIRLIGHT UNITS

UNITS 5 & 6, 7 PARKVIEW ROAD
FAIRLIGHT NSW 2094

STATUS	ISSUED FOR DA		
PROJECT	2127	DRAWN	APPROVED
DATE	14/06/2022	SCALE	1:100 @A3
DRAWING	DD021	REVISION	C

terms of views and outlook without unreasonably compromising the amenity of adjoining and nearby residents and the locality generally.
- The proposal is in keeping with the bulk, scale and mass of surrounding development, particularly the newer development and evolving character of the locality.
- The proposal will not have any unreasonable impacts on adjoining and nearby properties in terms of shading and privacy impacts.

Will the proposed development be in the public interest because it is consistent with the objectives of the zone?

The objectives of the R1 zone are:

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

The proposal provides modest alterations and additions to the existing building on the land, which will provide for the housing needs of the community within a diverse residential environment.

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

The existing building currently contains 6 X 2-bedroom dwellings. The proposal consolidates 2 into one dwelling and, as a result, it will provide for a variety of housing types and densities on the site.

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

This objective is not relevant to the proposal because it consolidates two dwellings into one in an existing residential flat building and other land uses that provide facilities or services are limited under the zoning of the land and it would not be appropriate to provide them in a single use building.

Concurrence of the Secretary

The concurrence of the Secretary may be assumed by the consent authority. The implications of a development not complying with a development standard of the Manly LEP are local in scope and raise no matters of significance for State or regional environmental planning.

The circumstances of the case should be balanced against the usual presumption of public benefit in maintaining a development standard. The floor space ratio of the proposed development is justified as set out above. The non-compliance is historical.

The floor space ratio of the building is consistent with the prevailing pattern of development in the locality and despite the non-compliance it will not result in any unreasonable residential and environmental impact. The proposal is satisfactory in its context. The proposal will have no unreasonable impact on the public benefit of maintaining a development standard for this site.

#2127 FAIRLIGHT UNITS STUKEL ARCHITECTURE PTY LTD

18 NOVEMBER 2022

STUKEL ARCHITECTURE
LEVEL 1, 1-5 LINK ROAD
ZETLAND NSW 2017
02 9698 2591
WWW.STUKEL.COM.AU
NOMINATED ARCHITECT DANIEL STUKEL BEASLY
REG. No. 7680 NSW 5217 QLD
DEP 0000564 PDP 0000184 P17689

SEPP 65 Design Verification Statement

Units 5 & 6, 7 Parkview Road, Fairlight NSW 2094

This Design Verification Statement has been prepared by **Registered Architect Daniel Beasly** (NSW Reg No. 7680), also registered under the Design and Building Practitioners Act 2020 as a Design Practitioner, Architect (DEP0000564) and Principal Design Practitioner (PDP0000184).

This statement has been prepared in support of the lodged Development Application **DA2022/1131** for alterations and additions to a residential flat building including the consolidation of Units 5 and 6 into a single dwelling and the addition of two balconies.

Refer also to the Statement of Environmental Effects prepared by **Kim Burrell** dated June 2022.

The proposed development complies with the Design Quality Principles of the *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* and the *Apartment Design Guide* as outlined below in Sections 1, 2 and 3.

Daniel Beasly

DIRECTOR
STUKEL ARCHITECTURE PTY LTD

Section 1. SEPP 65 Design Quality Principles Review

Principle 1: Context and neighbourhood character
Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.
Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.
Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

- The existing building is located in close proximity to major bus routes, local shops, parks and beaches.
- There are opportunities for a family with multiple children to stay in the area and warrants the improvement in apartment mix with a larger 3+ bedroom apartment.

Principle 2: Built form and scale
Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.
Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.
Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

- The proposal involves consolidation of the two second floor dwellings into one. The floor space of the existing building remains unchanged. Therefore, the bulk of the development remains substantially the same.
- The addition of the two balconies are within the notional building envelope and do not add any unreasonable visual scale and bulk because they are visually lightweight structures that are commensurate with buildings of this nature. The proposal is therefore considered to be consistent with the existing character.
- The addition of these balcony structures is a conventional practice for buildings of this age and subsequently provides an appropriate exemplar for the remaining dwellings in the building.

