



northern  
beaches  
council

# AGENDA

## NORTHERN BEACHES LOCAL PLANNING PANEL

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

**WEDNESDAY 5 OCTOBER 2022**

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

A handwritten signature in black ink, appearing to read 'Peter Robinson'.

**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.

## **Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 5 October 2022**

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Northern Beaches Local Planning Panel held 21 September 2022.	
<b>3.0</b>	<b>CATEGORY 3 APPLICATIONS</b>	
<b>4.0</b>	<b>PUBLIC MEETING ITEMS.....</b>	<b>5</b>
4.1	REV2022/0004 - 16 Bangaroo Street, North Balgowlah - Review of Determination of Application DA2021/0680 for Alterations and additions to an existing dwelling house and use as a centre-based child care facility.....	5
4.2	DA2022/0193 - 199-205 Pittwater Road, Manly - Alterations and additions to shop top housing. ....	70

### **5.0 NON PUBLIC MEETING ITEMS**

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.

Nil

## **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 21 SEPTEMBER 2022**

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#### **RECOMMENDATION**

That the Panel note that the minutes of the Northern Beaches Local Planning Panel held 21 September 2022 were adopted by the Chairperson and have been posted on Council's website.

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## 4.0 PUBLIC MEETING ITEMS

<b>ITEM 4.1</b>	<b>REV2022/0004 - 16 BANGAROO STREET, NORTH BALGOWLAH - REVIEW OF DETERMINATION OF APPLICATION DA2021/0680 FOR ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING HOUSE AND USE AS A CENTRE-BASED CHILD CARE FACILITY.</b>
<b>AUTHORISING MANAGER</b>	<b>Rod Piggott</b>
<b>TRIM FILE REF</b>	<b>2022/604000</b>
<b>ATTACHMENTS</b>	<b>1 <a href="#">↓</a>Assessment Report</b> <b>2 <a href="#">↓</a>Site Plans &amp; Elevations</b>

### 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 and it is the subject of 10 or more unique submissions by way of objection.

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### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. REV2022/0004 for Review of Determination Application No. DA2021/0680 for the Alterations and additions to an existing dwelling house and use as a centre-based child care facility on land at Lot 111 DP 11936, 16 Bangaroo Street, NORTH BALGOWLAH for the reasons for refusal set out in the Assessment Report.

**DEVELOPMENT APPLICATION ASSESSMENT REPORT**

<b>Application Number:</b>	REV2022/0004
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<b>Responsible Officer:</b>	Hugh Halliwell (Consultant Planner – Mecone)
<b>Land to be developed (Address):</b>	Lot 111 DP 11936, 16 Bangaroo Street NORTH BALGOWLAH NSW 2093
<b>Proposed Development:</b>	Review of Determination of Application DA2021/0680 for alterations and additions to an existing dwelling house and use as a centre based childcare facility
<b>Zoning:</b>	Warringah LEP 2022 – Land zoned sR2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	N/A
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Kellie Maree Gielis Craig Stephen Gielis
<b>Applicant:</b>	William Fleming

<b>Application Lodged:</b>	07/04/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Other
<b>Notified:</b>	1 <sup>st</sup> Notification: 19/05/2022 – 2/06/2022 2 <sup>nd</sup> Notification: 12/08/2022 – 26/08/2022
<b>Advertised:</b>	12/08/2022
<b>Submissions Received:</b>	163
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$129,030
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**EXECUTIVE SUMMARY**

This application involves the review of a determination of development application DA2021/0680. This DA was refused by LPP on 17 November 2021 on the following grounds:

- Concerns regarding the proposal's lack of compliance in relation to the clause 3.23 of the SEPP (Transport and Infrastructure) and Child Care Planning Guideline,
- Concerns relating to the provision of suitable traffic and parking arrangements, and
- Impacts on residential amenity.

The subject s8.2A application has been made to address the above matters. However, it is determined that the application has not satisfied the above matters.



The application involves the change of use of a dwelling house to a child care centre. Other works include the widening of the existing driveway crossing along the southern boundary to accommodate an additional parking space, internal works and associated landscaping within the rear setback. The child care centre proposes to accommodate 12 children, a total of 3 staff and has provision for 3 car parking spaces.

Council is not satisfied with the traffic generation coupled with the lack of any-on-site turning area resulting in a greater frequency of vehicles reversing across the footpath. This is likely to result in an unacceptable impact on pedestrians and other vehicles. Further concern is raised in relation to appropriate sight lines at the property boundary, and insufficient detail provided on the plans with regards to parking dimensions. The proposal relies upon vehicular parking which is partly beyond the property boundary, which is non-compliant.

Concern has been raised in relation to the proposed acoustic mitigation measures and acoustic impacts associated with the proposed centre. A peer review of the acoustic assessment has been undertaken which has raised concern in relation to the acoustic report methodology and results. Council's Building Assessment officer has noted concern regarding the ability of the proposal to comply with Clause D1.10 of the BCA in relation to external access and egress.

The application was notified in accordance with Council's Community Participation Plan and one hundred and sixty-three (163) submissions were received, all of which oppose the application. The issues that have been raised in the submissions include traffic and parking, pedestrian safety risks, and amenity impacts.

As more than 10 unique submissions by way of objection were received, the application is referred to the Northern Beaches Local Planning Panel for determination.

For the reasons outlined above and within this assessment report, the proposed development is recommended for refusal.

## **PROPOSED DEVELOPMENT IN DETAIL**

The application seeks alterations and additions to an existing dwelling house to facilitate the change of use of the premises to a child care facility. In particular, the application includes:

- Internal alterations to accommodate the change of use of a dwelling house to a child care facility to accommodate 12 children aged between 3 and 5 years of age and a total of 3 staff.
- Hours of operation 8:30am to 4:00pm Monday to Friday.
- A new crossover and parking area located along the southern elevation.
- Off-street parking to accommodate three cars. Two cars in a tandem arrangement along the southern boundary with a third car space located towards the centre of the site.
- Child proof gate measuring 1.2m high
- Landscaping within the backyard

### **Ground floor**

- Meeting room
- Library
- Kitchen
- 2 x WC's
- Storeroom
- Laundry
- Activity Area No. 1
- Activity Area No. 2

### **First Floor**

- 2 x store rooms
- Staff room



- Office
- Staff WC

This Review of Determination involves the following changes to the application which was refused:

- Reduction to child numbers from twenty (20) to twelve (12), and
- Amended documentation, including traffic impact assessment and acoustic assessment have been submitted in support of the proposal and reduced child numbers on traffic and acoustic grounds.

### **ASSESSMENT INTRODUCTION**

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

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

### **SUMMARY OF ASSESSMENT ISSUES**

- Warringah Development Control Plan - A.5 Objectives
- Warringah Development Control Plan - B7 Front Boundary Setbacks
- Warringah Development Control Plan - C2 Traffic, Access and Safety
- Warringah Development Control Plan - C3 Parking Facilities
- Warringah Development Control Plan - D3 Noise
- Warringah Development Control Plan - D20 Safety and Security

### **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 111 DP 11936 , 16 Bangaroo Street NORTH BALGOWLAH NSW 2093
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the western side of Bangaroo Street.</p> <p>The site is regular in shape with a frontage of 12.105m along Bangaroo Street and a depth of 42.67m. The site has a surveyed area of 514.17m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a two storey dwelling with a driveway crossover located along the southern boundary and does not provide a garage or carport, with hard stand parking located along the southern side to accommodate two cars.</p>

	<p>The site is relatively flat sloping gently from the northern side boundary to the southern side boundary.</p> <p>A low masonry retaining wall is located along the front boundary of the site with a garden bed located along the eastern and northern boundary of the front setback and a turfed area within the front setback.</p> <p>The backyard consists of a turfed area with planting located along the northern, western and southern boundaries consisting of small to medium sized trees.</p> <p>The site is not identified as a Heritage Item.</p> <p>The site is not identified as bushfire prone land.</p> <p>Adjoining and surrounding development is characterised by residential dwellings of a similar size and scale. A three (3) storey residential flat building is located along the western (rear) boundary with access provided from Worrobil Street.</p>
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Map:



## SITE HISTORY

The site is subject to two prior development applications, as follows:

1. **DA2020/1397** - Alterations and additions to a dwelling house and use of premises as a childcare centre. This DA was withdrawn on 21 January 2021.
2. **DA2021/0680** - Alterations and additions to an existing dwelling house and use as a centre-based childcare facility. This DA was reported before the NBLPP and refused on 17 November 2021 for the following reasons:
  1. *The proposal is inconsistent with Clause 23 of the SEPP Educational Establishments and Child Care Facilities.*
  2. *The proposed development is inconsistent with the provisions of Clause A.5 Objectives of the Warringah Development Control Plan in that it fails to respond to the*



*characteristics of the site and the neighbourhood, is not able to be a good neighbour, and does not provide a high level of access to and within the development in a safe manner.*

3. *The proposed development is inconsistent with the provisions of Clause C2 Traffic, Access and Safety of the Warringah Development Control Plan 2011 in that the proposed access arrangements will give rise to an unsafe environment for pedestrians and vehicles and their occupants. In particular, of concern is the reversing of vehicles onto the footpath and the road carriageway when leaving the car park, the reliance on stacked car parking which exacerbates safety concerns, proximity of a bus stop, proximity of a major roundabout, and the volume of vehicles in the road network at peak periods.*
4. *The proposed development is inconsistent with the provisions of Clause C3 Parking Facilities of the Warringah Development Control Plan in that it fails to provide compliant off-street parking arrangements for the child care centre.*
5. *The proposed development is inconsistent with the provisions of Clause D20 Safety and Security of the Warringah Development Control Plan.*
6. *Pursuant to Section 4.15 (1) (b) and (c) of the Environmental Planning and Assessment Act 1979 the proposed development is unsuitable for the site due to neighbourhood amenity and public safety outcomes.*
7. *Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.*

#### **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)**

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

##### **Section 8.3 of the Act**

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 17 November 2021. The review was lodged on 7 April 2022 and is to be considered by the Northern Beaches Local Planning Panel on 5 October 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 'Proposed Development in Detail' 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

#### **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 Development Control Plan.

As a result of the public exhibition process council is in receipt of 163 submission/s from:

<b>Name:</b>	<b>Address:</b>
Ms Janice Anne Hunter	15 A Serpentine Crescent NORTH BALGOWLAH NSW 2093
Mr Christopher Paul Smith	12 Winsome Avenue NORTH BALGOWLAH NSW 2093
Mark Ian Langley	96 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mrs Honnie Bustos	13 St Pauls Road NORTH BALGOWLAH NSW 2093
Caroline Jane Harman	82 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mrs Rowena Helen Casper	4 A Winsome Avenue NORTH BALGOWLAH NSW 2093
Ms Ann Cherie Bolton	40 Baringa Avenue SEAFORTH NSW 2092
Mrs Catherine Anne Gunton	52 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mrs Christie Melanie Peck	106 Bangaroo Street NORTH BALGOWLAH NSW 2093
William Gregory Skelly	5 / 133 - 137 North Steyne MANLY NSW 2095
Mrs Susan Clare Kilbey	26 Tottenham Street NORTH BALGOWLAH NSW 2093
Mrs Kelly Nadine Drew	23 A Mons Road NORTH BALGOWLAH NSW 2093
Ms Brooke Louise Midson	6 Bardoo Avenue NORTH BALGOWLAH NSW 2093
Ms Saskia Margaret Emanuel	1 / 1 St Pauls Road NORTH BALGOWLAH NSW 2093
Ms Kirsty Jean Bonser	8 Brook Road SEAFORTH NSW 2092
Miss Lyndsay Barbara Steadman	30 Myrtle Street NORTH BALGOWLAH NSW 2093
Ms Michaela Utesena	22 Worrobil Street NORTH BALGOWLAH NSW 2093
Ms Caroline Leckey	20 Woodbine Street NORTH BALGOWLAH NSW 2093
Mrs Carla Rocio Castro Conde	50 Eileen Street NORTH BALGOWLAH NSW 2093
Mrs Christine Anne Boys	34 Warringah Street NORTH BALGOWLAH NSW 2093
Mr Mark Andrew O'Sullivan	15 Hunter Street NORTH BALGOWLAH NSW 2093
Mrs Sarah West	27 Eileen Street NORTH BALGOWLAH NSW 2093
Elizabeth Diamond	125 Clontarf Street SEAFORTH NSW 2092
Miss Sarah Kelly Stewart	22 Woodbine Street NORTH BALGOWLAH NSW 2093
Mrs Amy Victoria Black	74 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mr Carl Edward Stanfield	4 Eureka Avenue NORTH BALGOWLAH NSW 2093
Ms Alison Jane Mace	12 Winsome Avenue NORTH BALGOWLAH NSW 2093
Mr Paul Robert O'Brien	44 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mr Joseph Alexander Parkes Ward	10/45 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mr Dean James Linden	27 St Pauls Road NORTH BALGOWLAH NSW 2093
Mrs Samantha Jane Smith	26 Boyle Street BALGOWLAH NSW 2093
Anne Fairley Beaton Ottey	35 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mrs Nicole Lee Lawrence	27 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mr Bryan Lawrence	27 Bangaroo Street NORTH BALGOWLAH NSW 2093
Ms Rebecca Josephine Bose	71 Bangaroo Street NORTH BALGOWLAH NSW 2093

Mark Joseph Sharman	38 Eileen Street NORTH BALGOWLAH NSW 2093
Mrs Tanya Vicki Boicheski	48 Fromelles Avenue SEAFORTH NSW 2092
Mrs Koreen Sumn-See White	29 Serpentine Crescent NORTH BALGOWLAH NSW 2093
Mr Kim Reginald Peacock-Smith	18 Worrobil Street NORTH BALGOWLAH NSW 2093
Mr Sinan Kaya	18 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mr Timothy McDonald Dawson	41 Eileen Street NORTH BALGOWLAH NSW 2093
Brent Davies	50 Woodbine Street NORTH BALGOWLAH NSW 2093
Jennifer Anne Turner	45 Bangaroo Street NORTH BALGOWLAH NSW 2093
Ester Josefin Lobb	12 St Pauls Road NORTH BALGOWLAH NSW 2093
Mr Andrew Clifford Hinton	50 Eileen Street NORTH BALGOWLAH NSW 2093
Ms Lyna Ung	13 Hunter Street NORTH BALGOWLAH NSW 2093
Mrs Lorelle Abigail Gina	21 St Pauls Road NORTH BALGOWLAH NSW 2093
Mr Simon John Hartley	26 Woolgoolga Street NORTH BALGOWLAH NSW 2093
Mr Graham Edward Bruce	9 Hunter Street NORTH BALGOWLAH NSW 2093
Mrs Cery Johnette Kean	C/- Crystal Pools Pty Ltd Po Box 271 PENNANT HILLS NSW 1715
Ms Georgina Greer	7 Serpentine Crescent NORTH BALGOWLAH NSW 2093
Ms Maxine Kay Peacock-Smith	18 Worrobil Street NORTH BALGOWLAH NSW 2093
Mr Julio Cruces	26 Serpentine Crescent NORTH BALGOWLAH NSW 2093
Therese Maree Ravell	59 Woodbine Street NORTH BALGOWLAH NSW 2093
Selwyn Basil Montgomery Garwell	68 Serpentine Crescent BALGOWLAH NSW 2093
Mrs Dorota Asigno	16 Worrobil Street NORTH BALGOWLAH NSW 2093
Mr Kenneth Leslie Churcher	25 Bangaroo Street NORTH BALGOWLAH NSW 2093
Adrian Boyle	Address Unknown
Clare Francis Turner	59 Woolgoolga Street NORTH BALGOWLAH NSW 2093
Mrs Carolyn Margaret Bruce	9 Hunter Street NORTH BALGOWLAH NSW 2093
Oliver Mace Smith	Address Unknown
Alison Fiona Fisher	6 Florence Court NORTH BALGOWLAH NSW 2093
Mr Kieren Christopher Hutchings	38 Bangaroo Street NORTH BALGOWLAH NSW 2093
Geraldine Onas Hall	12 David Road COLLAROY PLATEAU NSW 2097
Mr Steven Jon Hopkins	19 A Eileen Street NORTH BALGOWLAH NSW 2093
Mrs Robyn Rae Bathgate	1 Coramba Street NORTH BALGOWLAH NSW 2093
Mr Jamie Raymond Lobb	12 St Pauls Road NORTH BALGOWLAH NSW 2093
Eva Lobb	12 St Pauls Road NORTH BALGOWLAH NSW 2093
Ms Victoria Helena Mackay	1 / 2 Worrobil Street NORTH BALGOWLAH NSW 2093
Shelley Wright	64 Woolgoolga Street NORTH BALGOWLAH NSW 2093
Mrs Shelagh Mary Brigid Lubbock	39 Woolgoolga Street NORTH BALGOWLAH NSW 2093
Mrs Sarah Silverthorne	4 Urunga Street NORTH BALGOWLAH NSW 2093
Ms Julie Gay Hodder	4 Sandy Bay Road CLONTARF NSW 2093
Ms Jin Hee Lucy Olney	3 Winsome Avenue NORTH BALGOWLAH NSW 2093

Andrew Warrington Thompson	3 Coramba Street NORTH BALGOWLAH NSW 2093
Adam Iezzi	Address Unknown
Ms Judy Anne Masters	6 / 2 Worroebil Street NORTH BALGOWLAH NSW 2093
Ms Claudia Tsiamis	10 Brook Road SEAFORTH NSW 2092
Mr Christopher James Shaw	7 Serpentine Crescent NORTH BALGOWLAH NSW 2093
Mr Matthew Brian Higgs	5 Worroebil Street NORTH BALGOWLAH NSW 2093
Graham Kirk Thomson	6 Bangaroo Street NORTH BALGOWLAH NSW 2093
Shirley Frances Thomson	6 Bangaroo Street NORTH BALGOWLAH NSW 2093
Simon Hall	6 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mr Gordon Robert Soling	17 A Bangaroo Street NORTH BALGOWLAH NSW 2093
Patricia Ann Soling	17 A Bangaroo Street NORTH BALGOWLAH NSW 2093
Ms Christina Lee Parks	60 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mrs Helen Anita McMahon	C/- Ray White Real Estate 45 Sydney Road MANLY NSW 2095
Ms Eliza Jane Kirkby	32 Worroebil Street NORTH BALGOWLAH NSW 2093
Ms Susan Mary Lumb	4 Burringbar Street NORTH BALGOWLAH NSW 2093
Ms Fiona Isabel Smith	44 A Bangaroo Street NORTH BALGOWLAH NSW 2093
Mrs Janette Hall	43 Bangaroo Street NORTH BALGOWLAH NSW 2093
Johanna May Ferguson	5 / 2 Worroebil Street NORTH BALGOWLAH NSW 2093
Ms Lee Purches	35 Woodbine Street NORTH BALGOWLAH NSW 2093
Mr Robert Michael Weddepohl	41 Bangaroo Street NORTH BALGOWLAH NSW 2093
Ms Sophie Kathryn Swan	73 Woodbine Street NORTH BALGOWLAH NSW 2093
Mr Dirk Verwohlt	17 Gloucester Street NORTH BALGOWLAH NSW 2093
Adrienne Opal Taylor Weddepohl	41 Bangaroo Street NORTH BALGOWLAH NSW 2093
Ms Jade Kimberley Cerfontyne	2 Kitchener Street BALGOWLAH NSW 2093
Jacqueline Alice Daley	15 A Bangaroo Street NORTH BALGOWLAH NSW 2093
Mrs Corina Francis Crowe	50A Fromelles Avenue SEAFORTH NSW 2092
Mrs Ingrid Louise Chapman	8 Taree Avenue NORTH BALGOWLAH NSW 2093
Mr Malcolm Phillip Morris	29 Bangaroo Street NORTH BALGOWLAH NSW 2093
Ms Michele Mary Percival	14 A Bangaroo Street NORTH BALGOWLAH NSW 2093
Ms Antonia Bossi	14 B Bangaroo Street NORTH BALGOWLAH NSW 2093
Mrs Angela Lentidoro	51 Woodbine Street NORTH BALGOWLAH NSW 2093
Rein Vanem	22 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mr Jonathan Harris	32 The Corso MANLY NSW 2095
Yvonne Mary Bowyer	55 Woodbine Street NORTH BALGOWLAH NSW 2093
Mrs Josephine Iacobbe	PO Box 4031 BALGOWLAH HEIGHTS NSW 2093
Mrs Camilla Rosemary Schroder	9 Fromelles Avenue SEAFORTH NSW 2092
Ms Amanda Margaret Magarey	3 / 2 Worroebil Street NORTH BALGOWLAH NSW 2093
Mrs Helene Lorna Morris	29 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mr Mark Patrick Flynn Teresa Flynn	48 Eileen Street NORTH BALGOWLAH NSW 2093
Mr Adam William Keam	25 Serpentine Crescent NORTH BALGOWLAH NSW 2093