Principle 3: Density
Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.
Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

- The density of the development will likely remain unchanged as the consolidated apartments offer the same number of bedrooms as the two separate dwellings. The density might even increase where current 2 bedroom apartments have only a single occupant.

Principle 4: Sustainability
Good design combines positive environmental, social and economic outcomes.
Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.

- The design provides improved cross ventilation and sunlight access to the subject unit, with passive solar shading from the existing eaves and balcony additions.

Principle 5: Landscape
Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

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

- There are no proposed changes to the landscape.

Principle 6: Amenity
Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.
Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.

- The revised floor plan and balcony additions will enhance residential amenity for the future occupants without unreasonably and detrimentally impacting the residential amenity of adjoining and nearby residents or the streetscape generally.
- The enlarged openings and balconies will take advantage of the regional views towards the east and the coastline.
- The larger living spaces will provide appropriate dimensions for a family.

Principle 7: Safety
Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.
A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

- The balconies off the living spaces are situated to the street and look over the public domain providing valuable casual surveillance.

Principle 8: Housing diversity and social interaction
Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.
Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.
Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.

- The apartment mix has been improved.

Principle 9: Aesthetics
Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.
The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

- The design with the balcony additions offers some articulation and interest to the front facade.
- The balconies provide additional architectural detailing for a building which currently has little visual interest.

Section 2. Apartment Design Guide **Applicable Sections**

Part 1 - Identifying the context

1A Apartment building types	*Refer Section 3*
1B Local character and context	*Refer Section 3*
1C Precincts and individual sites	*Not Applicable: Existing Residential Apartment Development*

Part 2 - Developing the controls

2A Primary controls	*Refer sections 2C-2H*
2B Building envelopes	*Refer Section 3*
2C Building height	*Not Applicable: No change to roof and building height*
2D Floor space ratio	*Not Applicable: No change to floor area*
2E Building depth	*Refer Section 3*
2F Building separation	*Refer Section 3*
2G Street setbacks	*Refer Section 3*
2H Side and rear setbacks	*Refer Section 3*

Part 3 - Siting the development

3A Site analysis	*Not Applicable: No change to building setting*
3B Orientation	*Not Applicable: No change to building orientation*
3C Public domain interface	*Not Applicable: No change to public domain interface*
3D Communal and public open space	*Not Applicable: No change to communal/public open space*
3E Deep soil zones	*Not Applicable: No change to deep soil zones*
3F Visual privacy	*Refer Section 3*
3G Pedestrian access and entries	*Not Applicable: No change to entries*
3H Vehicle access	*Not Applicable: No change to vehicular access*
3J Bicycle and car parking	*Not Applicable: No change to bicycle and car parking*

Part 4 - Designing the building

Amenity

4A Solar and daylight access	*Refer Section 3*
4B Natural ventilation	*Refer Section 3*
4C Ceiling heights	*Not Applicable: No change to existing ceiling heights*
4D Apartment size and layout	*Refer Section 3*
4E Private open space and balconies	*Refer Section 3*
4F Common circulation and spaces	*Not Applicable: No change to common circulation spaces*
4G Storage	*Refer Section 3*
4H Acoustic privacy	*Not Applicable: No change to sources / common partitions*
4J Noise and pollution	*Not Applicable: No source of noise or pollution*

Configuration

4K Apartment mix	*Refer Section 3*
4L Ground floor apartments	*Not Applicable: No change to ground floor apartment*
4M Facades	*Refer Section 3*
4N Roof design	*Not Applicable: No change to roof*
4O Landscape design	*Not Applicable: No change to landscape*
4P Planting on structures	*Not Applicable: No planting on structures*
4Q Universal design	*Refer Section 3*
4R Adaptive reuse	*Not Applicable*