Mr Alexander Dino Asigno	16 Worrobil Street NORTH BALGOWLAH NSW 2093
Mrs Genevieve Margaret Brock	9 Serpentine Crescent NORTH BALGOWLAH NSW 2093
Mrs Karen Marosa	13 Worrobil Street NORTH BALGOWLAH NSW 2093
Mrs Anita McMahon	26 Bangaroo Street NORTH BALGOWLAH NSW 2093
Nathan Reid	11/34 Serpentine Crescent NORTH BALGOWLAH NSW 2093
Fiona Dick	Address Unknown
Mrs Lisa Maurice	6 / 14 Malvern Avenue MANLY NSW 2095
Mr Bradley James Maurice	12 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mr Sasha Dimovski	19 A Bangaroo Street NORTH BALGOWLAH NSW 2093
Dympna Baker	2 St Pauls Road NORTH BALGOWLAH NSW 2093
Gisela Elisabeth Moser	20 Coramba Street NORTH BALGOWLAH NSW 2093
Ms Abigail Louise Sweet	4 Yamba Street NORTH BALGOWLAH NSW 2093
David John O'Neill	31 / 2 A Campbell Parade MANLY VALE NSW 2093
David George Perks	1 Worrobil Street NORTH BALGOWLAH NSW 2093
Mrs Kathryn Alison Jerman	50 Baringa Avenue SEAFORTH NSW 2092
Mrs Kelly Bartholomew	246 / 117 Old Pittwater Road BROOKVALE NSW 2100
Mrs Amanda Ann Longmore	4 Worrobil Street NORTH BALGOWLAH NSW 2093
Katherine Ellen Dunne	4 / 2 Worrobil Street NORTH BALGOWLAH NSW 2093
Timothy John Concannon	24 Bangaroo Street NORTH BALGOWLAH NSW 2093
Miss Katie Louise Ward	14 Breakers Place MOUNT COOLUM NSW 4573
Mrs Joy Nicola Perks	1 Worrobil Street NORTH BALGOWLAH NSW 2093
Duncan McPherson	6 Worrobil Street NORTH BALGOWLAH NSW 2093
Mrs Ulla Kofoed Krause	7 Worrobil Street NORTH BALGOWLAH NSW 2093
Ms Jennifer Gardiner	23 Yatama Street SEAFORTH NSW 2092
Mr Martin Alwyn Parry	13 A Bangaroo Street NORTH BALGOWLAH NSW 2093
Maree Hanson	2 / 62 - 64 Bangaroo Street NORTH BALGOWLAH NSW 2093
Miss Irena Zezelj	2 / 2 Worrobil Street NORTH BALGOWLAH NSW 2093
Withheld Adam Lezzi	NORTH BALGOWLAH NSW 2093
Withheld Adam Lezzi	2 / 2 Worrobil Street NORTH BALGOWLAH NSW 2093
Mrs Karis Nicola Khatchadourian	15 Penrose Place FRENCHS FOREST NSW 2086
Lisa Mozes	20 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mrs Kerry Anne Bennet	67 Fromelles Avenue SEAFORTH NSW 2092
Ms Julie Elizabeth Flowers	2 / 12 James Street MANLY NSW 2095
Withheld	NORTH BALGOWLAH NSW 2093
Mrs Nathalie Michele Spanos	9 Coramba Street NORTH BALGOWLAH NSW 2093
Louise Pamela Moore	2 / 32 Poulton Parade FRENCHS FOREST NSW 2086
Mr Julie Elizabeth Livingstone	1 / 9 Marlee Street NORTH BALGOWLAH NSW 2093
Mr Bernd Johannes Krause	7 Worrobil Street NORTH BALGOWLAH NSW 2093
Matthew Robert Longmore	4 Worrobil Street NORTH BALGOWLAH NSW 2093
Blackwattle Planning	Address Unknown
Noise & Sound Services	Spectrum House 3 Cassandra Avenue ST IVES NSW 2075
Ms Elizabeth Fiona Dick	10/45 Bangaroo Street NORTH BALGOWLAH NSW 2093
Cinzia Iezzi	3 / 22 Pavilion Street QUEENSCLIFF NSW 2096



Mr Calvin Dunne	13 Birkley Road MANLY NSW 2095
Mrs Camilla Mary Pattison Stewart	7 Gloucester Street NORTH BALGOWLAH NSW 2093
Mr David Richards	53 Bangaroo Street NORTH BALGOWLAH NSW 2093
Karen Maric	25 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mrs Sandra Jenner	50 Woodbine Street NORTH BALGOWLAH NSW 2093
Mr Phillip John Bird	3 Florence Court NORTH BALGOWLAH NSW 2093
David Zoltan Mozes	C/- Denis Smith Level1 1073 Pittwater Road COLLAROY NSW 2097

The Development Application was publicly exhibited in accordance with Council's Community Participation Plan. The Development Application was first notified from 19/05/2022 – 2/06/2022, then followed by a renotification period from 12/08/2022 – 26/08/2022 due to amended information being received. As a result of the public exhibition and advertising, 163 submissions were received in objection to the proposal.

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

- **Traffic impacts and insufficient off-street parking**

Comment: A number of submissions were received with regards to the traffic impacts of the child care centre on Bangaroo Street and surrounding streets. Neighbouring residents highlighted that there are existing concerns regarding safety due to existing traffic congestion, vehicles exceeding the speed limit, limited sight lines and the limited number of on-street parking spaces. The Subject site is located within close proximity to bus stops which also results in traffic congestion along Bangaroo Street. Concern is also raised in regard to the use of the proposed crossover in close proximity to the busy intersection located to the south at Bangaroo Street and Worribol Street.

Concerns were also received regarding the insufficient number of off-street parking spaces proposed on site and the impact that will have on the number of on-street parking available in the surrounding streets, in particular Worribol Street. In particular, issues were raised with regards to the appropriateness and safety of accessing the off-street parking spaces and the inability to enter and exit the site in a forward direction. The submissions noted the high pedestrian activity along Bangaroo Street given the close proximity to bus stops, Seaforth Public School and the shops located north along Woodbine Street and raise concern that the a child care centre in this location will only add to increased pedestrian activity. The submissions raise grave concern for the safety of pedestrians, in particularly children when entering and existing the centre.

Council's Traffic Engineer has considered the submitted Traffic and Parking Impact Assessment and subsequent peer review. Concerns have been raised in relation to the proposal from a traffic perspective. Detailed comments in this regard are provided in this report under the "Referrals" section. See also discussion under Clause C2 Traffic, Access and Safety and C3 Parking Facilities of the WDCP for further discussion.

- **Pedestrian safety risks**

Comment: Issues were raised with regards to risk of accident or injury to local residents and people accessing the centre who utilise the Bangaroo Street footpath directly in front of the site. Concerns were expressed as to the volume of vehicles crossing the pedestrian path as well as the resulting flow on implications. Council's Traffic Engineer has considered the submitted Traffic and Parking Impact Assessment and peer review. Detailed comments in this regard are provided in this report under the "Referrals" section.

- **Noise pollution**

Comment: Many submissions raise concern with regard to the noise generated from the development, as a result of increased traffic and children. The same submissions have noted the



propose acoustic barrier measuring 1.8m to 3m in height will be undesirable, including having a visual impact on neighbouring properties. As discussed below, Council's Environmental Health Officer has reviewed the proposal in relation to acoustic impacts and raises concern regarding the submitted documentation in light of a peer review and response process. This process raises some doubts in relation to the efficacy of proposed mitigation measures in addition to the acoustic modelling and results. Recommendations are made for a further assessment to be undertaken.

- **Neighbourhood character / land use clash**

Comment: It is noted that several submissions have raised concern in relation to the centre not fitting within the character of the area, leading to undesirable impacts, including noise, waste and traffic. Further impacts on residential amenity are noted. Child care centres are a permitted land use within the R2 zone, but are to be sited, designed and operated in a manner that is commensurate with the objective of the zone and character of the area that does not conflict with adjoining and nearby land. To this end, the proposal is considered to result in undesirable impacts on traffic and acoustic privacy.

- **Fire safety and regulation / emergency egress**

Comment: The concerns raised in relation to fire safety and emergency egress are acknowledged. Council's Building Assessment Officer has reviewed the proposal and has requested clarification on compliance with egress requirements under the BCA. Insufficient detail is provided to demonstrate compliance with the above.

- **Fencing**

Comment: Concern is raised in relation to proposed fencing and associated maintenance costs. Proposed acoustic barriers are located 0.5m within the property boundary. Any responsibility for the ongoing maintenance is that of the owner/operator of the centre.

- **Operations and management**

Comment: Several submissions have noted concern regarding impact of services associated with commercial use, e.g., waste collection and deliveries. Were the proposal to be supported, a detailed and thorough operational plan of management would need to be prepared detailing how such services would be dealt with by the centre. While the application is supported by a OPoM, this would need to be amended to ensure all detail is provided.

- **Insufficient details and missing documentation**

Comment: There are submissions which have highlighted inconsistencies between plans and reports, and insufficient detail on plans, including dimensions. A thorough review of the supporting documentation has been undertaken. Concerns on inconsistencies and accuracy of reports is noted. Peer reviews have been undertaken of the acoustic and traffic assessments to ensure a thorough assessment. It is also noted that many plans do not provide sufficient detail, including dimensions to make a proper assessment. This has been raised with the applicant.

- **Property devaluation**

Comment: Property devaluation is not a matter for consideration under s4.15 of the EP&A Act and cannot be considered as part of this assessment.

- **Crime levels**

Comment: There is no evidence to suggest a child care centre will lead to new criminal activity in the area.

- **Stormwater run-off**



Comment: Council's Development Engineer has reviewed the proposal from a stormwater perspective and is supportive of the proposal, subject to conditions.

**REFERRALS**

Internal Referral Body	Comments
Traffic	<p><b>Not Supported</b></p> <p>I have reviewed the amended plans and the applicant's response to peer review of the traffic impact assessment.</p> <p>The amended plans do not appear to have been adjusted at all to address concerns or provide clarification with regard to issues raised in the previous traffic referral comments.</p> <p><b><u>Parking</u></b></p> <ol style="list-style-type: none"> <li>1. Although requested, the amended plans have no dimensions for the driveway and parking area, and it is therefore not possible to confirm if the parking spaces and driveway are sized in accordance with Australian Standards. The applicant's traffic consultant has asserted that there is sufficient space to accommodate the owner's small car and a sedan however the Australian Standard for off-street parking requires that even a small car space must be no less than 2.3m wide (plus 0.3m addition clearance on each obstructed side) and 5.0m in length while a standard parking space must be no less than 5.4m in length. The size of the vehicle currently driven by the owner is irrelevant. As noted in the previous traffic referral comments the surveyed dimensions suggest that there is only 2.27m width between the existing southern fence and the building's wall. This is inadequate to meet the Australian Standard even for a small car space and the amended plans and reporting have provided no information to refute the above. Fully dimensioned plans reflecting surveyed dimensions for the parking area to clarify available lengths and widths for each off-street parking space are required.</li> <li>2. The applicant's traffic consultant has also asserted that it is okay for a vehicle to park partly outside the property boundary provided it does not encroach on the footpath (pg. 14). Any vehicles parking in such a manner would be illegally parked and could receive a parking infringement. There appears to be insufficient space for two B85 vehicles to park nose to tail along the southern boundary without either preventing access to/from the side gate and preventing access to the waste/recycling area and/or encroaching on the footpath area. Dimensioned plans consistent with surveyed dimensions are required to confirm the area available for off-street parking. All parking spaces must be entirely contained within the property boundaries.</li> </ol>

Internal Referral Body	Comments
	<p>3. The surveyed dimensions suggest that there is 5.07m between the front boundary of the site and the patio. The front boundary of the site currently has a rendered wall running along it which further reduces the width. It is understood that a portion of the rendered wall is to be removed to allow parking however the patio level is well above the parking space level so overhang of a parked vehicle onto the patio will not be possible. The applicant's response to the peer review of the traffic report asserts on page 15 that there is a 5.35m length available between the front boundary and the patio/balcony. This is inconsistent with the surveyed dimensions and there is concern that not enough space is available for a B85 vehicle to park without encroaching on the nature strip area. Dimensioned plans consistent with surveyed dimensions are required. All parking spaces shown on the plans must be entirely contained within the property boundaries and spaces designated for drop off and pick up purposes must be sized in accordance with user class 3 in AS2890.1 Fig 2.2.</p> <p><b><u>Traffic Generation</u></b></p> <p>The previous traffic referral comments had requested that the site's traffic generation be revised to reflect traffic generation arising from the operation of a preschool (which most closely resembles the centre's proposed operating hours). The applicant's response to the peer review of the traffic report has acknowledged that they have underestimated the traffic generation from the site (pg. 8). Using the rates for a Preschool the AM peak hour traffic generation rate would increase from 8 trips per hour to 17 trips per hour. The amended PM peak traffic would have also been revised up from 7 trips per hour to 10 trips per hour. The PM peak traffic would occur between 2:30pm and 4:00pm rather than coinciding with general traffic peak which occurs later in the evening. The PM peak traffic would however correspond with the after-school period when children would be walking along the footpath. There is concern that this revised traffic generation coupled with the lack of any on-site turning area results in a greater frequency of vehicles reversing back across the footpath. This is in an area within close to proximity to a bus stop and within 400m of Seaforth Public School and it is therefore likely that vehicles reversing from the site will regularly encounter pedestrians. Measures to ensure the safety of pedestrians are required.</p> <p><b><u>Additional issues</u></b></p> <p><b><u>Pedestrian sight lines at boundary</u></b></p> <p>AS2890.1 Fig 3.3 requires that sight line triangles 2.5m x 2.0m in size should be available at the point where the driveway meets the property boundary. There is an existing dividing wall along the southern boundary of the site which prevents a complaint site line triangle from being created on</p>

Internal Referral Body	Comments
	<p>the south side of the driveway. A compliant sight line triangle will however be required on the north side of the driveway particularly as vehicles will be reversing rather than exiting forwards from the site. The absence of pedestrian crash history (as outlined on page 10 of the applicant's response to the peer review of their traffic assessment) although noted is not significant justification to overcome the need for adequate sight lines to pedestrians. Measures to overcome the absence of a sight line triangle to the south should be proposed by the applicant.</p> <p>Amended plans are required to address the concerns raised above and as detailed in the previous traffic referral comments.</p>
<p>Environmental Health – Industrial Use</p>	<p><b>Not Supported</b></p> <p>Environmental Health previously made comment and provided proposed conditions of any approval.</p> <p>For this review, the applicant has provided expert response to questions raised about the supporting acoustic report methodology and results and the peer reviewer still has some concerns (letter to Council 20 July 2022) summarised here for clarity to the reader.</p> <p>We note that, as well as a response to the peer review, RWDI are now suggesting significant changes to the proposed childcare. These include the proposed number of children, the proposed hours of use and hence, a proposed higher noise emission criterium for the outdoor play. Furthermore, RWDI have accepted that the additional noise monitoring conducted at the backyard ground floor (L02) and rear balcony (L03) between 26 and 29 June 2020 did not occur during periods within the proposed operating hours of the childcare centre. Note: Wilkinson Murray were taken over by RWDI. Directors S.A. Scannell, K. Scannell MSc., MAAS, &amp; M. J. Scannell BA MAAS. Hence, we respectively suggest that RWDI produce an updated noise assessment report which addresses all of the proposed changes. This can then be assessed by Council and peer reviewed by an AAAC acoustical consultancy.</p> <p>The updated report should also include revised background noise monitoring and an assessment of the new Council requirements for mechanical ventilation systems from kitchen and toilets (see Northern Beaches Environmental Health Referral Response - commercial use, dated 22/06/2022). This due to the limited possible locations of this plant other than at close proximity to the neighbouring properties.</p> <p>Environmental Health acknowledges that the basis of any assessment report; should changes be made, such as an increase in child numbers, hours or whether a 3m acoustic wall can or cannot be built near the property boundary, as well as mechanical ventilation requirements; needs to be</p>

Internal Referral Body	Comments
	<p>reflected in an up-to-date acoustic review by the applicant and taking into consideration the above reviewers' comments.</p> <p>Changes to site or operational plans can impact on potential noise nuisance outcomes. These assessments are theoretical until finally confirmed at occupation stage under real life circumstances. Significantly objection to and failure to build the proposed significant 3m wall the length of the rear boundary will have a significant impact on the acoustic recommendations.</p> <p>If a 3m wall set in 500mm from and the length of the rear boundary is unacceptable to Council, then the proposal cannot be currently supported. (Also, how and who maintains the 500mm wide inaccessible land strip created also needs addressing). Dividing fences are generally 1.8m high on or near the boundary.</p> <p>Whilst no guarantee can be given, noise control measures can usually be provided to comply (for example - if child numbers and hours are reduced, or plans amended). Childcare facilities are a source of complaint to Council mainly due to crying or screaming children and a robust Plan of Management is also critical incorporating any acoustic recommendations.</p> <p>If the 3m acoustic barrier wall is supported by Council, child numbers and hours confirmed in the acoustic report as proposed as assessed, Environmental Health could in these circumstances support the proposal and then require an acoustic review at the time of occupation to assess the noise criteria in operation, including mechanical ventilation/plant and equipment (any potential changes/modifications necessary being carried out within 30 days).</p> <p>The proposal is therefore unsupported.</p>
Environmental Health – Commercial Use	<p><b>Supported</b></p> <p>No significant changes relating to the food area/s. No changes to the Environmental Health referral comments or recommended conditions from 22 June 2022.</p>
Landscape	<p><b>Supported</b></p> <p>The proposal for alterations and additions to the existing dwelling and use as a centre-based childcare facility under this review application is assessed by an alternate Landscape Officer to DA2021/0680.</p> <p>As outlined in the Statement of Environmental Effects the changes, for review, to DA2021/0680 are mainly related to traffic issues and children capacity limits. There are no changes to the information provided regarding the landscape.</p> <p>No Arboricultural Impact Assessment is included as part of the application however the Statement of Environmental Effects provided in DA2021/0680 indicated no trees were to</p>

Internal Referral Body	Comments
	<p>be removed for the proposed works; "The proposal does not require the removal of any flora or fauna". As outlined in the Landscape Referral for DA2021/0680 some vegetation to the southern side of the front yard will need to be removed to accommodate the new parking area. All other trees and vegetation shall be retained and protected subject to the imposed conditions. Landscape Referral notes that the two mature Magnolia trees to the rear of the dwelling shall be retained and protected and all works within the tree protection zone of these trees shall be supervised by a Project Arborist subject to the imposed conditions.</p> <p>A new 3-metre-high fence is proposed 500mm off the rear boundary. All fencing works in the tree protection zone of the existing trees shall be under the advice and supervision of the Project Arborist. Landscape Referral raises no other concerns subject to the imposed conditions.</p> <p>The proposal is therefore supported.</p>
Waste	<p><b>Supported</b></p> <p>I note that the location of the bin storage has not changed on the amended plans.</p> <p>Waste Services had no objection to this location on the original plans and still has no objections.</p> <p>As an alternative the bins could be stored in the grassed area at the front of the property with suitable screening around the bins. This location provides better access for emptying the bins.</p>
Building Assessment	<p><b>Not Supported</b></p> <p>The amended plans have been reviewed resulting in (2) additional conditions relating to access and egress (external) and access for disabled (internal).</p> <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p><b>Further Review</b></p> <p>Concern has been raised regarding the additional condition relating to access and egress (external) and the ability of the proposal to comply with Clause D1.10 of the BCA.</p> <p>In this regard the applicant is to provide details as to how the requirements for a 1m wide unobstructed path of travel from the rear external exit door to the street, as required by D1.10 of the BCA, can be achieved. The details need to include the location, width of the pathway and any measures on how to overcome obstructions and still maintain the required width.</p>



External Referral Body	Comments
Ausgrid	The proposal was referred to Ausgrid. A response was received by Council from Ausgrid stating that "decision not required". Therefore, it is assumed that no objections are raised and no conditions are recommended.

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

#### SEPP (Transport and Infrastructure) 2021

Clause 3.23 of State Environmental Planning Policy (Transport and Infrastructure) 2021 stipulates that:

*Before determining a development application for development for the purposes of a centre-based child-care facility, the consent authority must take into consideration any applicable provisions of the Child Care Planning Guideline, in relation to the proposed development.*

As previously outlined this application is for the establishment of a centre-based child-care facility.

As per the provisions of Clause 3.23, the provisions of the SEPP and the Child Care Planning Guideline are applicable.

### DESIGN QUALITY PRINCIPLES

#### Principle 1: Context

*Good design responds and contributes to its context, including 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.*

*Well-designed child care facilities respond to and enhance the qualities and identity of the area including adjacent sites, streetscapes and neighbourhood.*

*Well-designed child care facilities take advantage of its context by optimising nearby transport, public facilities and centres, respecting local heritage, and being responsive to the demographic, cultural and socio-economic makeup of the facility users and surrounding communities.*

Comment: Consistent

The existing dwelling remains substantially the same with the façade not being dramatically altered other than the introduction of a 1.2m high child proof fence within the front setback. The provision of hard standing car parking within the front setback to create three (3) parking spaces does not comply with B7 Front Boundary Setbacks control as stipulated in the Warringah Development



Control Plan (WDCP). This control does not support car parking within the front setback. The development proposes to increase the number of car parking spaces from two (2) to three (3). Notwithstanding the non-compliance, the additional parking space is not considered to impact on the character with the low-density residential character of the surrounding streetscape given no parking structures are proposed and the stacked parking arrangement will minimise the appearance of the third parking space along the southern boundary closer to the building. The front setback will maintain 50% of the area as landscaped open space and will be generally free of any structures (other than the child proof gate) to maintain a sense of openness.

### **Principle 2: Built Form**

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

*Good design 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. Good design also uses a variety of materials, colours and textures.*

*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.*

*Contemporary facility design can be distinctive and unique to support innovative approaches to teaching and learning, while still achieving a visual appearance that is aesthetically pleasing, complements the surrounding areas, and contributes positively to the public realm.*

Comment: Consistent

The overall scale, bulk and height of the proposed childcare centre is consistent with that of the largely low-density residential character along Bangaroo Street and the surrounding area. As above, the proposal will breach the front setback control within the WDCP, however this is considered minor and will not impact on the building particularly when viewed from the public domain of Bangaroo Street. Given the design of the building is not substantially changing, it is not considered to dominate the streetscape or the existing built environment along Bangaroo Street.

### **Principle 3: Adaptive Learning Spaces**

*Good facility design delivers high quality learning spaces and achieves a high level of amenity for children and staff, resulting in buildings and associated infrastructure that are fit-for-purpose, enjoyable and easy to use. This is achieved through site layout, building design, and learning spaces fit-out.*

*Good design achieves a mix of inclusive learning spaces to cater for all students and different modes of learning. This includes appropriately designed physical spaces offering a variety of settings, technology, and opportunities for interaction.*

Comment: Inconsistent

The design of the proposed childcare centre does not deliver learning spaces and an acceptable level of amenity for both children and staff when assessed against the applicable requirements of the Child Care Planning Guideline (refer below for a detailed assessment). Concurrence to the NSW Department of Education – Early Childhood Education Directorate was not identified to be necessary at the time of lodgement, nevertheless the development would need to meet clauses 107 and 108 which relate to the indoor and outdoor space requirements of the Education and Care Services National Regulations 2011. Should the application be approved, conditions can be imposed in this regard.

### **Principle 4: Sustainability**



*Sustainable design combines positive environmental, social, and economic outcomes.*

*This includes use of natural cross ventilation, sunlight and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and re-use of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.*

*Well-designed facilities are durable and embed resource efficiency into building and site design, resulting in less energy and water consumption, less generation of waste and air emissions and reduced operational costs.*

Comment: Inconsistent

There is concern that the proposed layout is not conducive to providing for a positive sustainable outcome, specifically in relation to sunlight and passive thermal design. The proposal seeks to retain the existing dwelling layout, resulting in learning spaces, in particular 'Activity Area No 1' being located to the southern side of the ground floor. As such, there is no ability for this space to receive sufficient sunlight. The proposed layout of the centre is not considered suitable to provide for a sustainable development.

#### **Principle 5: Landscape**

*Landscape and buildings should operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.*

*Well-designed landscapes make outdoor spaces assets for learning. This includes designing for diversity in function and use, age-appropriateness, and amenity.*

*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.*

Comment: Consistent

The development proposes an appropriately designed landscaped open space area within the rear setback. This area complies with the minimum requirement for an unencumbered space for the children to enjoy and provides a selection of low to medium height trees and shrubs to ensure the landscape character of the development is maintained within the immediate vicinity. The outdoor learning environment for children is therefore considered acceptable.

#### **Principle 6: Amenity**

*Good design positively influences internal and external amenity for children, staff and neighbours. Achieving good amenity contributes to positive learning environments and the well-being of students and staff.*

*Good amenity combines appropriate and efficient indoor and outdoor learning spaces, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, service areas and ease of access for all age groups and degrees of mobility.*

*Well-designed child care facilities provide comfortable, diverse and attractive spaces to learn, play and socialise.*

Comment: Inconsistent



As previously discussed, the proposed design of the centre, including internal and external spaces, is not considered to provide for a positive experience with amenity, staff and neighbours not being appropriately considered. As noted, the internal layout of the ground floor is not conducive to a positive learning environment. The outdoor learning spaces do not provide suitable shading for children. While the reliance upon a 3m high acoustic barrier is not appropriate in this instance. Further, there remains unresolved concerns in relation to the potential acoustic impacts generated by the centre (refer to Referral section above for acoustic assessment).

**Principle 7: Safety**

*Well-designed childcare facilities optimise the use of the built and natural environment for learning and play, while utilising equipment, vegetation and landscaping that has a low health and safety risk, and can be checked and maintained efficiently and appropriately.*

*Good childcare facility design balances safety and security with the need to create a welcoming and accessible environment. It provides for quality public and private spaces that are inviting, clearly defined and allow controlled access for members of the community. Well-designed childcare facilities incorporate passive surveillance and Crime Prevention Through Environmental Design (CPTED).*

Comment: Consistent

The proposed childcare centre is considered to achieve consistency with the need to provide safe and secure learning spaces as well as appropriate supervision of children. The entries are also clearly defined and allow for controlled access for members of the community. The following table is an assessment against the criteria of the 'Child Care Planning Guideline' as required by State Environmental Planning Policy (Transport and Infrastructure) 2021.

The following table is an assessment against the criteria of the 'Child Care Planning Guideline' as required by State Environmental Planning Policy (Transport and Infrastructure) 2021.

### **MATTERS FOR CONSIDERATION**

<b>Objectives</b>	<b>Criteria/Guidelines</b>	<b>Comments</b>
<b>3.1 Site selection and location</b>		
<b><i>C1 To ensure that appropriate zone considerations are assessed when selecting a site</i></b>	<p>For proposed developments in or adjacent to a residential zone, consider:</p> <ul style="list-style-type: none"> <li>• the acoustic and privacy impacts of the proposed development on the residential properties</li> <li>• the setbacks and siting of buildings within the residential context</li> <li>• traffic and parking impacts of the proposal on residential amenity.</li> </ul>	<p><b>Inconsistent</b></p> <p>The application is accompanied by an acoustic report to address the proposed childcare centre. A peer review of this acoustic assessment has also been undertaken raising concern regarding the acoustic methodology and results. The report makes recommendations regarding acoustic walls and treatments to mitigate adverse noise impacts to adjoining properties. The proposal is considered unacceptable as it relies upon a 3m high acoustic barrier, with uncertainty regarding the efficacy of the barrier. There remain unresolved acoustic matters, therefore the proposal cannot be supported on acoustic grounds.</p> <p>The additional vehicular and pedestrian traffic generated by the proposed childcare centre is likely to adversely impact upon safety in the street. Further, the proposal provides for insufficient parking dimensions leading to an unacceptable parking arrangement. This is discussed in detail further in this report.</p>

	<p>When selecting a site, ensure that:</p> <ul style="list-style-type: none"> <li>• the location and surrounding uses are compatible with the proposed development or use</li> <li>• the site is environmentally safe including risks such as flooding, land slip, bushfires, coastal hazards</li> <li>• there are no potential environmental contaminants on the land, in the building or the general proximity, and whether hazardous materials remediation is needed</li> <li>• the characteristics of the site are suitable for the scale and type of development proposed having regard to:             <ul style="list-style-type: none"> <li>• size of street frontage, lot configuration, dimensions and overall size</li> <li>• number of shared boundaries with residential properties</li> <li>• the development will not have adverse environmental impacts on the surrounding area, particularly in sensitive environmental or cultural areas</li> </ul> </li> <li>• where the proposal is to occupy or retrofit an existing premises, the interior and exterior spaces are suitable for the proposed use</li> <li>• there are suitable drop off and pick up areas, and off and on street parking</li> <li>• the type of adjoining road (for example classified, arterial, local road, cul-de-sac) is appropriate and safe for the proposed use</li> <li>• it is not located closely to incompatible social activities and uses such as restricted premises, injecting rooms, drug clinics and the like, premises licensed for alcohol or gambling such as hotels, clubs, cellar door premises and sex services premises.</li> </ul>	<p><b>Inconsistent</b></p> <p>The site is considered safe from risks associated with natural hazards.</p> <p>The additional vehicular and pedestrian traffic generated by the proposed childcare centre is likely to adversely impact upon safety in Bangaroo Street. Further, the proposal provides for insufficient off-street parking of appropriate dimensions, in particular with drop-off/pick-up locations and an unacceptable parking arrangement. This is discussed in detail further in this report.</p> <p>The proposed childcare centre is not located closely to any known incompatible social activities/uses.</p>
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<p><b>C3 To ensure that sites for child care facilities are appropriately located</b></p>	<p>A child care facility should be located:</p> <ul style="list-style-type: none"> <li>• near compatible social uses such as schools and other educational establishments, parks and other public open space, community facilities, places of public worship</li> <li>• near or within employment areas, town centres, business centres, shops</li> <li>• with access to public transport including rail, buses, ferries</li> <li>• in areas with pedestrian connectivity to the local community, businesses, shops, services and the like.</li> </ul>	<p><b>Consistent</b></p> <p>The proposed child care facility is located close to Seaforth Public School, but is not near to any employment areas, town centres, business centres or shops. The nearest shops are Woodbine Street, North Balgowlah, some 350m towards the north of the site. Access to public transport (buses) are nearby along Bangaroo Street adjacent to the subject site and pedestrian connectivity is available via existing footpaths</p>
<p><b>C4 To ensure that sites for child care facilities do not incur risks from environmental, health or safety hazard</b></p>	<p>A child care facility should be located to avoid risks to children, staff or visitors and adverse environmental conditions arising from:</p> <ul style="list-style-type: none"> <li>• proximity to: <ul style="list-style-type: none"> <li>○ heavy or hazardous industry, waste transfer depots or landfill sites</li> <li>○ LPG tanks or service stations</li> <li>○ water cooling and water warming systems</li> <li>○ odour (and other air pollutant) generating uses and sources or sites which, due to prevailing land use zoning, may in future accommodate noise or odour generating uses</li> </ul> </li> </ul>	<p><b>Consistent</b></p> <p>The proposed childcare centre is not located in proximity to sites known to incur risks from environmental, health or safety hazards</p>
<p><b>3.2 Local character, streetscape and the public domain</b></p>		

<p><b><i>C5 To ensure that the child care facility is compatible with the local character and surrounding streetscape</i></b></p>	<p>The proposed development should:</p> <ul style="list-style-type: none"> <li>• contribute to the local area by being designed in character with the locality and existing streetscape</li> <li>• reflect the predominant form of surrounding land uses, particularly in low density residential areas</li> <li>• recognise predominant streetscape qualities, such as building form, scale, materials and colours</li> <li>• include design and architectural treatments that respond to and integrate with the existing streetscape</li> <li>• use landscaping to positively contribute to the streetscape and neighbouring amenity</li> <li>• integrate car parking into the building and site landscaping design in residential areas.</li> </ul>	<p><b>Consistent</b></p> <p>The proposed childcare centre does not dramatically change the built form of the existing building in character with the locality and existing streetscape. The existing building does reflect the predominant form of the surrounding low density residential context.</p> <p>Whilst the additional off-street car parking does reduce the landscaped open space within the front setback, the openness of the site is retained.</p>
<p><b><i>C6, C7, C8 To ensure clear delineation between the child care facility and public spaces</i></b></p>	<p>Create a threshold with a clear transition between public and private realms, including:</p> <ul style="list-style-type: none"> <li>• fencing to ensure safety for children entering and leaving the facility</li> <li>• windows facing from the facility towards the public domain to provide passive surveillance to the street as a safety measure and connection between the facility and the community</li> <li>• integrating existing and proposed landscaping with fencing.</li> </ul>	<p><b>Consistent</b></p> <p>Existing windows towards Bangaroo Street ensure that these requirements are capable of being achieved, particularly when accounting for regulatory procedures that would need to be undertaken by the Early Childhood Education Directorate prior to any childcare centre becoming operational.</p>
	<p>On sites with multiple buildings and/or entries, pedestrian entries and spaces associated with the child care facility should be differentiated to improve legibility for visitors and children by changes in materials, plant species and colours.</p>	<p><b>Consistent</b></p> <p>The proposed childcare centre is a single building with a primary entry point via the Bangaroo Street frontage. As previously mentioned, these requirements are capable of being achieved, particularly when accounting for regulatory procedures that would need to be undertaken by the Early Childhood Education Directorate prior to childcare centre becoming operational.</p>

	<p>Where development adjoins public parks, open space or bushland, the facility should provide an appealing streetscape frontage by adopting some of the following design solutions:</p> <ul style="list-style-type: none"> <li>• clearly defined street access, pedestrian paths and building entries</li> <li>• low fences and planting which delineate communal/ private open space from adjoining public open space</li> <li>• minimal use of blank walls and high fences.</li> </ul>	<p><b>N/A</b></p> <p>The Site does not adjoin any public parks, open space, or bushland.</p>
<p><b>C9, C10 To ensure that front fences and retaining walls respond to and complement the context and character of the area and do not dominate the public domain.</b></p>	<p>Front fences and walls within the front setback should be constructed of visually permeable materials and treatments. Where the site is listed as a heritage item, adjacent to a heritage item or within a conservation area front fencing should be designed in accordance with local heritage provisions.</p>	<p><b>Consistent</b></p> <p>The application proposes a child proof gate/fence within the front setback. The gate will measure 1.2m in height and will be located 1.2m from the front boundary. The gate will be constructed of visually permeable materials as to reduce the visual impact when viewed from Bangaroo Street.</p>
	<p>High solid acoustic fencing may be used when shielding the facility from noise on classified roads. The walls should be setback from the property boundary with screen landscaping of a similar height between the wall and the boundary</p>	<p><b>N/A</b></p> <p>Bangaroo Street is a local road and therefore would not require high fencing that would otherwise be necessary along a classified road.</p>
<p><b>3.3 Building orientation, envelope, and design</b></p>		

<p><b>C11 To respond to the streetscape and site, while optimising solar access and opportunities for shade</b></p>	<p>Orient a development on a site and design the building layout to:</p> <ul style="list-style-type: none"> <li>• ensure visual privacy and minimise potential noise and overlooking impacts on neighbours by:</li> <li>• facing doors and windows away from private open space, living rooms and bedrooms in adjoining residential properties</li> <li>• placing play equipment away from common boundaries with residential properties</li> <li>• locating outdoor play areas away from residential dwellings and other sensitive uses</li> <li>• optimise solar access to internal and external play areas</li> <li>• avoid overshadowing of adjoining residential properties</li> <li>• minimise cut and fill</li> <li>• ensure buildings along the street frontage define the street by facing it</li> <li>• ensure that where a child care facility is located above ground level, outdoor play areas are protected from wind and other climatic conditions.</li> </ul>	<p><b>Inconsistent</b></p> <p>The proposed childcare centre is located within a R2 Low Density Residential area which is characterised by residential dwellings.</p> <p>It is considered that the design of the building layout does not allow for suitable solar access and shading. Internal activity areas, specifically 'Activity Area No 1' is not suitably located to ensure sufficient solar access. While shading to the external play areas is not provided.</p> <p>An acoustic report and a subsequent peer review has been submitted with the development application which was reviewed by Council's Environmental Health (Industrial) Section. The review confirms shortcomings in the acoustic report methodology and results. The peer reviewer has ongoing concerns, particularly in relation to the reliance upon a 3m high acoustic barrier.</p> <p>As noted above, there remains ongoing concerns in relation to general amenity to within the site and to nearby residential properties. Therefore, the proposal cannot be supported.</p>
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<p><b>C12 To ensure that the scale of the child care facility is compatible with adjoining development and the impact on adjoining buildings is minimised</b></p>	<p>The following matters may be considered to minimise the impacts of the proposal on local character:</p> <ul style="list-style-type: none"> <li>• building height should be consistent with other buildings in the locality</li> <li>• building height should respond to the scale and character of the street</li> <li>• setbacks should allow for adequate privacy for neighbours and children at the proposed child care facility</li> <li>• setbacks should provide adequate access for building maintenance</li> <li>• setbacks to the street should be consistent with the existing character.</li> </ul>	<p><b>Consistent</b></p> <p>The existing building is consistent with the height and setbacks of other buildings in the locality and responds positively to the scale and character of the street.</p>
<p><b>C13, C14 To ensure that setbacks from the boundary of a child care facility are consistent with the predominant development within the immediate context</b></p>	<p>Where there are no prevailing setback controls minimum setback to a classified road should be 10 metres. On other road frontages where there are existing buildings within 50 metres, the setback should be the average of the two closest buildings. Where there are no buildings within 50 metres, the same setback is required for the predominant adjoining land use.</p> <p>On land in a residential zone, side and rear boundary setbacks should observe the prevailing setbacks required for a dwelling house.</p>	<p><b>Consistent</b></p> <p>The front building line of the dwelling is not altered as a result of the proposal.</p> <p><b>Consistent</b></p> <p>No changes proposed to the existing side and rear setbacks.</p>
<p><b>C15 To ensure that the built form, articulation and scale of development relates to its context and buildings are well designed to contribute to an area's character</b></p>	<p>The built form of the development should contribute to the character of the local area, including how it:</p> <ul style="list-style-type: none"> <li>• respects and responds to its physical context such as adjacent built form, neighbourhood character, streetscape quality and heritage</li> <li>• contributes to the identity of the place</li> <li>• retains and reinforces existing built form and vegetation where significant</li> <li>• considers heritage within the local neighbourhood including identified heritage items and conservation areas</li> <li>• responds to its natural environment including local landscape setting and climate</li> <li>• contributes to the identity of place.</li> </ul>	<p><b>Consistent</b></p> <p>The built form of the proposed childcare centre is seen to respect and respond to its adjacent built form, the character of the neighbourhood or streetscape.</p>
<p><b>C16 To ensure that buildings are designed to create safe</b></p>	<p>Entry to the facility should be limited to one secure point which is:</p> <ul style="list-style-type: none"> <li>• located to allow ease of access, particularly</li> </ul>	<p><b>Consistent</b></p> <p>The entry to the childcare centre is limited to one secure point and is consistent with the requirements of this guideline.</p>