4S Mixed use	*Not Applicable*
4T Awnings and signage	*Not Applicable*

Performance

4U Energy efficiency	*Refer Section 3*
4V Water management and conservation	*Not Applicable: No change to stormwater*
4W Waste management	*Not Applicable: No change to waste management*
4X Building maintenance	*Refer Section 3*

Section 3. Apartment Design Guide **Demonstration of Meeting Objectives**

Part 1 - Identifying the context

1A - Apartment building types

The arrangement and configuration of the residential apartment building is existing.
Currently the building consists of 6 two bedroom apartments. The proposed re-configuration of the layout of Level 2 will, converting 2 two bedroom apartments into a 3 bedroom 1 study apartment will create a better housing mix with various apartment types within the existing building form, and also in the precinct.

1B - Local character and context

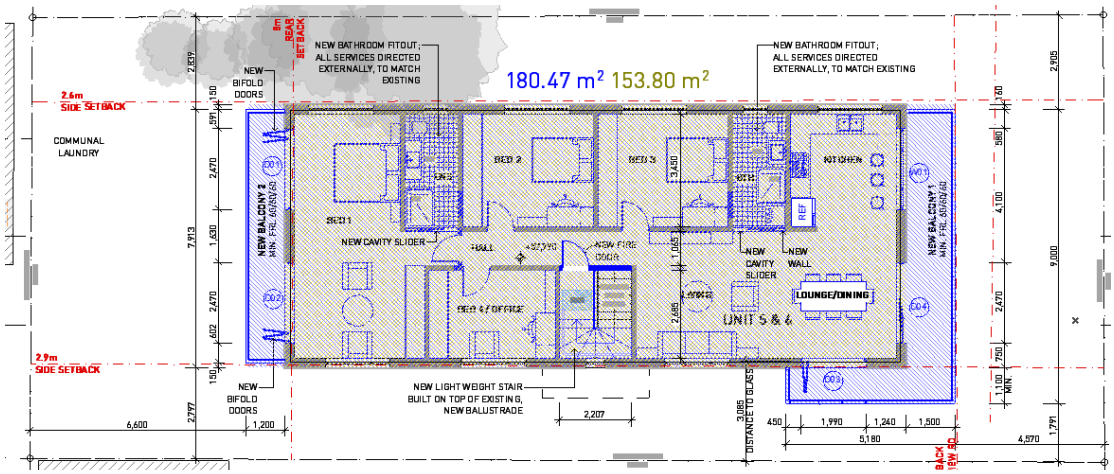
The existing building is located in a desirable area, which justifies improving the apartment type mix and introducing an apartment for a family with multiple children.
150m walking distance to major bus routes on Sydney Road.
250m walking distance to a local shop.
600m walking distance to the local park, botanic garden and beach.
Under 1km to the centre of the Manly community, recreational and business centre.

2A Primary controls

Refer to sections 2C-2H

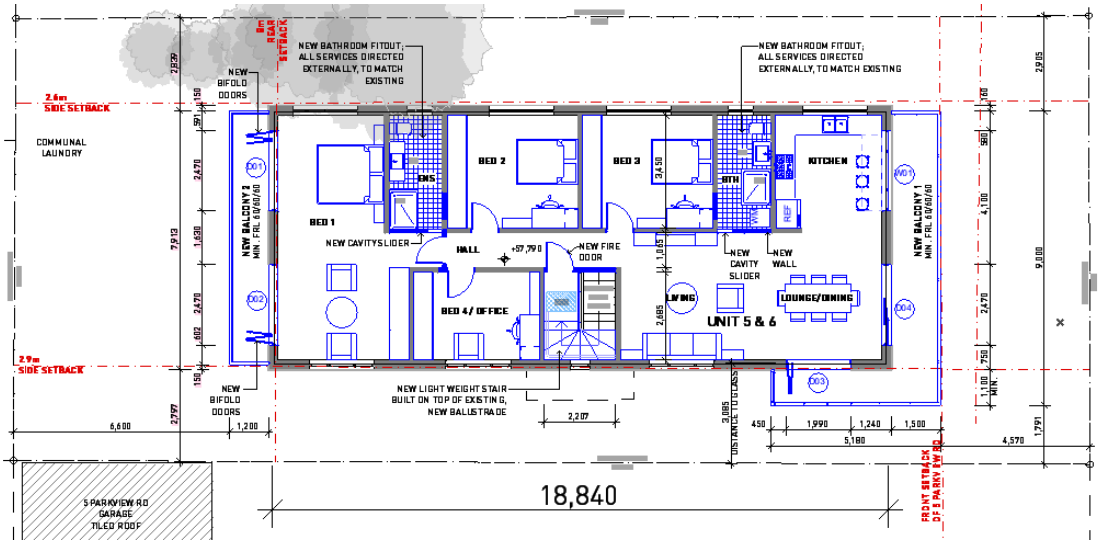
2B Building envelopes

The building envelope should be 25-30% greater than the floor area footprint, and includes balconies. Balconies contribute to the design by adding articulation to a building form.
The proposed balconies define a building enveloped 18% greater than the existing building floor area / footprint. (180m^2 from 154m^2)



2E Building depth

The alterations to the Level 2 will create a dual aspect apartment orientated east west. The existing depth from glass line to glass line is 18.8m, which is reasonably close to the guideline of 12-18m for a building depth. There are active facades at each end of the floorplate with outlook, balconies and access to light and air.



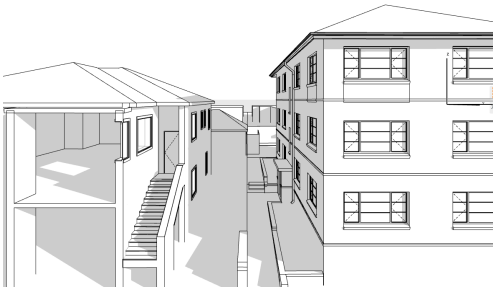
2F Building separation

The building separation is existing.
The only proposed change is the addition of the balconies to satisfy section 4E.

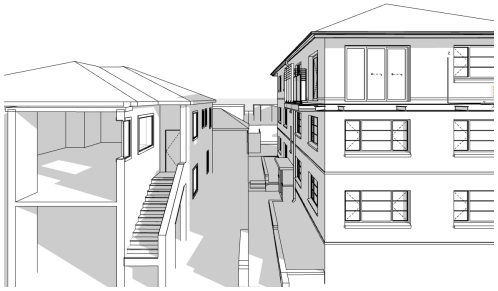
The difference in loss of light is minimal due to the existing eave overhang above.
The balcony to the rear of the building off the bedrooms will be seldom used, and the southern portion of the balcony to the front has a high glazed privacy screen protecting the amenity of the neighbour to the south.

The existing separation to the south is 7.5m. The balcony is 1.1m deep.

EXISTING sectional view along boundary.

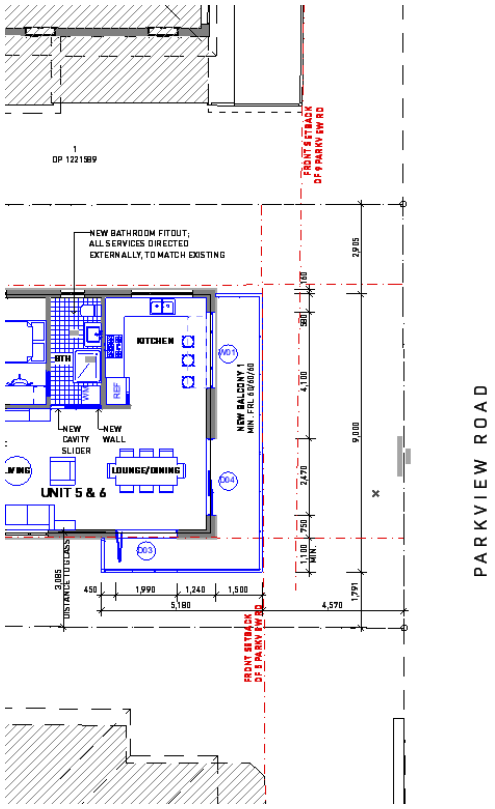


PROPOSED sectional view along boundary.