<p><b>environments for all users</b></p>	<p>for pedestrians</p> <ul style="list-style-type: none"> <li>• directly accessible from the street where possible</li> <li>• directly visible from the street frontage</li> <li>• easily monitored through natural or camera surveillance</li> <li>• not accessed through an outdoor play area.</li> <li>• in a mixed-use development, clearly defined and separate from entrances to other uses in the building.</li> </ul>	
<p><b>C17 To ensure that child care facilities are designed to be accessible by all potential users</b></p>	<p>Accessible design can be achieved by:</p> <ul style="list-style-type: none"> <li>• providing accessibility to and within the building in accordance with all relevant legislation</li> <li>• linking all key areas of the site by level or ramped pathways that are accessible to prams and wheelchairs, including between all car parking areas and the main building entry</li> <li>• providing a continuous path of travel to and within the building, including access between the street entry and car parking and main building entrance. Platform lifts should be avoided where possible</li> <li>• minimising ramping by ensuring building entries and ground floors are well located relative to the level of the footpath.</li> </ul> <p><b>NOTE:</b> <i>The National Construction Code, the Discrimination Disability Act 1992 and the Disability (Access to Premises – Buildings) Standards 2010 set out the requirements for access to buildings for people with disabilities.</i></p>	<p><b>Consistent</b></p> <p>The proposal provides an accessible design for wheelchairs and prams and a continuous path of travel to and within the building including access between the street entry and car parking and main building entrance.</p>
<p><b>3.4 Landscaping</b></p>		
<p><b>C18, C19 To provide landscape design that contributes to the streetscape and amenity</b></p>	<p>Appropriate planting should be provided along the boundary integrated with fencing. Screen planting should not be included in calculations of unencumbered outdoor space.</p> <p>Use the existing landscape where feasible to provide a high quality landscaped area by:</p> <ul style="list-style-type: none"> <li>• reflecting and reinforcing the local context</li> <li>• incorporating natural features of the site, such as trees, rocky outcrops and vegetation communities into landscaping.</li> </ul>	<p><b>Consistent</b></p> <p>The proposed landscape arrangement includes perimeter native screen plantings along both side boundaries for the site. These plantings have not been included in calculations of unencumbered outdoor space.</p>

	<p>Incorporate car parking into the landscape design of the site by:</p> <ul style="list-style-type: none"> <li>• planting shade trees in large car parking areas to create a cool outdoor environment and reduce summer heat radiating into buildings</li> <li>• taking into account streetscape, local character and context when siting car parking areas within the front setback</li> <li>• using low level landscaping to soften and screen parking areas.</li> </ul>	<p><b>Consistent</b></p> <p>The proposed parking area along the southern side of the site within the front setback will provide for three (3) off street parking spaces. Landscaping is proposed along the northern side of the site within the front setback which will assist in softening the car hard stand parking spaces.</p>
<p><b>3.5 Visual and acoustic privacy</b></p>		
<p><b>C20, C21 To protect the privacy and security of children attending the facility</b></p>	<p>Open balconies in mixed use developments should not overlook facilities nor overhang outdoor play spaces.</p> <p>Minimise direct overlooking of indoor rooms and outdoor play spaces from public areas through:</p> <ul style="list-style-type: none"> <li>• appropriate site and building layout</li> <li>• suitably locating pathways, windows and doors</li> <li>• permanent screening and landscape design.</li> </ul>	<p><b>N/A</b></p> <p>The proposal is not a mixed-use development.</p> <p><b>Consistent</b></p> <p>Indoor rooms and outdoor play spaces of the proposed childcare centre are located away from public areas. This has been achieved through largely incorporated these areas internally and towards the rear of the site.</p>
<p><b>C22 To minimise impacts on privacy of adjoining properties</b></p>	<p>Minimise direct overlooking of main internal living areas and private open spaces in adjoining developments through:</p> <ul style="list-style-type: none"> <li>• appropriate site and building layout</li> <li>• suitable location of pathways, windows and doors</li> <li>• landscape design and screening.</li> </ul>	<p><b>Inconsistent</b></p> <p>The proposal does not minimise direct overlooking towards adjoining residential properties from a first floor balcony.</p>

<p><b><i>C23, C24 To minimise the impact of child care facilities on the acoustic privacy of neighbouring residential developments</i></b></p>	<p>A new development, or development that includes alterations to more than 50 per cent of the existing floor area, and is located adjacent to residential accommodation should:</p> <ul style="list-style-type: none"> <li>• provide an acoustic fence along any boundary where the adjoining property contains a residential use. (An acoustic fence is one that is a solid, gap free fence).</li> <li>• ensure that mechanical plant or equipment is screened by solid, gap free material and constructed to reduce noise levels e.g. acoustic fence, building, or enclosure.</li> </ul>	<p><b>Inconsistent</b></p> <p>The Development Application is supported by a detailed Acoustic Assessment, prepared by Wilkinson Murray, dated 21 April 2021, which was followed by a Peer Review and subsequent response to the Peer Review, undertaken by Noise and Sound Services, dated April 2022 and RWDI Australia, respectively.</p> <p>The report prepared by Wilkinson Murray details a 1.8m high noise barrier is to be constructed along part of the southern boundary adjacent to the open space at the rear of the site with a 2.4m high noise barrier constructed along the southern boundary adjacent to the building. A 2.4m high noise barrier is proposed along the northern boundary with a 3.0m high noise barrier proposed along the western (rear) boundary.</p> <p>The Peer Review, prepared by Noise and Sound Services notes concerns regarding noise generated from the outdoor play areas, particularly the residential receivers, in the elevated six units at 2 Worrobil Street. The peer review also notes the general unacceptability of the 3m high acoustic barrier to neighbours, while also having reservations regarding the height being suitable to meet the noise goals of background noise plus 5dB. The review concludes that the site remains unsuitable for use as a childcare centre. A response to this peer review, prepared by RWDI Australia has responded to the matters raised by Noise and Sound</p>
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		<p>Services. RWDI acknowledge inconsistencies and shortfalls in the original assessment and modelling, and provides clarification and further detail in this regard. The response by RWDI states that the proposal remains satisfactory and supportable from an acoustic perspective. However, a new acoustic assessment would be required to be undertaken and reassessed by Council.</p> <p>Council's Environmental Health (Industrial) Officer acknowledges the above and is not in a position to support the proposal due to the shortcomings in the original assessment, and requests an updated noise assessment report.</p>
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	<p>A suitably qualified acoustic professional should prepare an acoustic report which will cover the following matters:</p> <ul style="list-style-type: none"> <li>• identify an appropriate noise level for a child care facility located in residential and other zones</li> <li>• determine an appropriate background noise level for outdoor play areas during times they are proposed to be in use</li> <li>• determine the appropriate height of any acoustic fence to enable the noise criteria to be met.</li> </ul>	<p><b>Inconsistent</b></p> <p>Refer to above for discussion on acoustic assessment and impacts generated by the proposed childcare.</p>
<p><b>3.6 Noise and air pollution</b></p>		
<p><b>C25, C26</b></p>	<p>Adopt design solutions to minimise the impacts of noise, such as:</p> <ul style="list-style-type: none"> <li>• creating physical separation between buildings and the noise source</li> <li>• orienting the facility perpendicular to the noise source and where possible buffered by other uses</li> <li>• using landscaping to reduce the perception of noise</li> <li>• limiting the number and size of openings facing noise sources</li> <li>• using double or acoustic glazing, acoustic louvres or enclosed balconies (wintergardens)</li> <li>• using materials with mass and/or sound insulation or absorption properties, such as solid balcony balustrades, external screens and soffits</li> <li>• locating cot rooms, sleeping areas and play areas away from external noise sources</li> </ul>	<p><b>Inconsistent</b></p> <p>The DA proposes acoustic barriers measuring from 1.8m – 3m in height to the northern, southern and western boundaries. A Peer Review of Murray Wilkinson’s acoustic assessment undertaken by NSS has raised reservations regarding the acceptability of the proposal and the assessment undertaken by MW. As previously noted above, there are concerns regarding the efficacy of the proposed barriers, as highlighted by the peer review conducted by NSS. In order for the proposal to be considered, a further noise assessment report is to be provided for assessment.</p>

	<p>An acoustic report should identify appropriate noise levels for sleeping areas and other non-play areas and examine impacts and noise attenuation measures where a childcare facility is proposed in any of the following locations:</p> <ul style="list-style-type: none"> <li>• on industrial zoned land</li> <li>• where the ANEF contour is between 20 and 25, consistent with AS 2021 – 2000</li> <li>• along a railway or mass transit corridor, as defined by State Environmental Planning Policy (Infrastructure) 2007</li> <li>• on a major or busy road</li> <li>• other land that is impacted by substantial external noise.</li> </ul>	<p><b>Inconsistent</b></p> <p>As above, the application is to be supported by a revised noise assessment report taking in the findings and conclusions in RWDIs response to the peer review. Upon receipt of an updated assessment, Council will determine the acceptability of the proposal in relation to noise levels for sleeping areas and other non-play areas.</p>
<p><b><i>C27, C28 To ensure air quality is acceptable where child care facilities are proposed close to external sources of air pollution such as major roads and industrial development</i></b></p>	<p>Locate child care facilities on sites which avoid or minimise the potential impact of external sources of air pollution such as major roads and industrial development.</p>	<p><b>N/A</b></p> <p>The proposed childcare centre is not located near external sources of air pollution such as major roads and industrial development.</p>

	<p>A suitably qualified air quality professional should prepare an air quality assessment report to demonstrate that proposed child care facilities close to major roads or industrial developments can meet air quality standards in accordance with relevant legislation and guidelines.</p> <p>The air quality assessment report should evaluate design considerations to minimise air pollution such as:</p> <ul style="list-style-type: none"> <li>• creating an appropriate separation distance between the facility and the pollution source. The location of play areas, sleeping areas and outdoor areas should be as far as practicable from the major source of air pollution</li> <li>• using landscaping to act as a filter for air pollution generated by traffic and industry. Landscaping has the added benefit of improving aesthetics and minimising visual intrusion from an adjacent roadway</li> <li>• incorporating ventilation design into the design of the facility.</li> </ul>	<p><b>N/A</b></p> <p>As above, the proposed childcare centre is not close to major roads or industrial developments.</p>
<b>3.7 Hours of operation</b>		
<p><b>C29, C30 To minimise the impact of the child care facility on the amenity of neighbouring residential developments</b></p>	<p>Hours of operation within areas where the predominant land use is residential should be confined to the core hours of 7.00am to 7.00pm weekdays. The hours of operation of the proposed child care facility may be extended if it adjoins or is adjacent to non-residential land uses.</p>	<p><b>Consistent</b></p> <p>The hours of operation for the proposed childcare centre are to be 8:30am to 4:00pm Monday to Friday.</p>
	<p>Within mixed use areas or predominantly commercial areas, the hours of operation for each child care facility should be assessed with respect to its compatibility with adjoining and co-located land uses.</p>	<p><b>N/A</b></p> <p>The proposed childcare centre is not located within a mixed use area or predominantly commercial area.</p>
<b>3.8 Traffic, parking and pedestrian circulation</b>		

<p><b>C31, C32, C33 To provide parking that satisfies the needs of users and demand generated by the centre</b></p>	<p>Off street car parking should be provided at the rates for child care facilities specified in a Development Control Plan that applies to the land.</p> <p>Where a Development Control Plan does not specify car parking rates, off street car parking should be provided at the following rates:</p> <p>Within 400 metres of a metropolitan train station:</p> <ul style="list-style-type: none"> <li>• 1 space per 10 children</li> <li>• 1 space per 2 staff. Staff parking may be stack or tandem parking with no more than 2 spaces in each tandem space.</li> </ul> <p>In other areas:</p> <ul style="list-style-type: none"> <li>• 1 space per 4 children.</li> </ul> <p>A reduction in car parking rates may be considered where:</p> <ul style="list-style-type: none"> <li>• the proposal is an adaptive re-use of a heritage item</li> <li>• the site is in a B8 Metropolitan Zone or other high density business or residential zone</li> <li>• the site is in proximity to high frequency and well connected public transport</li> <li>• the site is co-located or in proximity to other uses where parking is appropriately provided (for example business centres, schools, public open space, car parks)</li> <li>• there is sufficient on street parking available at appropriate times within proximity of the site.</li> </ul>	<p><b>Inconsistent</b></p> <p>The Warringah DCP requires that 1 space per employee of the child care centre be provided on site and provision for drop off and pick up points. The proposed child care facility is to accommodate for 12 children and a total of 3 staff. The application provides for a total of three (3) spaces, with one (1) space dedicated for staff and two (2) dedicated for parents/carers. While the supporting plans suggest the site will accommodate 3 spaces, due to insufficient detail being provided on the plans, it is unclear whether the spaces are appropriately dimensioned, therefore satisfying the minimum parking requirements.</p> <p>Council's Traffic Engineer has reviewed the Traffic and Parking Impact Assessment with regards to parking and notes the lack of detail on the plans in relation to dimensions, and finds the proposal lacking in this regard.</p> <p>See detailed comments within this report.</p>
	<p>In commercial or industrial zones and mixed use developments, on street parking may only be considered where there are no conflicts with adjoining uses, that is, no high levels of vehicle movement or potential conflicts with trucks and large vehicles.</p>	<p><b>N/A</b></p> <p>The proposed childcare centre is not located within a commercial or industrial zone and does not form part of a mixed use development.</p>

	<p>A Traffic and Parking Study should be prepared to support the proposal to quantify potential impacts on the surrounding land uses and demonstrate how impacts on amenity will be minimised. The study should also address any proposed variations to parking rates and demonstrate that:</p> <ul style="list-style-type: none"> <li>the amenity of the surrounding area will not be affected</li> <li>there will be no impacts on the safe operation of the surrounding road network.</li> </ul>	<p><b>Inconsistent</b></p> <p>A Traffic and Parking Impact Assessment has been provided with the development application. Council's Traffic Engineer has reviewed this report and considers the development will impact on pedestrian and vehicle safety, during the intense drop off and pick up times in association with the close location of a bus stop and a busy intersection.</p>
<p><b>C34, C35 To provide vehicle access from the street in a safe environment that does not disrupt traffic flows</b></p>	<p>Alternate vehicular access should be provided where child care facilities are on sites fronting:</p> <ul style="list-style-type: none"> <li>a classified road</li> <li>roads which carry freight traffic or transport dangerous goods or hazardous materials.</li> </ul> <p>The alternate access must have regard to:</p> <ul style="list-style-type: none"> <li>the prevailing traffic conditions</li> <li>pedestrian and vehicle safety including bicycle movements</li> <li>the likely impact of the development on traffic.</li> </ul> <p>Child care facilities proposed within cul-de-sacs or narrow lanes or roads should ensure that safe access can be provided to and from the site, and to and from the wider locality in times of emergency.</p>	<p><b>N/A</b></p> <p>The Site is not located on a classified road or a road which carries freight traffic or transport dangerous goods or hazardous materials.</p> <p><b>N/A</b></p> <p>The Site is not located within a cul-de-sac.</p>

<p><b>C36, C37, C38 To provide a safe and connected environment for pedestrians both on and around the site</b></p>	<p>The following design solutions may be incorporated into a development to help provide a safe pedestrian environment:</p> <ul style="list-style-type: none"> <li>• separate pedestrian access from the car park to the facility</li> <li>• defined pedestrian crossings included within large car parking areas</li> <li>• separate pedestrian and vehicle entries from the street for parents, children and visitors</li> <li>• pedestrian paths that enable two prams to pass each other</li> <li>• delivery and loading areas located away from the main pedestrian access to the building and in clearly designated, separate facilities</li> <li>• in commercial or industrial zones and mixed use developments, the path of travel from the car parking to the centre entrance physically separated from any truck circulation or parking areas</li> <li>• vehicles can enter and leave the site in a forward direction.</li> </ul>	<p><b>Inconsistent</b></p> <p>A Traffic and Parking Impact Assessment has been provided with the development application. Council's Traffic Engineer has reviewed this report and considers that the additional vehicle and pedestrian traffic generated by the childcare centre is likely to adversely impact upon safety in the street and pedestrians.</p>
	<p>Mixed use developments should include:</p> <ul style="list-style-type: none"> <li>• driveway access, manoeuvring areas and parking areas for the facility that are separate to parking and manoeuvring areas used by trucks</li> <li>• drop off and pick up zones that are exclusively available for use during the facility's operating hours with spaces clearly marked accordingly, close to the main entrance and preferably at the same floor level. Alternatively, direct access should avoid crossing driveways or maneuvering areas used by vehicles accessing other parts of the site</li> <li>• parking that is separate from other uses, located and grouped together and conveniently located near the entrance or access point to the facility.</li> </ul>	<p><b>N/A</b></p> <p>The proposed development does not form part of a mixed use development.</p>

	<p>Car parking design should:</p> <ul style="list-style-type: none"> <li>• include a child safe fence to separate car parking areas from the building entrance and play areas</li> <li>• provide clearly marked accessible parking as close as possible to the primary entrance to the building in accordance with appropriate Australian Standards</li> <li>• include wheelchair and pram accessible parking.</li> </ul>	<p><b>Consistent</b></p> <p>The application has not demonstrated that the design of all car parking bays will allow for full opening of all doors, nor that drop off/pick up spaces are compliant in width against relevant Australian Standards.</p>
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**APPLYING THE NATIONAL REGULATIONS TO DEVELOPMENT PROPOSALS**

Regulation	Design Guidance	Comments
<b>4.1 Indoor space requirements</b>		
<b>Regulation 107 Education and Care Services National Regulation</b>	<b><i>The proposed development includes at least 3.25 square metres of unencumbered indoor space for each child.</i></b>	<p><b>Consistent</b></p> <p>The proposed development 39m<sup>2</sup> requires at least of indoor space.</p>

<p>Every child being educated and cared for within a facility must have a minimum of 3.25m<sup>2</sup> of unencumbered indoor space. If this requirement is not met, the concurrence of the regulatory authority is required under the SEPP.</p> <p>Unencumbered indoor space excludes any of the following:</p> <ul style="list-style-type: none"> <li>• passageway or thoroughfare (including door swings) used for circulation</li> <li>• toilet and hygiene facilities</li> <li>• nappy changing area or area for preparing bottles</li> <li>• area permanently set aside for the use or storage of cots</li> <li>• area permanently set aside for storage</li> <li>• area or room for staff or administration</li> <li>• kitchens, unless the kitchen is designed to be used predominately by the children as part of an educational program e.g. a learning kitchen <ul style="list-style-type: none"> <li>• on-site laundry</li> <li>• other space that is not suitable for children.</li> </ul> </li> </ul> <p>All unencumbered indoor spaces must be provided as a secure area for children. The design of these spaces should consider the safe supervision of children.</p> <p>When calculating indoor space requirements, the area required for any</p>	<p>Verandahs as indoor space</p> <p>For a verandah to be included as unencumbered indoor space, any opening must be able to be fully closed during inclement weather. It can only be counted once and therefore cannot be counted as outdoor space as well as indoor space.</p> <p>Storage</p> <p>Storage areas including joinery units are not to be included in the calculation of indoor space. To achieve a functional unencumbered area free of clutter, storage areas must be considered when designing and calculating the spatial requirements of the facility. It is recommended that a child care facility provide:</p> <ul style="list-style-type: none"> <li>• a minimum of 0.3m<sup>3</sup> per child of external storage space</li> <li>• a minimum of 0.2m<sup>3</sup> per child of internal storage space.</li> </ul> <p>Storage does not need to be in a separate room or screened, and there should be a mixture of safe shelving and storage that children can access independently. Storage of items such as prams, bikes and scooters should be located adjacent to the building entrance.</p> <p>Where an external laundry service is used, storage and collection points for soiled items should be in an area with separate external access, away from children. This will prevent clothes being carried through public areas and reduce danger to children during drop off and collection of laundry.</p>	<p>The proposal provides for 106.4m<sup>2</sup> of indoor space.</p> <p>The proposal requires 3.6m<sup>3</sup> of external storage space.</p> <p>The proposal provides for 4.7m<sup>3</sup> of external storage space.</p> <p>The proposal requires 2.4m<sup>3</sup> of internal storage space.</p> <p>The proposal provide for 25.9m<sup>3</sup> of internal storage space.</p> <p>An internal laundry is accommodated on the ground floor.</p>
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<p>additional child may be waived when the child is being cared for in an emergency circumstance as set out in regulation 123(5) or the child is being educated or cared for in exceptional circumstances as set out in regulation 124(5) and (6) of the National Regulations.</p>		
<p>Applicants should also note that regulation 81 requires that the needs for sleep and rest of children at the service be met, having regard to their ages, development stages and individual needs.</p> <p>Development applications should indicate how these needs will be accommodated.</p> <p>Verandahs may be included when calculating indoor space with the written approval from the regulatory authority.</p>		
<p><b>4.2 Laundry and hygiene facilities</b></p>		

<p><b>Regulation 106 Education and Care Services National Regulation</b></p> <p>There must be laundry facilities or access to laundry facilities; or other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage prior to their disposal or laundering. The laundry and hygienic facilities must be located and maintained in a way that does not pose a risk to children.</p> <p>Child care facilities must also comply with the requirements for laundry facilities that are contained in the National Construction Code.</p>	<p><b><i>The proposed development includes laundry facilities or access to laundry facilities OR explain the other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage of soiled clothing, nappies and linen prior to their disposal or laundering.</i></b></p> <p>Laundry and hygiene facilities are a key consideration for education and care service premises. The type of laundry facilities provided must be appropriate to the age of children accommodated.</p> <p><b>On site laundry</b> On site laundry facilities should contain:</p> <ul style="list-style-type: none"> <li>• a washer or washers capable of dealing with the heavy requirements of the facility</li> <li>• a dryer</li> <li>• laundry sinks</li> <li>• adequate storage for soiled items prior to cleaning</li> <li>• an on site laundry cannot be calculated as usable unencumbered play space for children.</li> </ul> <p><b>External laundry service</b> A facility that does not contain on site laundry facilities must make external laundering arrangements. Any external laundry facility providing services to the facility needs to comply with any relevant Australian Standards.</p>	<p><b>Consistent</b></p> <p>An on-site laundry has been provided on the ground floor contain the appropriate facilities required. Such requirements are considered to be capable of being achieved, particularly when accounting for regulatory procedures that would need to be undertaken by the Early Childhood Education Directorate prior to childcare centre becoming operational.</p>
<p><b>4.3 Toilet and hygiene facilities</b></p>		

<p><b>Regulation 109 Education and Care Services National Regulation</b></p> <p>A service must ensure that adequate, developmentally and age-appropriate toilet, washing and drying facilities are provided for use by children being educated and cared for by the service; and the location and design of the toilet, washing and drying facilities enable safe use and convenient access by the children.</p> <p>Child care facilities must comply with the requirements for sanitary facilities that are contained in the National Construction Code.</p>	<p><b><i>The proposed development includes adequate, developmentally and age appropriate toilet, washing and drying facilities for use by children being educated and cared for by the service.</i></b></p> <p>Toilet and hygiene facilities should be designed to maintain the amenity and dignity of the occupants. Design considerations could include:</p> <ul style="list-style-type: none"> <li>• junior toilet pans, low level sinks and hand drying facilities for children</li> <li>• a sink and handwashing facilities in all bathrooms for adults</li> <li>• direct access from both activity rooms and outdoor play areas</li> <li>• windows into bathrooms and cubicles without doors to allow supervision by staff</li> <li>• external windows in locations that prevent observation from neighbouring properties or from side boundaries</li> </ul>	<p><b>Consistent</b></p> <p>The proposed childcare centre appears to contain adequate toilet, washing and drying facilities inclusive of the relevant design considerations. As previously highlighted, these requirements are considered to be capable of being achieved, particularly when accounting for regulatory procedures that would need to be undertaken by the Early Childhood Education Directorate prior to childcare centre becoming operational.</p>
<p><b>4.4 Ventilation and natural light</b></p>		
<p><b>Regulation 110 Education and Care Services National Regulation</b></p> <p>Services must be well ventilated, have adequate natural light, and be maintained at a temperature that ensures the safety and wellbeing of children.</p> <p>Child care facilities must comply with the light and ventilation and minimum ceiling height requirements of the</p>	<p><b><i>The proposed development includes indoor spaces to be used by children that:</i></b></p> <ul style="list-style-type: none"> <li>• <b><i>will be well ventilated; and</i></b></li> <li>• <b><i>will have adequate natural light; and</i></b></li> <li>• <b><i>can be maintained at a temperature that ensures the safety and well-being of children.</i></b></li> </ul> <p><b>Ventilation</b></p> <p>Good ventilation can be achieved through a mixture of natural cross ventilation and air conditioning. Encouraging natural ventilation is the basis of sustainable design; however, there will be circumstances where mechanical ventilation will be essential to creating ambient temperatures within a facility.</p>	<p><b>Inconsistent</b></p> <p>The proposal is not found to provide suitable access to natural light, particularly 'Activity Area No 1', which is located on the southern side of the building. This is considered to impact on general amenity and wellbeing of students and staff. Due to the above, it is considered the proposal would be reliant upon artificial lighting, which is considered undesirable.</p>

<p><i>National Construction Code.</i> Ceiling height requirements may be affected by the capacity of the facility.</p>	<p>To achieve adequate natural ventilation, the design of the child care facilities must address the orientation of the building, the configuration of rooms and the external building envelope, with natural air flow generally reducing the deeper a building becomes. It is recommended that child care facilities ensure natural ventilation is available to each indoor activity room.</p> <p><b>Natural light</b> Solar and daylight access reduces reliance on artificial lighting and heating, improves energy efficiency and creates comfortable learning environments through pleasant conditions. Natural light contributes to a sense of well-being, is important to the development of children and improves service outcomes. Daylight and solar access changes with the time of day, seasons and weather conditions. When designing child care facilities consideration should be given to:</p> <ul style="list-style-type: none"> <li>• providing windows facing different orientations</li> <li>• using skylights as appropriate</li> <li>• ceiling heights.</li> </ul> <p>Designers should aim to minimise the need for artificial lighting during the day, especially in circumstances where room depth exceeds ceiling height by 2.5 times. It is recommended that ceiling heights be proportional to the room size, which can be achieved using raked ceilings and exposed trusses, creating a sense of space and visual interest.</p>	
<b>4.5 Administrative space</b>		
<p><b>Regulation 110 Education and Care Services National Regulation</b></p> <p>A service must provide adequate area or areas for the purposes of conducting the administrative functions of the service, consulting with parents of children and</p>	<p><b><i>The proposed development includes an adequate area or areas for the purposes of conducting the administrative functions of the service; and consulting with parents of children; and conducting private conversations.</i></b></p> <p>Design considerations could include closing doors for privacy and glass partitions to ensure supervision.</p> <p>When designing administrative spaces, consideration should be given to functions</p>	<p><b>Consistent</b></p> <p>The proposed childcare centre appears to include adequate area or areas for the purposes of conducting the administrative functions of the service; and consulting with parents of children; and conducting private conversations.</p>

<p>conducting private conversations.</p>	<p>which can share spaces and those which cannot. Sound proofing of meeting rooms may be appropriate where they are located adjacent to public areas, or in large rooms where sound can easily travel.</p> <p>Administrative spaces should be designed to ensure equitable use by parents and children at the facility. A reception desk may be designed to have a portion of it at a lower level for children or people in a wheel chair.</p>	<p>As previously highlighted, these requirements are considered to be capable of being achieved, particularly when accounting for regulatory procedures that would need to be undertaken by the Early Childhood Education Directorate prior to childcare centre becoming operational.</p>
<p><b>4.6 Nappy change facilities</b></p>		
<p><b>Regulation 112 Education and Care Services National Regulations</b></p> <p>Child care facilities must provide for children who wear nappies, including appropriate hygienic facilities for nappy changing and bathing. All nappy changing facilities should be designed and located in an area that prevents unsupervised access by children.</p> <p>Child care facilities must also comply with the requirements for nappy changing and bathing facilities that are contained in the National Construction Code.</p>	<p><i>(To be completed only if the proposed development is for a service that will care for children who wear nappies).</i></p> <p><b><i>The proposed development includes an adequate area for construction of appropriate hygienic facilities for nappy changing including at least one properly constructed nappy changing bench and hand cleansing facilities for adults in the immediate vicinity of the nappy change area.</i></b></p> <p>In circumstances where nappy change facilities must be provided, design considerations could include:</p> <ul style="list-style-type: none"> <li>• properly constructed nappy changing bench or benches</li> <li>• a bench type baby bath within one metre from the nappy change bench</li> <li>• the provision of hand cleansing facilities for adults in the immediate vicinity of the nappy change area</li> <li>• a space to store steps</li> <li>• positioning to enable supervision of the activity and play areas.</li> </ul>	<p><b>Consistent</b></p> <p>The proposed childcare centre appears to include adequate area or areas for the purposes of nappy changing.</p> <p>As previously highlighted, these requirements are considered to be capable of being achieved, particularly when accounting for regulatory procedures that would need to be undertaken by the Early Childhood Education Directorate prior to childcare centre becoming operational.</p>
<p><b>4.7 Premises designed to facilitate supervision</b></p>		

<p><b>Regulation 115 Education and Care Services National Regulations</b></p> <p>A centre-based service must ensure that the rooms and facilities within the premises (including toilets, nappy change facilities, indoor and outdoor activity rooms and play spaces) are designed to facilitate supervision of children at all times, having regard to the need to maintain their rights and dignity.</p> <p>Child care facilities must also comply with any requirements regarding the ability to facilitate supervision that are contained in the National Construction Code.</p>	<p><b><i>The proposed development (including toilets and nappy change facilities) are designed in a way that facilitates supervision of children at all times, having regard to the need to maintain the rights and dignity of the children.</i></b></p> <p>Design considerations should include:</p> <ul style="list-style-type: none"> <li>• solid walls in children’s toilet cubicles (but no doors) to provide dignity whilst enabling supervision</li> <li>• locating windows into bathrooms or nappy change areas away from view of visitors to the facility, the public or neighbouring properties</li> <li>• avoiding room layouts with hidden corners where supervision is poor, or multi room activity rooms for single groups of children</li> <li>• avoiding multi-level rooms which compromise, or require additional staffing, to ensure proper supervision. If multilevel spaces are proposed, consideration should be given to providing areas that can be closed off and used only under supervision for controlled activities</li> </ul>	<p><b>Inconsistent</b></p> <p>The proposed children’s toilet and change facilities do not contain windows in appropriate locations to ensure supervision.</p>
<p><b>4.8 Emergency and evacuation procedures</b></p>		

<p><b>Regulations 97 and 168 Education and Care Services National Regulations</b></p> <p>Regulation 168 sets out the list of procedures that a care service must have, including procedures for emergency and evacuation.</p> <p>Regulation 97 sets out the detail for what those procedures must cover including:</p> <ul style="list-style-type: none"> <li>• instructions for what must be done in the event of an emergency</li> <li>• an emergency and evacuation floor plan, a copy of which is displayed in a prominent position near each exit</li> <li>• a risk assessment to identify potential emergencies that are relevant to the service.</li> </ul>	<p>Facility design and features should provide for the safe and managed evacuation of children and staff from the facility in the event of a fire or other emergency.</p> <p>Multi-storey buildings with proposed child care facilities above ground level may consider providing additional measures to protect staff and children. For example:</p> <ul style="list-style-type: none"> <li>• independent emergency escape routes from the facility to the ground level that would separate children from other building users to address child protection concerns during evacuations</li> <li>• a safe haven or separate emergency area where children and staff can muster during the initial stages of a fire alert or other emergency. This would enable staff to account for all children prior to evacuation.</li> </ul> <p>An emergency and evaluation plan should be submitted with a DA and should consider:</p> <ul style="list-style-type: none"> <li>• the mobility of children and how this is to be accommodated during an evacuation</li> <li>• the location of a safe congregation/assembly point, away from the evacuated building, busy roads and other hazards, and away from evacuation points used by other occupants or tenants of the same building or of surrounding buildings</li> <li>• how children will be supervised during the evacuation and at the congregation/assembly point, relative to the capacity of the facility and governing child-to- staff ratios.</li> </ul>	<p><b>Consistent</b></p> <p>The Development Application is supported by a detailed emergency and evacuation plan contained within the Operational Plan of Management.</p>
<p><b>4.9 Outdoor space requirements</b></p>		
<p><b>Regulation 108 Education and Care Services National Regulations</b></p> <p>An education and care service premises must provide for every child being educated and cared for within the facility to have a minimum of 7.0m<sup>2</sup> of unencumbered outdoor space. If this requirement is not met,</p>	<p><b><i>The proposed development includes at least 7.0 square metres of unencumbered outdoor space for each child.</i></b></p> <p>Calculating unencumbered space for outdoor areas should not include areas of dense hedges or plantings along boundaries which are designed for landscaping purposes and not for children's play.</p> <p>When new equipment or storage areas are added to existing services, the potential impact on unencumbered space calculations and service approvals must be considered.</p>	<p><b>Consistent</b></p> <p>The proposed childcare centre requires at least 84m<sup>2</sup> of outdoor open space.</p> <p>The proposed childcare 173.8m<sup>2</sup> centre provides for of unencumbered outdoor space.</p>

<p>the concurrence of the regulatory authority is required under the SEPP.</p> <p>Unencumbered outdoor space excludes any of the following:</p> <ul style="list-style-type: none"> <li>• pathway or thoroughfare, except where used by children as part of the education and care program</li> <li>• car parking area</li> <li>• storage shed or other storage area</li> <li>• laundry</li> <li>• other space that is not suitable for children.</li> </ul>	<p><b>Verandahs as outdoor space</b></p> <p>Where a covered space such as a verandah is to be included in outdoor space it should:</p> <ul style="list-style-type: none"> <li>• be open on at least one third of its perimeter</li> <li>• have a clear height of 2.1 metres</li> <li>• have a wall height of less than 1.4 metres where a wall with an opening forms the perimeter</li> <li>• have adequate flooring and roofing</li> <li>• be designed to provide adequate protection from the elements</li> </ul> <p><b>Simulated outdoor environments</b></p> <p>Proponents should aim to provide the requisite amount of unencumbered outdoor space in all development applications. A service approval will only be granted in exceptional circumstances when outdoor space requirements are not met. For an exemption to be granted, the preferred alternate solution is that indoor space be designed as a simulated outdoor environment.</p> <p>Simulated outdoor space must be provided in addition to indoor space and cannot be counted twice when calculating areas.</p> <p>Simulated outdoor environments are internal spaces that have all the features and experiences and qualities of an outdoor space. They should promote the same learning outcomes that are developed during outdoor play. Simulated outdoor environments should have:</p>	
<p>When calculating outdoor space requirements, the area required for any additional child may be waived when the child is being cared for in an emergency circumstance as set out in regulation 123(5) or the child is being educated or cared for in exceptional circumstances as set out in regulation 124(5)</p>	<ul style="list-style-type: none"> <li>• more access to natural light and ventilation than required for an internal space through large windows, glass doors and panels to enable views of trees, views of the sky and clouds and movement outside the facility</li> <li>• skylights to give a sense of the external climate</li> <li>• a combination of different floor types and textures, including wooden decking, pebbles, mounds, ridges, grass, bark and artificial grass, to mimic the uneven surfaces of an outdoor environment</li> <li>• sand pits and water play areas</li> <li>• furniture made of logs and stepping logs</li> </ul>	

<p>and (6) of the National Regulations. Applicants should also note that regulation 274 (Part 7.3 NSW Provisions) states that a centre-based service for children preschool age or under must ensure there is no swimming pool on the premises, unless the swimming pool existed before 6 November 1996. Where there is an existing swimming pool, a water safety policy will be required.</p> <p>A verandah that is included within indoor space cannot be included when calculating outdoor space and vice versa.</p>	<ul style="list-style-type: none"> <li>• dense indoor planting and green vegetated walls</li> <li>• climbing frames, walking and/or bike tracks</li> <li>• vegetable gardens and gardening tubs.</li> </ul>	
<p><b>4.10 Natural Environment</b></p>		
<p><b>Regulation 113 Education and Care Services National Regulations</b></p> <p>The approved provider of a centre-based service must ensure that the outdoor spaces allow children to explore and experience the natural environment.</p>	<p><b><i>The proposed development includes outdoor spaces that will allow children to explore and experience the natural environment.</i></b></p> <p>Creating a natural environment to meet this regulation includes the use of natural features such as trees, sand and natural vegetation within the outdoor space.</p> <p>Shrubs and trees selected for the play space must be safe for children. Avoid plant species that risk the health, safety and welfare of the facility's occupants, such as those which:</p> <ul style="list-style-type: none"> <li>• are known to be poisonous, produce toxins or have toxic leaves or berries</li> <li>• have seed pods or stone fruit, attract bees, have thorns, spikes or prickly foliage or drop branches</li> </ul>	<p><b>Consistent</b></p> <p>The proposed landscape arrangement has been reviewed by Council's Landscape Officer as acceptable, subject to conditions.</p> <p>The outdoor space areas have been designed to comply with the relevant requirements of this criteria.</p>

	<p>The outdoor space should be designed to:</p> <ul style="list-style-type: none"> <li>• provide a variety of experiences that facilitate the development of cognitive and physical skills, provide opportunities for social interaction and appreciation of the natural environment</li> <li>• assist supervision and minimise opportunities for bullying and antisocial behaviour</li> <li>• enhance outdoor learning, socialisation and recreation by positioning outdoor urban furniture and play equipment in configurations that facilitate interaction.</li> </ul>	
<p><b>4.11 Shade</b></p>		
<p><b>Regulation 114 Education and Care Services National Regulations</b></p> <p>The approved provider of a centre-based service must ensure that outdoor spaces include adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.</p>	<p><b><i>The proposed development includes adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.</i></b></p> <p>Providing the correct balance of sunlight and shade to play areas is important for the health and well-being of children and staff. Combining built and natural shade will often be the best option.</p> <p><b>Solar access</b> Controlled exposure to daylight for limited periods is essential as sunlight provides vitamin D which promotes healthy muscles, bones and overall well-being. Outdoor play areas should be provided with controlled solar access throughout the year. Outdoor play areas should:</p> <ul style="list-style-type: none"> <li>• have year-round solar access to at least 30 per cent of the ground area, with no more than 60 per cent of the outdoor space covered.</li> <li>• provide shade in the form of trees or built shade structures giving protection from ultraviolet radiation to at least 30 per cent of the outdoor play area</li> <li>• have evenly distributed shade structures over different activity spaces.</li> </ul>	<p><b>Consistent</b></p> <p>The proposed childcare centre provides for at least 30% of the outdoor open space as uncovered areas with solar access available during the day. The proposed childcare centre has less than 60% of the outdoor space covered.</p>

	<p><b>Natural shade</b> Natural shade should be a major element in outdoor play areas. Trees with dense foliage and wide-spreading canopies provide the best protection. Existing stands of trees, particularly in rear setbacks, should be retained to provide shaded play areas. Species that suit local soil and climatic conditions and the character of the environment are recommended.</p> <p>Dense shrubs can also provide shade. They should be planted around the site perimeter so; they don't obstruct supervision. Pruning shrubs on the underside may create shaded play nooks underneath. Planting for shade and solar access is enhanced by:</p> <ul style="list-style-type: none"> <li>• placing appropriately scaled trees near the eastern and western elevations</li> <li>• providing a balance of evergreen and deciduous trees to give shade in summer and sunlight access in winter.</li> </ul> <p><b>Built shade structures</b> Built structures providing effective shade include:</p> <ul style="list-style-type: none"> <li>• permanent structures (pergolas, sails and verandahs)</li> <li>• demountable shade (marquees and tents)</li> <li>• adjustable systems (awnings)</li> <li>• shade sails.</li> </ul> <p>Shade structures should not create safety hazards. Support systems such as upright posts should be clearly visible with rounded edges or padding. Vertical barriers at the sides of shade structures should be designed to prevent children using them for climbing.</p> <p>Shade structures should allow adults to view and access the children's play areas, with a recommended head clearance of 2.1 metres. The floor area underneath the structure should be of a sufficient size and shape to allow children to gather or play actively.</p>	<p><b>Consistent</b></p> <p>The proposal provides sufficient natural shade within the rear yard located adjacent to the outdoor play area.</p> <p><b>Inconsistent</b></p> <p>The proposal does not provide any form of built shade structures within the rear outdoor play space for children.</p>
<p><b>4.12 Fencing</b></p>		