2G Street setbacks

The existing building and proposed balcony additions are aligned to the existing pattern of street setbacks. The new works are set back from the decorative timber balconies of the neighbour to the north.



2H Side and rear setbacks

Refer to section 2G.

3F Visual privacy

Objective 3F-1
Minimum required separation distance from building and side and rear boundaries: Up to 4 storeys; 6m.

The balconies are situated front and rear of the building and therefore their orientation is predominantly over the semi-pubic domain at the front of the property rather than into private open space and habitable rooms of adjoining property.

The existing rear facade of the building is 7.8m from the rear boundary.
The proposed rear balcony is 6.7m from the rear boundary.
There are currently large trees screening the neighbouring property to the south which has no visible windows close to the boundary.

The existing side facade of the building is 2.8m from the rear boundary.
The proposed side balcony is 1.8m from the side boundary.

The proposed balcony addition maintains visual privacy by including a 1.6m high translucent glass privacy screen in front of the proposed glazed south facing doors.

Objective 3F-2
Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space.

The use of a 1.6m high translucent glass privacy screen detailed with open translucent glass blades will provide privacy and maintain light and air flow.

4A Solar and daylight access

Objective 4A-1
Minimum 2 hours direct sunlight to 70% of living rooms and private open spaces at mid winter.

These solar studies below demonstrate that more than 70% of the proposed 5 apartments (4) receive direct sunlight to the combined Kitchen, Living, Dining Room for at least 2 hours in mid winter.

All apartments receive direct sunlight between 9am and 3pm in mid winter.

9AM WINTER SOLSTICE NE

10AM WINTER SOLSTICE NE

11AM WINTER SOLSTICE NE

12PM WINTER SOLSTICE NE

12PM WINTER SOLSTICE NW

1PM WINTER SOLSTICE NW

2PM WINTER SOLSTICE NW

3PM WINTER SOLSTICE NW

Objective 4A-2
Daylight access is maximised where sunlight is limited.

Not applicable as minimum direct sunlight is achieved.

Objective 4A-3
Design incorporates shading and glare control, particularly for warmer months

The existing roof eave and gutter provides passive solar shading to the Level 2 doors and windows with a 730mm protrusion. The proposed balconies provide improved solar shading to the Level 1 windows.

4B Natural ventilation

Objective 4B-1
All habitable rooms are naturally ventilated.

All habitable rooms in the modified layout receive natural ventilation.
The addition of the balconies allows for increased effective openable areas capturing easterly breezes for summer cooling.

Objective 4B-2
The layout and design of single aspect apartments maximises natural ventilation.

The proposed apartment is dual aspect, east and west, providing good cross ventilation.

Objective 4B-3
The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents

The proposed altered layout provides a cross ventilated apartment from east to west.
The overall depth is 18.8m which is reasonably close to the design guide of 18m.

4D Apartment size and layout

Objective 4D-1
The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.

Design criteria 1: 4 bedroom apartment minimum 102m^2
Proposed: 3 bedroom apartment 131m^2

Design criteria 2: habitable rooms to have glass area 10% of floor area
Proposed: compliant

Objective 4D-2
Environmental performance of the apartment is maximised.

Design criteria 1 + 2: not applicable as all facades have access to light and air.
Bathrooms and laundries have an external openable window.
Main living spaces should be oriented toward the primary outlook and aspect and away from noise sources.

Objective 4D-3
Apartment layouts are designed to accommodate a variety of household activities and needs.

Design criteria 1: Master bedroom has an area of 25m^2 excluding wardrobes (minimum 10m^2)
Design criteria 2: All three bedrooms have over 3.25m minimum dimension (minimum 3m)
Design criteria 3: Living and combined living/dining room has a width ranging from of 3.9-7.5m (minimum 4m)

4E Private open space and balconies

Objective 4E-1
Apartments provide appropriately sized private open space and balconies to enhance residential amenity.