<p><b>Regulation 104 Education and Care Services National Regulations</b></p> <p>Any outdoor space used by children must be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.</p> <p>This regulation does not apply to a centre-based service that primarily provides education and care to children over preschool age, including a family day care venue where all children are over preschool age. Child care facilities must also comply with the requirements for fencing and protection of outdoor play spaces that are contained in the National Construction Code</p>	<p><b><i>Outdoor space that will be used by children will be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.</i></b></p> <p>Fencing at child care facilities must provide a secure, safe environment for children and minimise access to dangerous areas.</p> <p>Fencing also needs to positively contribute to the visual amenity of the streetscape and surrounding area. In general, fencing around outdoor spaces should:</p> <ul style="list-style-type: none"> <li>• prevent children climbing over, under or through fences</li> <li>• prevent people outside the facility from gaining access by climbing over, under or through the fence</li> <li>• not create a sense of enclosure.</li> </ul> <p>Design considerations for side and rear boundary fences could include:</p> <ul style="list-style-type: none"> <li>• being made from solid prefinished metal, timber or masonry</li> <li>• having a minimum height of 1.8 metres</li> <li>• having no rails or elements for climbing higher than 150mm from the ground.</li> </ul> <p>Fencing and gates should be designed to ensure adequate sightlines for vehicles and pedestrian safety in accordance with Australian Standards and Roads and Maritime Services Traffic Management Guidelines. Gates should be designed to prevent children leaving/entering unsupervised by use of childproof locking systems.</p>	<p><b>Consistent</b></p> <p>The proposed outdoor space to be used by children will be enclosed with fencing of an appropriate height and design to ensure that children preschool age or under cannot go through, over or under it. It should be noted that regulatory procedures would need to be undertaken by the Early Childhood Education Directorate prior to the childcare centre becoming operational.</p>
<p><b>4.13 Soil Assessment</b></p>		

<p><b>Regulation 25 Education and Care Services National Regulations</b></p> <p>Subclause (d) of regulation 25 requires an assessment of soil at a proposed site, and in some cases, sites already in use for such purposes as part of an application for service approval.</p> <p>With every service application one of the following is required:</p> <ul style="list-style-type: none"> <li>• a soil assessment for the site of the proposed education and care service premises</li> <li>• if a soil assessment for the site of the proposed child care facility has previously been undertaken, a statement to that effect specifying when the soil assessment was undertaken</li> <li>• a statement made by the applicant that states, to the best of the applicant's knowledge, the site history does not indicate that the site is likely to be contaminated in a way that poses an unacceptable risk to the health of children</li> </ul>	<p>To ensure consistency between the development consent and the service approval application, a soil assessment should be undertaken as part of the development application process.</p> <p>Where children will have access to soil the regulatory authority requires a preliminary investigation of the soil. This includes sites with or without buildings and existing approved children's services where:</p> <ul style="list-style-type: none"> <li>• the application is to alter or extend the premises</li> <li>• the alteration or extension requires earthworks or deep excavations (exceeding a depth of one metre)</li> <li>• the works are going to take place in an area used for children's outdoor play or will be used for children's outdoor play after the work is completed</li> <li>• a soil assessment has not been undertaken at the children's service.</li> </ul> <p>Minor landscaping, creation of sand pits, movement of play equipment and so on do not qualify as earthworks and do not require a soil assessment.</p> <p>An assessment of soil for a children's service approval application may require three levels of investigation:</p> <ul style="list-style-type: none"> <li>• Stage 1 - Preliminary investigation (with or without soil sampling)</li> <li>• Stage 2 - Detailed site investigation</li> <li>• Stage 3 - Site specific human health risk assessment.</li> </ul>	<p><b>Consistent</b></p> <p>No excavation is proposed as part of the proposal and therefore an assessment of the soil is required.</p> <p>Council's Environmental Health Officer has also reviewed the proposal and has raised no objection.</p>
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Conclusion

The proposed child care centre fails to comply with Clause 3.23 of the SEPP Transport and Infrastructure 2021. The application has failed to address reasons for refusal provided under the DA, specifically those relating to traffic and acoustic matters. A detailed assessment of the proposal finds that the child care centre is inconsistent with the traffic and parking requirements of the SEPP. The proposal fails to provide the required dimensions to determine the suitability of the three (3) off-street parking spaces for the centre and given the location and configuration of the three (3) spaces provided, does not allow for vehicles to enter and exit the site in a forward motion.



Vehicles will be required to reverse over the existing footpath on Bangaroo Street which is considered to adversely impact the safety of pedestrians. The close proximity to bus stops and a busy intersection raises concern regarding the suitability of the site as a child care centre. The proposal is considered to raise significant traffic and parking issues which will significantly impact on the surrounding residential amenity.

Further issue has been raised in relation to the general design and layout of the centre. These primarily relate to the provision of shade structure, natural light, and supervision. Ensuring acoustic privacy is provided to surrounding properties remains a concern that has not been resolved.

For the reasons stated above, the proposed child care centre is considered inconsistent with the SEPP and is therefore recommended for Refusal.

#### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

#### WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

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

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of buildings	8.5m	7.6m	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

#### WARRINGAH DEVELOPMENT CONTROL PLAN

##### Built Form Controls

Built Form Control	Requirement	Proposed	Proposed %Variation	Complies
B1 Wall Height	7.2m	5.2m	N/A	Yes
B3 Side Boundary Envelope	N: 4m	No change	N/A	Yes
	S: 4m	No change	N/A	Yes

Built Form Control	Requirement	Proposed	Proposed %Variation	Complies
B5 Side Boundary Setbacks	N: 0.9m	1.2m	N/A	Yes
	S: 0.9m	2.5m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	Hard stand parking area	100%	No
B9 Rear Boundary Setbacks	6m	20m	N/A	Yes
D1 Landscape Open Space (LOS) and Bushland Setting	40%	42.7%	N/A	Yes

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

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	No
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	No	No
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	No	No
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment



### A.5 Objectives

A detailed assessment of the proposal has found that the day care centre is not consistent with the following provisions of the WDCP 2011:

- *To ensure new development is a good neighbour, creates a unified landscape, contributes to the street, reinforces the importance of pedestrian areas and creates an attractive design outcome*

The proposal has not sufficiently demonstrated that it is able to provide for a development that does not unreasonably impact on the amenity of neighbouring properties, specifically in relation to acoustic privacy. A peer review of the acoustic assessment was undertaken which raises concern that the proposed development will result in amenity impacts to neighbouring properties. Council's Environmental Health Officer has reviewed the proposal, including the acoustic assessment and peer review. They have also raised doubts regarding the ability of the development to appropriately mitigate acoustic impacts on surrounding properties.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the objective of this Clause and is not supported in this particular instance.

- *Provide a high level of access to and within development.*

The proposal fails to provide a high level of access to and within the site. The proposal does not offer a compliant off-street car parking in accordance with WDCP. There is lack of detail surrounding the practical and safe access to the development with issues such as parking activity within No Stopping Zones or across driveways, restricted sightlines due to parked vehicles and congested conditions at drop off and pick up times. A bus stop is located in front of the subject site which will also generate pedestrian activity, along with children being dropped and picked up at the centre. Vehicles will also be reversing onto the road in close proximity to a busy intersection. The Traffic Report does not sufficiently address these issues and is not supported by Council's Traffic Engineer.

The proposed development is not considered to sufficiently respond to the characteristics of the site which is evident in the number of non-compliance's relating to traffic, access and safety and the number of objections raised.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the objectives of this Clause and is not supported in this particular instance.

### B7 Front Boundary Setbacks

#### Description of non-compliance

The development proposes three (3) hard stand car parking spaces, two of which are located adjacent to each other and are readily visible from Bangaroo Street. The third space is located as part of a stacked parking arrangement and is located closer to the building. The control states that the front boundary setback area is to be landscaped and generally free of any structures, basements, carparking or site facilities other than driveways, letter boxes, garbage storage areas and fences. All three (3) hard stand spaces located within the front setback and are non-compliant with this control.

The development proposes a 1.2m high child proof gate located 1.2m to the front boundary, however the control stipulated this is permitted within the front setback.

#### Merit consideration:

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



- *To create a sense of openness.*

Comment:

The development does not propose any parking structures i.e. a garage or carport within the front setback. Whilst the development proposes to widen the existing crossover located along the southern boundary to allow for an additional parking space, approximately 50% of the front setback will remain landscaped with landscaping located to the north of the hardstand area. The stacked parking arrangement along the southern boundary will reduce the visibility of the third car on site, so it does not visually prominent, while not contributing to an over development of the site. The absence of any car parking structures will ensure a sense of openness is maintained.

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

Comment:

The proposal maintains sufficient landscaping within the front setback consistent with surrounding properties. Parking within the front setback is not inconsistent with the surrounding area with the property to the north at 18 Bangaroo Street providing a carport structure within the setback area. The property offers sufficient landscaping to the north, similar to the subject site.

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

Comment:

The proposal will protect and enhance the visual quality of the streetscape of Bangaroo Street and the hard standing parking spaces will not alter the appearance of the development within the streetscape to an unreasonable extent. As noted above, parking structures, including carports are not untypical of the surrounding area with evidence of parking structures within the streetscape, therefore the proposed hardstand area is not considered to detract from the visual quality of the streetscape.

- *To achieve reasonable view sharing.*

Comment:

The proposed alterations to the existing dwelling are designed and sited to as not to obstruct any views to or from the subject site or adjacent and nearby sites.

Having regard to the above assessment, the proposed development is consistent with the objectives of this clause and is supported in this particular instance.

## **C2 Traffic, Access, and Safety**

### Merit consideration

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

- *To minimise traffic hazards.*

Comment:

The WDCP does not specify the size of the required drop off and pick up area, however the RMS Guide to Traffic generating developments require that parking be supplied at a rate of one space for every four children, i.e., 3 spaces. The development proposes three (3) off-street spaces.



While the submitted plans illustrate three (3) spaces being provided, which satisfy the minimum parking requirements under WDCP, the plans fail to provide dimensions for the parking area. Therefore, it is not possible to determine whether the proposal provides appropriately dimensioned and compliant parking spaces. Council's Traffic Engineer indicates that the proposed spaces do not provide compliant dimensions and the development relies on vehicles parking across nature strip area beyond the private property. This would create a shortfall in off-street parking, in turn creating potential traffic hazards.

Given the location and configuration of the proposed off-street parking spaces, vehicles are unable to exit the site in a forward motion therefore creating safety concerns for pedestrians accessing the footpath along the western side of Bangaroo Street. The proposed day care centre is within close proximity to bus stops, a busy intersection to the south and there will be a movement of children on the footpath accessing the centre. It is therefore concluded that the proposed arrangement will likely exacerbate traffic hazards within the immediate vicinity.

- *To minimise vehicles queuing on public roads.*

Comment:

The Traffic Report states that there is adequate on-street parking to accommodate the increase in cars required to stop at pick and drop off times. Whilst the Traffic and Parking Impact Assessment provides data to suggest there is ample parking available in the surrounding streets, a development should not rely on this entirely and should provide the minimum number of parking spaces as required for the proposed use. Given the busy activity associated with Bangaroo Street and the close proximity to shops, bus stops and Seaforth Primary School, it is anticipated that at pick up and drop off times, traffic congestion may arise given the lack of off-street parking.

- *To minimise the number of vehicle crossings in a street.*

Comment:

The development proposes to widen the existing crossover on Bangaroo Street. This is in keeping with the character of the surrounding neighbourhood.

- *To minimise traffic, pedestrian and cyclist conflict.*

Comment:

The development proposes three (3) off street car parking spaces which satisfies the minimum off-street car parking requirement for 12 children. However, as noted above, it is unclear whether the dimensions of each space are compliant. These spaces are provided by a stacked parking arrangement and an additional space within the front setback. The day care centre provides space for 12 children, and it is anticipated this will result in a number of reversing manoeuvres across the footpath at pick up times. Given the close proximity to bus stops and a busy intersection located south of the site (Worrobil Street and Bangaroo Street), it is expected this will give rise to an unsafe environment for pedestrians. Cars being able to enter and exit in a forward motion is encouraged however given the site restraints, this is not possible.

- *To minimise interference with public transport facilities.*

Comment:

The proposed child care centre is not anticipated to interfere with the public transport facilities.

- *To minimise the loss of "on street" kerbside parking.*

Comment:



As it has not been demonstrated that the site can provide three (3) compliant car spaces, it is not unreasonable to expect that vehicles might rely upon on-street kerbside parking. Relying upon on-street kerbside parking due to non-compliant off-street parking is unreasonable and the site should provide a minimum of three (3) off-street car parking spaces.

Having regard to the above assessment, the proposed development is not consistent with the objectives of this clause and is not supported in this particular instance.

### C3 Parking Facilities

#### Merit consideration

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

- *To provide adequate off street carparking.*

#### Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Child care centre	1 space / 4 children	3	3	0
<b>Total</b>		<b>3</b>	<b>3</b>	<b>0</b>

The WDCP parking rate is 1 space per four (4) children. The RMS guide to traffic generating development requires that parking be supplied at a rate of one space for every four children i.e. 3 spaces. The development proposes three (3) off-street spaces including one (1) stacked space. The existing crossover along the southern elevation is proposed to be widened to accommodate the existing two off-street stacked spaces and to allow the construction of an additional off-street space.

Council's review of the proposed development indicates that the proposal is unable to provide the minimum dimensions for each space, impacting on the proposal's ability to provide a compliant number of spaces, contrary to the supporting documentation. Without the plans being dimensioned, it is not possible to ascertain the exact dimensions of each space, therefore compromising the proposal's ability to provide a minimum 3 spaces, as per the table above.

The lack of suitably dimensioned off-street parking will also result in significant safety issues for passing pedestrians which includes the movement of children and their carer's accessing the centre. The configuration of the car parking spaces results in a number of reversing manoeuvres across the footpath. The location of the crossover servicing the centre is approximately 18m north of a busy intersection at Worribol Street and Bangaroo Street which along with a no stopping sign and bus stops within close proximity to the site, the availability of parking within close proximity to the site is reduced which gives rise to parking activity in restricted areas.

Council's Traffic Engineer has considered the submitted Traffic and Parking Impact Assessment and subsequent peer review and is not in supportive of the proposed development. Detailed comments in this regard are provided earlier in this report under the "Referrals" section.

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

#### Comment:

The development proposes three (3) off-street parking spaces, two (2) in a tandem arrangement and additional space within the front setback towards the centre of the site. The development proposes



to widen the existing crossover along the southern side of the site to accommodate the additional parking space. The widened crossover does not detract from the visual quality of the street frontage. The proposal does not include any structures (garage or carport). It is noted other car parking structures are located within the front setback, including at No 18 Bangaroo Street to the north.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment:

The proposed hardstand parking area will not detract from the visual quality of the street frontage or any other nearby public place. The proposal retains suitable landscaped area to the north to soften any perceived visual impact of the parking area.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the objectives of this clause and this assessment finds that the proposal is not supported, in this particular circumstance.

### **D3 Noise**

An Acoustic Report prepared by Wilkinson Murray dated 21 April 2022 for the proposed child care. A peer review of this report was undertaken by Noise and Sound Services, dated April 2022. A response to this peer review was undertaken by RWDI Australia dated 19 May 2022. Council's Environmental Health Officer has reviewed the submitted acoustic report and peer review and is not satisfied that noise can be mitigated and result in an acceptable outcome for surrounding development. Due to uncertainty in relation to the above raised within the peer review, Council's Environmental Health Officer cannot support the proposal and requires a further assessment to be completed. Detailed comments in this regard are provided earlier in this report under the "Referrals" section.

### **D20 Safety and Security**

The proposed childcare centre does not satisfy the requirements that seek to ensure the safety and security of all residents, occupants and visitors of various ages and abilities. A number of submissions including those received from neighbouring residents, have raised concern that the Development Application has not addressed the pedestrian safety outcomes, in particular the risk to pedestrians who utilise the Bangaroo Street footpath. It should also be noted that the pedestrian footpath begins along eastern side of Bangaroo Street directly adjacent the site, which in turn results in a particularly high usage of the footpath directly in front of Site at the drop-off/pick-up periods associated with the bus stop south of the intersection of Bangaroo Street and Worroby Street. Council's Traffic Engineer in reviewing the proposal has also raised concern with the level of impact on pedestrian and vehicular safety in the street, observing that the development in its current form is an over development of the site in this location.

Based on the above, the proposed development is inconsistent with this clause in relation the safety objectives and is recommended for refusal on this basis.

### **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 2021**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of \$ 645 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 129,030.

### **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;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and results in an unreasonable impact on surrounding, adjoining, adjacent and nearby properties.

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

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

The proposed child care centre has failed to resolve any of the reasons for refusal. As such, the previous reasons for refusal remain. Further, the proposal fails to comply with Clause 3.23 of the SEPP Transport and Infrastructure. The proposal fails to achieve compliance with C2 Traffic, Access and Safety and C3 Parking Facilities of the Warringah Development Control Plan 2011. The parking and access arrangement is not supported by Council's Traffic Engineer with the justification of the reliance on on-street parking spaces outlined in the Traffic Report unable to be relied on. The configuration of spaces provided on site results in vehicles unable to enter and exit the site in a forward motion resulting in numerous reversal manoeuvres over the existing footpath on Bangaroo Street. Given the busy nature of Bangaroo Street, along with the close proximity to bus stops and the busy intersection of Bangaroo Street and Worribol Street to the south, the pedestrian safety of people is at risk.

The proposal is unable to resolve outstanding acoustic issues in relation to the methodology and reporting requirements. A peer review undertaken notes the unacceptability of the proposal on the subject site and raises doubts in relation to the proposed mitigation measures. In this regard, the proposal is considered unreasonable.

In summary, the revised development is considered unsuitable and is recommended for Refusal. It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

### **RECOMMENDATION**

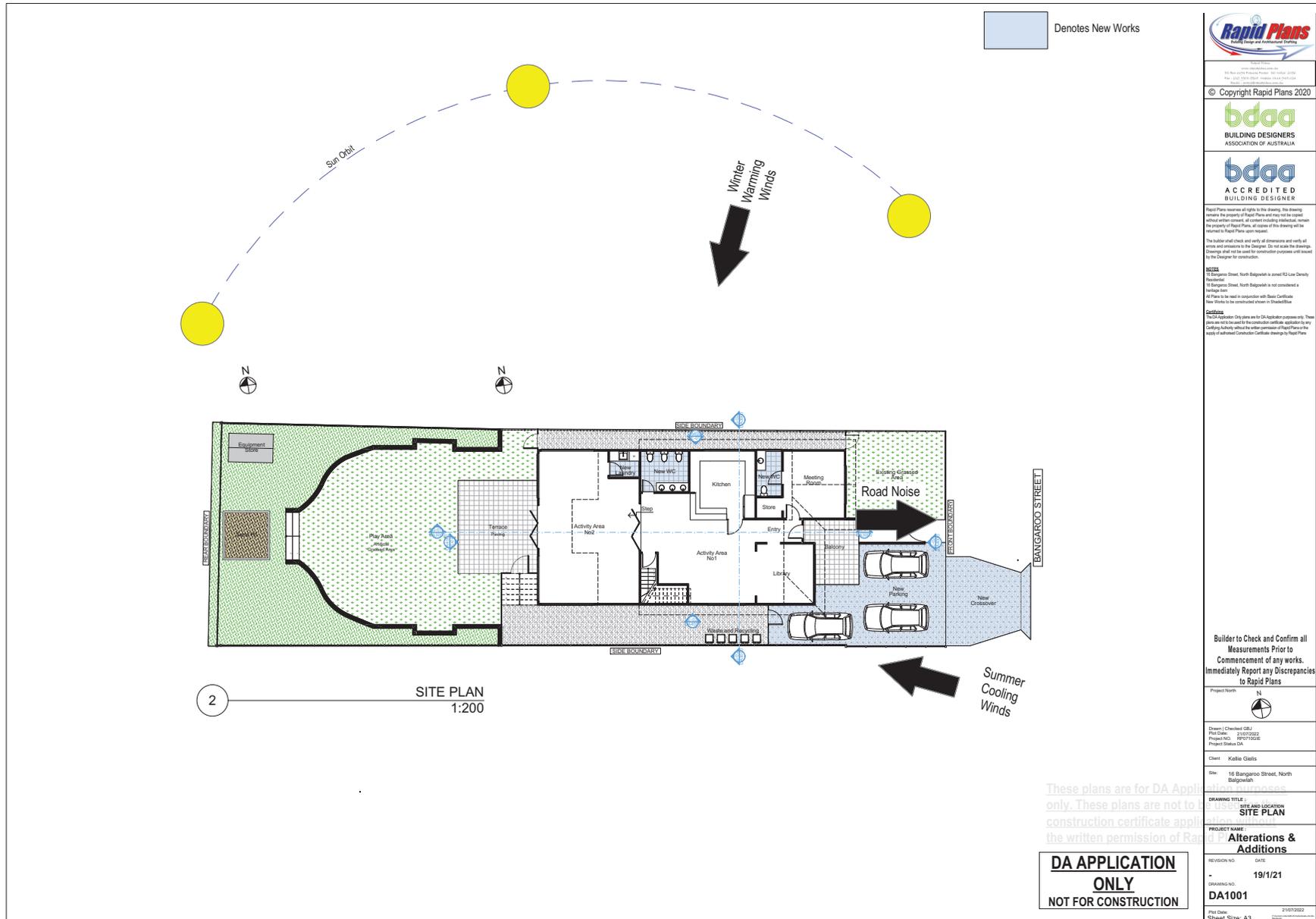


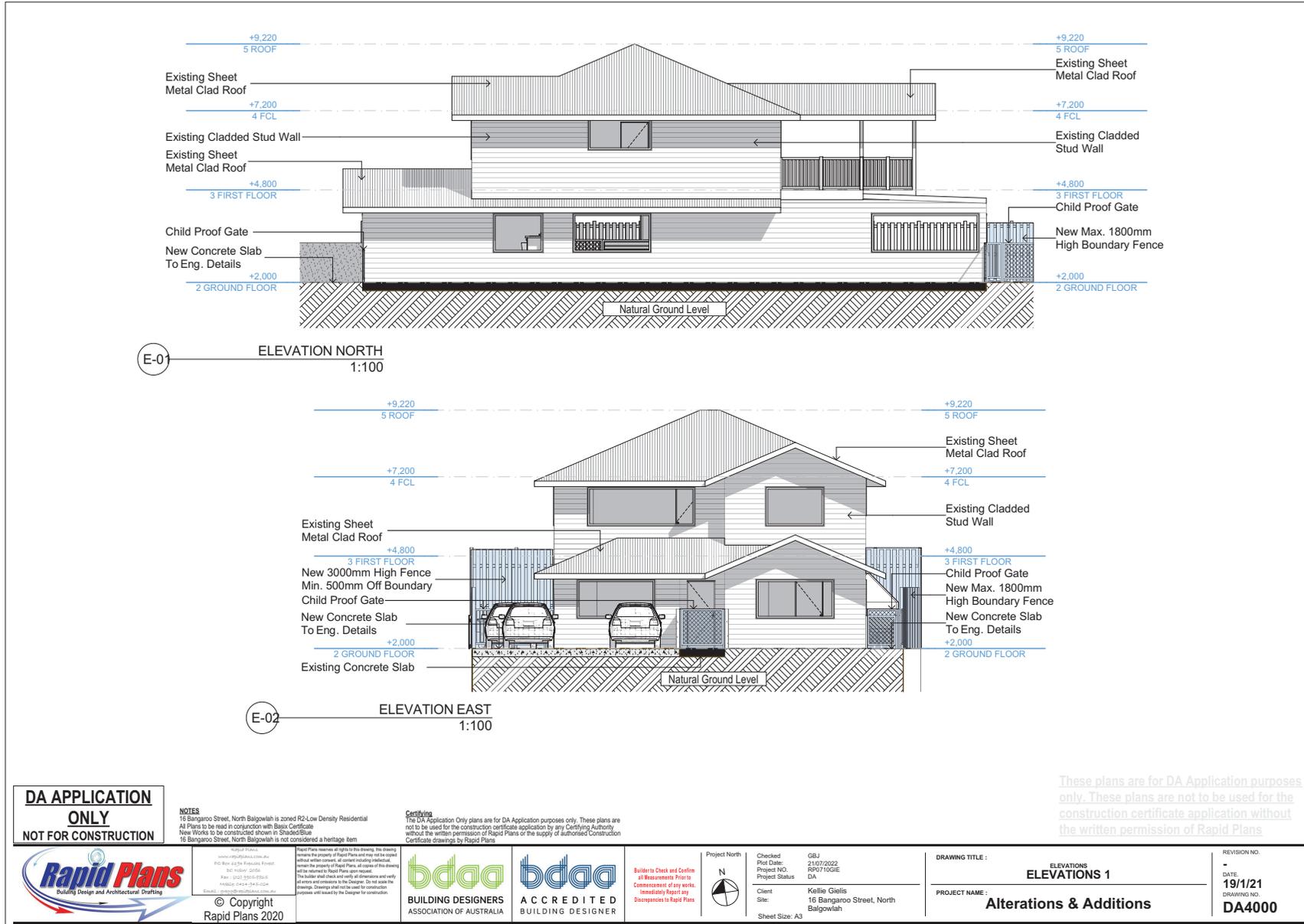
THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority confirm its decision to refuse to grant consent to the Review of Determination Application No. DA2021/0680 for the Alterations and additions to an existing dwelling house and use as a centre-based child care facility on land at Lot 111 DP 11936, 16 Bangaroo Street, NORTH BALGOWLAH, for the reasons outlined as follows:

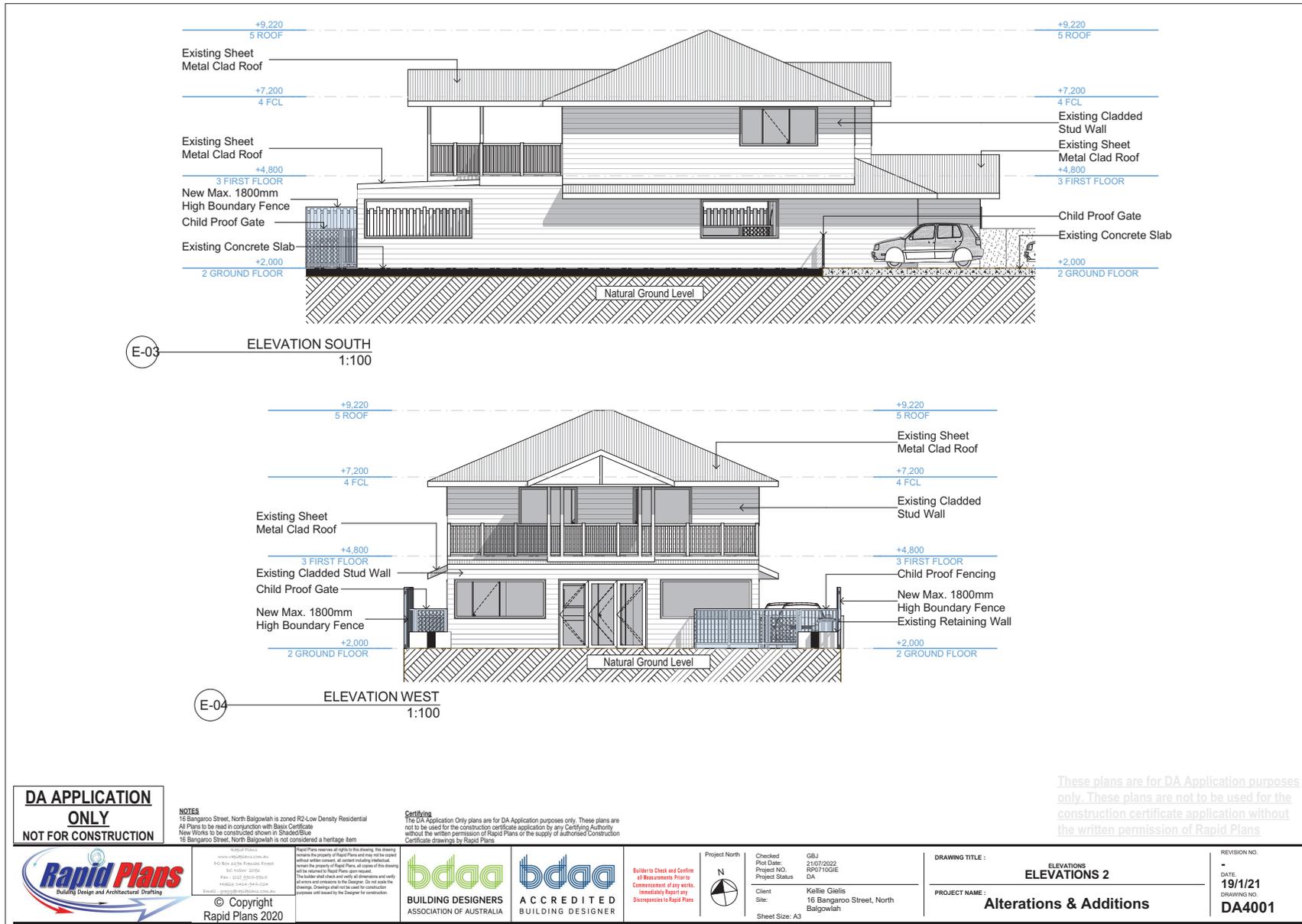
1. The proposal is inconsistent with Clause 3.23 of the SEPP Transport and Infrastructure.
2. The proposed development is inconsistent with the provisions of Clause A.5 Objectives of the Warringah Development Control Plan in that it fails to respond to the characteristics of the site and the neighbourhood, is not able to be a good neighbour, and does not provide a high level of access to and within the development in a safe manner.
3. The proposed development is inconsistent with the provisions of Clause C2 Traffic, Access and Safety of the Warringah Development Control Plan 2011 in that the proposed access arrangements will give rise to an unsafe environment for pedestrians and vehicles and their occupants. In particular, of concern is the reversing of vehicles onto the footpath and the road carriageway when leaving the car park, the reliance on stacked car parking which exacerbates safety concerns, proximity of a bus stop, proximity of a major roundabout, and the volume of vehicles in the road network at peak periods.
4. The proposed development is inconsistent with the provisions of Clause C3 Parking Facilities of the Warringah Development Control Plan in that it fails to provide compliant off-street parking arrangements for the child care centre.
5. The proposed development is inconsistent with the provisions of Clause D20 Safety and Security of the Warringah Development Control Plan.
6. Pursuant to Section 4.15 (1) (b) and (c) of the Environmental Planning and Assessment Act 1979 the proposed development is unsuitable for the site due to neighbourhood amenity and public safety outcomes. 7. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.

Hugh Halliwell (Consultant Planner – Mecone)

In submitting this assessment report to Council, I declare that I do not have any conflicts of interest.







<b>ITEM 4.2</b>	<b>DA2022/0193 - 199-205 PITTWATER ROAD, MANLY - ALTERATIONS AND ADDITIONS TO SHOP TOP HOUSING.</b>
<b>AUTHORISING MANAGER</b>	<b>Rod Piggott</b>
<b>TRIM FILE REF</b>	<b>2022/604186</b>
<b>ATTACHMENTS</b>	<b>1 <a href="#">↓</a>Assessment Report</b> <b>2 <a href="#">↓</a>Site Plans &amp; Elevations</b> <b>3 <a href="#">↓</a>Clause 4.6</b>

## 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.

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## 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. DA2022/0193 for Alterations and additions to shop top housing on land at Lot B DP 382992, 199 - 205 Pittwater Road, MANLY, subject to the conditions set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2022/0193
<b>Responsible Officer:</b>	Stephanie Gelder
<b>Land to be developed (Address):</b>	Lot B DP 382992, 199 - 205 Pittwater Road MANLY NSW 2095
<b>Proposed Development:</b>	Alterations and additions to shop top housing
<b>Zoning:</b>	Manly LEP2013 - Land zoned R1 General Residential Manly LEP2013 - Land zoned B1 Neighbourhood Centre
<b>Development Permissible:</b>	Yes - Zone R1 General Residential Yes - Zone B1 Neighbourhood Centre
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Manly Central Pty Ltd
<b>Applicant:</b>	Marina Goncalves
<b>Application Lodged:</b>	17/03/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Mixed
<b>Notified:</b>	30/03/2022 to 13/04/2022
<b>Advertised:</b>	30/03/2022
<b>Submissions Received:</b>	11
<b>Clause 4.6 Variation:</b>	4.4 Floor space ratio: 1.69%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 935,000.00

### EXECUTIVE SUMMARY

This development application seeks consent for Alterations and additions to shop top housing.

The site is split by 2 zones, the majority of the site being B1 Neighbourhood Centre zone, with the remaining portion in R1 General Residential.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to eleven (11) unique submissions received by way of objection.

Concerns raised in the objections predominantly relate to parking, footpath pavings, which have been

addressed through conditions or are deemed to be satisfactory. The remaining issues relating to the pedestrian crossing, the upgrading of stormwater pits and an existing billboard located on the northern elevation are not relevant to the proposed changes contained within this application.

The proposal seeks a departure from a development standard of Floor Space Ratio seeking a variation of 1.69% (11.59m<sup>2</sup>). The 4.6 request for the non-compliance with FSR standard arises from the construction of a new entry lobby and stairs.

This report concludes with a recommendation that the NBLPP grant approval to the development application, subject to conditions.

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposed development comprises of alterations and additions to shop top housing.

Specifically the proposed works include the following:

### External

- Restoration of the original parapet;
- Reinstatement of original signage;
- Signage for six (6) retail premises;
- Alterations and additions to existing windows and door openings;
- New metal awnings;

### Ground Floor

- Structural repairs and refurbishment of interior;
- Upgrade of existing Street facades fronting Golf Parade and Pittwater Road.
- Six (6) new retail shops;
- New common stair entrance and lobby to the first floor;
- Ten (10) car parking spaces;
- One (1) loading bay;
- Bicycle parking spaces;
- A central landscaped courtyard;
- Garbage storage areas for residential and for commercial premises;

### First Floor.

- Existing three (3) loft apartments to remain unchanged;
- Shop top housing (four units) above retail shops stop (conversion of existing apartments) - Unit 1 - one bedroom and study apartment, Unit 2 - one bedroom apartment, Unit 3 - studio apartment, Unit 4 - one bedroom and study apartment;
- New common lobby entrance and internal stairs for new apartments;
- Refurbishment of interior;
- New outdoor communal space and clothes drying area; and
- Service/plant area.

## **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 - 3.6 Accessibility  
 Manly Development Control Plan - 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor  
 Manly Development Control Plan - 4.2.8.3 Landscaping  
 Manly Development Control Plan - 4.2.8.5 Carparking, Vehicular Access and Loading Controls  
 Manly Development Control Plan - 4.2.8.9 Signage  
 Manly Development Control Plan - 4.4.3 Signage  
 Manly Development Control Plan - 4.4.4.1 Awnings in LEP B1 and B2 Business Zones

#### SITE DESCRIPTION

<b>Property Description:</b>	Lot B DP 382992 , 199 - 205 Pittwater Road MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) corner allotment located on the western side of Pittwater Road and northern side of Golf Parade.</p> <p>The site is irregular in shape with a primary frontage of 19.98m and 8.485m along Pittwater Road and a secondary frontage of 38.175m along Golf Parade. The site has a surveyed area of 684.6m<sup>2</sup>.</p> <p>The site is located within the B1 Neighbourhood Centre zone and R1 General Residential zone from Manly Local Environmental Plan 2013 and accommodates a two storey retail and residential building, and two storey loft apartment building currently on the site. The proposed development is located in the B1 Neighbourhood Centre zone.</p> <p>The site is generally flat with no significant changes in</p>

topography. There is no vegetation currently on the site and there are no details of any threatened species.

**Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by residential flat buildings, dwelling houses, semi-detached dwellings, and commercial premises. The subject site is located in Pittwater Road Conservation Area.

Map:



**SITE HISTORY**

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

**DA0382/1997**

Development Application for Refurbishment of Existing Commercial Premises, Reinstatement of the Former Three Dwellings Over and Conversion of the Warehouse into Three Flats.  
Approved on 15 June 1999.

**DA0382/1997**

Section 96(1A) Application for Shops/Flats/Warehouse.  
Approved on 19 August 2003.

**PLM2021/0239**

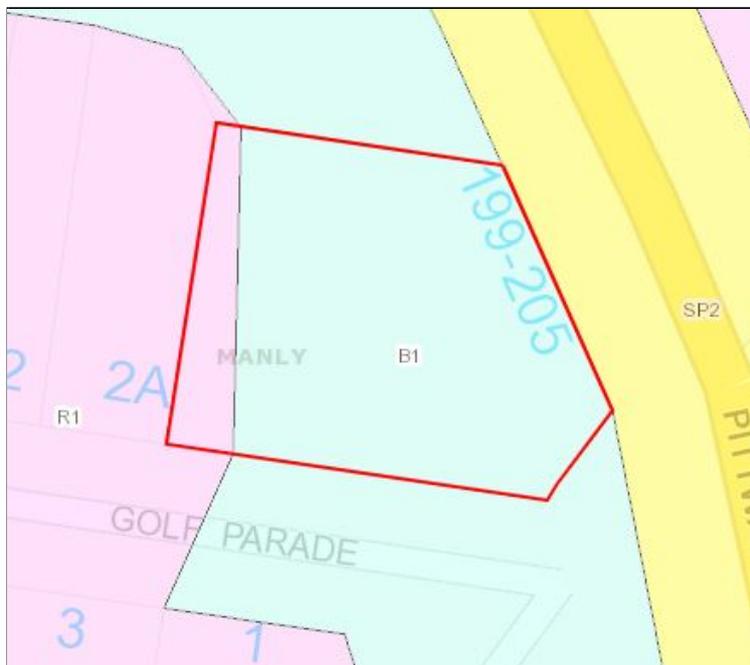
Pre-Lodgement Meeting - Written Advice Only for Multi Dwelling Housing and Shop Top Housing (Existing Use Rights) for 2A Golf Parade and 199-205 Pittwater Road, Manly.  
Meeting notes dated 8 September 2021.

The meeting notes concluded the following: *A review of the proposed development based on the specific issues raised in the pre-lodgement application has been carried out and you are advised that, given the characterisation of multi-dwelling housing by Commissioner Brown in Mount Annan 88 Pty Ltd*

*v Camden Council [2016] NSWLEC 1072, it could be considered that the existing 'flats' may be regarded as multi-dwelling housing and therefore may benefit from existing use rights on that portion of land zoned B1 Neighbourhood Centre. The construction of multi-dwelling housing on each of the lots is not objected to subject to the question of existing use rights being fully demonstrated in a development Application.*

## EXISTING USE RIGHTS HISTORY

The subject site is zoned mostly B1 Neighbourhood Centre under Manly Local Environmental Plan 2013 (MLEP 2013), however a portion of the subject site to the west is zoned R1 General Residential under MLEP 2013 (see Figure 1).



**Figure 1. Land Zoning under Manly Local Environmental Plan 2013 of 199-205 Pittwater Road MANLY**

The current proposal is for the alterations and additions to shop top housing that is permitted with consent under MLEP 2013 in both the B1 Neighbourhood Centre zone and R1 General Residential zone under MLEP 2013.

However, located within the R1 General Residential portion of the site is an existing building that contains three (3) loft flats. It is important to note, this proposal does not alter the western building that accommodates the existing three (3) loft flats.