Design criteria 1: All apartments are required to have a primary balcony of minimum 12m^2 and 2.4m depth for a 3+ bedroom apartment.
The existing building does not have any balconies.
The proposed balconies provide private open space generally in accordance with the guidelines for a building that currently has none.
The proposed primary balcony addition satisfies the minimum area and is 16m^2.
The depth is 1.5m due to structural limitations of adding a balcony to the existing and the amount of overshadowing to windows of the habitable spaces in the apartment below.
Additionally the balcony is less than 6m from the side boundary and the proposed depth will limit the loss of amenity to the adjacent property with large gatherings.

Objective 4E-2
Primary private open space and balconies are appropriately located to enhance liveability for residents.

The proposed primary balcony is located adjacent to the Living, Dining, Kitchen.

Objective 4E-3
Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.

The proposed balcony is not integrated into the building as the facade and structure are existing.
The balcony glazing is translucent to maintain privacy for the occupants from the public domain.

Objective 4E-4
Private open space and balcony design maximises safety.

The design of the balustrade meets the NCC for safety with the required non-climbable zone.

4G Storage

Objective 4G-1
Adequate, well designed storage is provided in each apartment.

Design criteria 1: storage required for 3+ bedroom apartments is 10m^3 at least 50% located in the apartment.
The required storage is available in the roof void, accessible from the corridor off the Living space. The owners have exclusive use rights to space. There is approximately 50m^3 of storage available in the roof void, excluding circulation.

Objective 4G-2
Additional storage is conveniently located, accessible and nominated for individual apartments.

No additional external storage is available.

4K Apartment mix

Objective 4K-1
A range of apartment types and sizes is provided to cater for different household types now and into the future.

Design guidance 1: A variety of apartment types is provided.
A 3 bedroom plus study apartment has been introduced to this residential apartment building containing only 2 bedroom apartments. This has improved the apartment mix.

Objective 4K-2
The apartment mix is distributed to suitable locations within the building.

Design guidance 1: Different apartment types are located to achieve successful facade composition and to optimise solar access.
The larger apartment has provided facade variation through the introduction of the balconies.

Design guidance 2: Larger apartment types are located on the ground or roof level where there is potential for more open space and on corners where more building frontage is available.
There was no opportunity for locating the larger apartment on the ground level due to it being an existing building.

4M Facades

Objective 4M-1
Building facades provide visual interest along the street while respecting the character of the local area.
The introduction of the balcony has provided varied building elements to the street.

Objective 4M-2
Building functions are expressed by the facade.
Not applicable. No proposed changes.

4Q Universal design

Objective 4Q-1
Universal design features are included in apartment design to promote flexible housing for all community members.

The new layout provides an opportunity for a family with multiple children, a larger living space, and a separate office and large master bedroom to allow for both parents to work from home.

Objective 4Q-2
A variety of apartments with adaptable designs are provided.
Refer section 4Q-1.

Objective 4Q-3
Apartment layouts are flexible and accommodate a range of lifestyle needs.
Refer section 4Q-1.

4U Energy efficiency

Objective 4U-1
Development incorporates passive environmental design.
All habitable rooms have access to good natural light.

Objective 4U-2
Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer.

The existing awning and balcony addition provide passive solar shading to the windows of Level 2 and Level 1.

Objective 4U-3
Adequate natural ventilation minimises the need for mechanical ventilation.

The new large door openings with balconies improve the natural cross ventilation in the apartment, capturing the cooling eastern winds.

4X Building maintenance

Objective 4X-1
Building design detail provides protection from weathering.
No change to the design of the building facade.

Objective 4X-2
Systems and access enable ease of maintenance.
The proposed balconies allow for safe and easy maintenance of the new doors and windows.

Objective 4X-3
Material selection reduces ongoing maintenance costs.

The proposed materials of prefinished metal, glass, and fibre cement require little maintenance.