A Development Application (DA382/97) was approved on 15 June 1999 for the Refurbishment Of Existing Commercial Premises, Reinstatement of the Former Three Dwellings Over and Conversion of the Warehouse into Three Flats. Therefore, the three (3) loft flats are subject to an existing approval.

Under the MLEP 2013, multi-dwelling housing is defined as three or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building. It is considered that the existing 'flats' may be regarded as multi-dwelling housing and

therefore benefit from existing use rights on that portion of land zoned B1 Neighbourhood Centre.

However, as the existing flats are unaltered under this application, no further assessment is required in this instance. However, if any future development is proposed to the existing flats, existing use rights are required to be demonstrated in a Development Application.

## APPLICATION HISTORY

### 20 May 2022

Following the preliminary assessment of the application, Council requested that the applicant submit further information in relation to the proposed signage including the billboard in accordance with *State Environmental Planning Policy (Industry and Employment) 2021* and Clause 4.4.3 Signage of Manly Development Control Plan 2013. Further information was requested from Council's internal referral bodies including Development Engineering, Heritage, Traffic Engineering, and Urban Design. Subsequently, on 17 June 2022 the applicant provided amended Master Plans, Response to Additional Information Report, amended Heritage Report, Stormwater Report, SEPP 65 Report, and amended Traffic Report. The amended plans and documentation constituted a reduced environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP). Notwithstanding the provisions of the CPP, the objectors of the proposal were notified of the amended documentation on 21 June 2022 via written email correspondence.

### 1 July 2022

In response to the amended documentation provided, further information was requested from Council's internal referral bodies including Development Engineering, Traffic Engineering, and Urban Design. Furthermore, a full set of amended plans was requested as the amended plans provided did not include all plans as detailed in the original Master Set. Subsequently, on 22 July 2022 the applicant provided amended Master Plans, amended Stormwater Plans, Response to Additional Information Report, and an amended Traffic Report. The amended plans and documentation constituted a reduced environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP). Notwithstanding the provisions of the CPP, the objectors of the proposal were notified of the amended documentation on 25 July 2022 via written email correspondence.

### 1 August 2022

The applicant was requested to provide an updated Clause 4.6 Report, noting the proposed FSR was reduced as a result of the amended plans. The amended plans did not alter the environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

### 15 August 2022

In response to the amended documentation provided, further information was requested from Council's internal referral bodies including Urban Design, Engineering, and Heritage. Furthermore, clarification was sought in relation to the amended Master Plans to ensure the billboard notes detailed the existing billboard to be unchanged as part of this proposal. Additionally, on 16 August 2022, internal referral comments from Council's Waste Officer were provided to the applicant. Subsequently, on 29 August 2022 the applicant provided amended Master Plans, Access Report, Accessibility Report, Heritage Report, Traffic Report, and Additional Information Response Report. The amended plans and documentation constituted a reduced environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP). Notwithstanding the provisions of the CPP, the objectors of the proposal were notified of the amended documentation on 01 September 2022 via written email correspondence.

### 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)	<p>Part 4, Division 2 of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p>Clause 29 of the EP&amp;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.</p> <p>Clauses 36 and 94 of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Council internal referral comments, clarification regarding proposed signage, and application of various SEPPs. Subsequently, the applicant provided amended documentation to satisfy Council's internal referral bodies.</p> <p>Clause 61 of the EP&amp;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.</p> <p>Clauses 62 and/or 64 of the EP&amp;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.</p> <p>Clause 69 of the EP&amp;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.</p> <p>Clause 69 of the EP&amp;A Regulation 2021 requires the consent</p>

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

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

#### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 30/03/2022 to 13/04/2022 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 11 submission/s from:

Name:	Address:
Ms Michelle Ann Egan	8 Golf Parade MANLY NSW 2095
Mr Geoffrey Charles Hughes	6 / 10 Golf Parade MANLY NSW 2095
Mrs Lisa Jane Buncle	226 Pittwater Road MANLY NSW 2095
Ms Sarah Louise Paine	2 Golf Parade MANLY NSW 2095
Mr Peter Clive Barr	41 Alexander Street MANLY NSW 2095
Mr Timothy John Evans	4 Golf Parade MANLY NSW 2095

Name:	Address:
Mr David Geoffrey Parfett	222 Pittwater Road MANLY NSW 2095
Mr John Thomas Hoffman	17 Golf Parade MANLY NSW 2095
Ms Priscilla Anne Longley	20 Golf Parade MANLY NSW 2095
Mrs Margaret Louise Williams	2 / 220 Pittwater Road MANLY NSW 2095
Families For Manly	Address Unknown

The following issues were raised in the submissions:

- **Footpath Pavings / Pedestrian Crossing to Pittwater Road;**
- **Stormwater Pits Upgrade;**
- **Existing Billboard / Illumination of Billboard; and**
- **Parking.**

The above issues are addressed as follows:

- **Footpath Pavings / Pedestrian Crossing to Pittwater Road**

The submissions raised concerns that the footpath pavings and pedestrian crossing to Pittwater Road should be upgraded.

Comment:

The applicant has demonstrated an upgrade to the footpath pavings located along the footpath to the east and west of the site. As discussed in the Internal Referral comments from Council's Road Reserve Officer, a separate application is required for the proposed street works on the footpath. As such, a condition has been recommended for Submission Roads Act Application for Civil Works in the Public Road for the purpose of the footpath along Pittwater Road and Golf Parade. Furthermore, the submission outlined the upgrading of the footpaths to include better street lighting and benches. The request for these items are not related to the proposed development, and as such should be raised to Council separately. Additionally, the request for an upgrade to the Pedestrian Crossing to Pittwater Road is not related to this development application, and again this request should be raised to Council separately.

- **Stormwater Pit Upgrade**

The submissions raised concerns that the adjacent stormwater pits require upgrading.

Comment:

The proposal has been reviewed by Council's Development Engineer and the referral comments have been provided under the Internal Referrals section contained within this report. The concern regarding the upgrading of the adjacent stormwater pits are not related to this development application, and any concerns should be raised to Council separately.

- **Existing Billboard / Illumination of Billboard**

The submissions raised concerns regarding the existing Billboard located along the northern facade of the development.

Comment:

The existing Billboard is not amended as part of this development application, and as such it is understood the Billboard is subject to an existing approval. Upon further investigation it is understood that previous investigation has been undertaken under the reference BLD2020/0037. As part of this investigation from Council's Building Compliance team, an existing approval for the Billboard signage is dated back to 1993. Notwithstanding, a separate Building Investigation has been lodged with Council to further investigate the existing billboard and illumination of the billboard under the reference BLD2022/0033.

- **Parking**

The submissions raised concerns surrounding adequate parking for the proposed development.

Comment:

A detailed assessment has been conducted under Clause 4.2.4 of Manly Development Control Plan 2013 and under the Traffic Engineer referral comments contained under the Internal Referral section contained within this report. In summary, the proposed development provides an improvement to the existing car parking arrangement on site, and the provision of ten (10) car parking spaces is supportable in this circumstance.

Concluding Comments

In summary, the concerns raised have been addressed and do not warrant the refusal of the proposed application.

**REFERRALS**

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>Supported, subject to conditions.</b></p> <p><b>Amended Plans:</b></p> <p><b>All previous referral conditions dated 25/3/2022 are still applicable to this Amended proposal.</b></p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Contaminated Lands)	<p><b>Supported, subject to conditions.</b></p> <p><b>General Comments</b></p> <p>Proposal includes demolition of some structures on-site, including walls, floor and court yard. Exposure of contaminants is most likely limited to existing construction materials and fill beneath courtyard slab, and is expected to be minimal in amounts, limited to asbestos fragments and minor amounts of lead paint. Thus, we suggest that it is reasonable to instate a hazardous materials survey condition on any determination document, the survey to be conducted prior to</p>

Internal Referral Body	Comments
	construction certificate being issued.
Environmental Health (Industrial)	<p><b>Supported, no conditions recommended.</b></p> <p><b>General Comments</b></p> <p>Council has reviewed the proposed alterations and additions of the development and conclude that the operations and use of the premises will be 'substantially the same'. Therefore, we have no concerns about detrimental impacts on amenity from such things as light, noise and odour created by use of retail and commercial premises below residential. No objections to the proposal.</p>
NECC (Coast and Catchments)	<p><b>Supported, no conditions recommended.</b></p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> <li>• Coastal Management Act 2016;</li> <li>• State Environmental Planning Policy (Coastal Management) 2018 (clauses 13, 14 &amp; 15); and</li> <li>• Relevant LEP and DCP clauses.</li> </ul> <p>The application meets the requirements of the relevant Environmental Planning Instruments and policies.</p>
NECC (Development Engineering)	<p><b>Supported, subject to conditions.</b></p> <p><u>3rd Development Engineering Referral Response (08/09/2022)</u> The stormwater issue raised in last response has been resolved in this submission. Development Engineering has no objection to the application subject to the following conditions of consent.</p> <p><u>2nd Development Engineering Referral Response (24/06/2022)</u> The applicant's consultant submitted a letter in regarding the need of the On site stormwater detention system (OSD). Development Engineering can accept this development without OSD. However, the applicant still require to provide a stormwater design plan to indicate and manage the proposed discharge to Council's kerb. Also, the maximum allowable discharge rate into the street kerb is 25l/s in all stormwater events in accordance with Council's Water Management For Development Policy. As a corner block, the subjected site can discharge into Pittwater Road and Gold Parade separately. The applicant must submit a stormwater management plan to demonstrate their stormwater design can comply with the maximum discharge rate into the street kerb.</p> <p>In this regard, Development Engineering cannot support the application due to clause 3.7 of Council's Manly DCP 2013.</p> <p><u>Development Engineering Referral Response (4/5/2022)</u> The application proposed to modify the existing building. The impervious areas of this development is over 60% of the total site</p>

Internal Referral Body	Comments					
	<p>area. An on site stormwater detention system is required in accordance with Council's Water Management For Development Policy. The design requirements of the detention system can be found in the above policy.</p> <p>Development Engineering cannot support the application due to clause 3.7 of Council's Manly DCP 2013.</p>					
Road Reserve	<p><b>Supported, no conditions recommended.</b></p> <p>The proposed development has limited impact on existing road infrastructure assets.</p> <p>Development Engineering team to include conditions to require Civil Works Application for proposed streetscape works on the footpath.</p>					
Strategic and Place Planning (Heritage Officer)	<p><b>Supported, subject to conditions.</b></p> <table border="1" data-bbox="563 965 1329 1993"> <thead> <tr> <th data-bbox="563 965 1329 1001">HERITAGE COMMENTS</th> </tr> </thead> <tbody> <tr> <td data-bbox="563 1001 1329 1037">Discussion of reason for referral</td> </tr> <tr> <td data-bbox="563 1037 1329 1272"> <p>The proposal has been referred to Heritage as the subject property is located in <b>C1 - Pittwater Road Conservation Area</b> and within the vicinity of two heritage items, listed in Schedule 5 of Manly Local Environmental Plan 2013:</p> <p><b>Item I 210 - Commercial building</b> - 210–214 Pittwater Road <b>Item I211 - Group of commercial buildings</b> - 216–218 Pittwater Road</p> </td> </tr> <tr> <td data-bbox="563 1272 1329 1308">Details of heritage items affected</td> </tr> <tr> <td data-bbox="563 1308 1329 1993"> <p>Details of the heritage items and the conservation area, as contained within the Manly Heritage Inventory are:</p> <p><b>C1 - Pittwater Road Conservation Area</b> <u>Statement of Significance:</u> 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. <u>Physical Description:</u> 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 separately. 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,</p> </td> </tr> </tbody> </table>	HERITAGE COMMENTS	Discussion of reason for referral	<p>The proposal has been referred to Heritage as the subject property is located in <b>C1 - Pittwater Road Conservation Area</b> and within the vicinity of two heritage items, listed in Schedule 5 of Manly Local Environmental Plan 2013:</p> <p><b>Item I 210 - Commercial building</b> - 210–214 Pittwater Road <b>Item I211 - Group of commercial buildings</b> - 216–218 Pittwater Road</p>	Details of heritage items affected	<p>Details of the heritage items and the conservation area, as contained within the Manly Heritage Inventory are:</p> <p><b>C1 - Pittwater Road Conservation Area</b> <u>Statement of Significance:</u> 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. <u>Physical Description:</u> 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 separately. 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,</p>
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Internal Referral Body	Comments			
	<p>vertical and vegetated backdrop.</p> <p><b>Item I 210 - Commercial building</b>  <u>Statement of Significance:</u>            A group of shops with upper floor residential apartments constructed as one building. Constructed in a Late Victorian style. Major significance as a unique example of style of architecture with commercial function at this date withing Municipality.</p> <p><u>Physical Description:</u>            c.1890 two storey commercial building of brick with iron roof. Originally two shops with dwelling above - shopfronts intact. Additional two storey brick building to north also has original shopfront. The addition has been constructed to match the original building at 1st floor level. First floor French doors now open onto awning. Evidence of original balcony extant. Possible original hip roof now only extant at southern end. Southern section has central chimney.</p> <p><b>Item I211 - Group of commercial buildings</b>  <u>Statement of Significance:</u>            An intact example of late 19th century retail architecture which is unusual within local area.            216,218,218A Pittwater Rd</p> <p><u>Physical Description:</u>            Two storey brick building(s) with retail outlets at ground floor level. Southern shop front generally intact. Southern section: significant elements include dormer windows, gabled iron roof, shop fronts. Northern section: original doorway with 3 course header arch over and 2 course arch over first floor window above. There is evidence of original tuck pointing to both buildings. The awning is not original.</p>			
	<p><b>Other relevant heritage listings</b></p>			
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Other	N/A			
	<p><b>Consideration of Application</b></p>			
	<p><b>Original heritage comments - 13 April 2022</b>            The proposal seeks consent for alterations and additions to an existing two storey, corner shop top housing building, located in</p>			

Internal Referral Body	Comments
	<p>Pittwater Road Conservation Area. The Heritage Design Statement, submitted with this application acknowledges the heritage value of the existing building and states that " <i>The street façade has a decorative parapet and some remains of the original signage to what was known as Nixons Corner, dated 1914. The building is chamfered to the corner of Golf Parade and Pittwater Road. The original first floor openings had vertical proportions and opened to a wrap-around timber veranda that projected out to the edge of the sidewalk below.</i>"</p> <p>It is also stated in the report, that "<i>The proposal will restore and upgrade of the external façade; refurbish the ground level retail with the provision of a new courtyard to the rear allowing for better amenity and solar access; and provide 4 small apartments to the first level</i>", including the restoration of the original parapet, reinstating the original signage, new openings with vertical proportions with juliette balconies, arched windows, new metal awnings. However, restoration is defined in the Burra Charter as "<i>returning a place to a known earlier state by removing accretions or by reassembling existing elements without the introduction of new material</i>" and the only restoration work proposed is the original parapet, as such the proposal is not considered to be restoring or reconstructing the original building.</p> <p>However, this would be a great opportunity to reconstruct this corner building to its original external appearance (Refer to Heritage Design Statement by CHROFI Page 2 - Image 2) by reinstating the original two storey wrap around verandah that would make the building a good focal point in the locality and within the conservation area. It is believed that this will also allow the building to be more attractive and better presented to the community and the streetscape by providing both a good heritage and commercial outcome.</p> <p>Although, it was built in 1914, the design of the two storey wrap around verandah is similar to the heritage listed building (c1890), across the road at 210-214 Pittwater Road, with the verandah posts on the footpath. These two buildings with similar external appearance would contribute the local character and create a small village centre, a focal point in Pittwater Road Conservation Area.</p> <p>Therefore, Heritage recommends to consider reinstating the original wrap around verandah.</p> <p><b>Amended Heritage Comments - 23 June 2022</b> Amended documents received on 21 June 2022 have been reviewed. The heritage response provided by Ruth Daniell has concluded that "<i>For the reasons set out in this submission, including the degree of previous alterations to the building, the assessed significance, its lack of contribution to the Conservation Area and the lack of solid evidence for reconstruction I support an adaptation that retains the building form, restores the parapet, that employs</i></p>

Internal Referral Body	Comments
	<p><i>good contemporary design is the preferable over a historicist conjectural reproduction of the original commercial building designed in 1914". It is agreed that there is lack of solid evidence for the reconstruction of the wrap-around verandah, however it is not agreed on the comment "its lack of contribution to the Conservation Area" and the lack of evidence on the original fenestration of the building as a careful analysis on the original external fabric would reveal the original fenestration of the first floor level. The existing building retains the original bulk and scale, including some original details in its original context, therefore it does contribute to the conservation area and this contribution could be enhanced after careful analysis of surrounding buildings that respects and supports the significance of the conservation area. The proposed individual awnings design is considered to be inconsistent with the character of the existing streetscape and the heritage conservation area. Therefore, considerations must be given to the replacement of these individual awnings with a continuous awning, to respect the character of the area and better relate to the existing heritage context and not overpower it.</i></p> <p>Heritage also raised concerns about the billboard signage on the northern facade of the building. A reduction on the size of this signage has been proposed, but it is considered that removing this signage would be a better response to the conservation area or reduce the size significantly and remove the illumination as it is highly visible from Pittwater Road.</p> <p>Therefore, no objections are raised on heritage grounds subject to two conditions.</p> <p><b>Further Amended Heritage Comments - 1 September 2022</b> Revised documents were received on 30 August 2022, including a supplementary heritage report addressing heritage concerns raised by Council (by Ruth Daniell, dated 29 August 2022). This document has been reviewed, along with the amended plans.</p> <p>The outstanding heritage concern with this application is the design of the awnings on the facade facing Pittwater Road (cnr Golf Parade).The amended plans do not make any changes to the individual metal awnings proposed on this primary facade and the revised heritage report still supports these individual awnings on heritage grounds. This is not agreed with.</p> <p>As per our previous heritage comment, the proposed individual awnings design is considered to be inconsistent with the character of the existing streetscape and the Pittwater Road Heritage Conservation Area. The individual awnings approach will not contribute to the significance of the place nor improve the contribution of this building to the conservation area. Most commercial buildings along the Pittwater Road Conservation Area corridor have continuous awnings of various types, framing the lower retail level. Traditionally, a building of this type would have</p>

Internal Referral Body	Comments
	<p>had some form of continuous awning, and while the original wrap-around verandah is not relevant any more due to changes to the 1st floor fenestration, a continuous awning is needed to ensure that this building once again creates a positive contribution to the conservation area.</p> <p>Practice note - Burra Charter Article 22 requires: <i>“New work should respect the context, strength, scale and character of the original and should not overpower it. The key to success is carefully considered design that respects and supports the significance of a place. Well-designed new work can have a positive role in the interpretation of a place.”</i> It is considered that the interpretation of the original wrap-around verandah on this building, would be a continuous awning, rather than the proposed individual awnings. Therefore, a condition is proposed to require the individual awnings to be replaced with a continuous awning of a design which would be compatible with the Pittwater Road Conservation Area.</p> <p>The other issue of concern previously was the new, illuminated billboard sign, This component has now been removed from the DA, therefore no heritage objections are raised as long as the current billboard sign is legal and has a valid approval.</p> <p><b>In conclusion, no objections are raised on heritage grounds, subject to the imposition of a condition requiring the awning to be continuous.</b></p> <p><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</p> <p>Further Comments</p>
Strategic and Place Planning (Urban Design)	<p><b>Supported, no conditions recommended.</b></p> <p><u>Further Revised Comments</u> This advice is provided as an internal referral from the Urban Design unit to the development assessment officer for consideration and coordination with the overall assessment.</p> <p>Urban Design raises no objection to the proposed application.</p> <p><u>Revised Comments</u> This advice is provided as an internal referral from the Urban Design unit to the development assessment officer for consideration and coordination with the overall assessment.</p> <p>Urban Design may be able to support the modification proposal if the following issues are addressed:</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>• Additional information has now been provided to clarify the applicability of SEPP 65 and the Apartment Design Guide. The application should be assessed on this basis.</li> <li>• The proposal fronts Pittwater Road which appears to be classified as a 20,000 AADT+ busy road. Additional acoustic information should be provided to ensure that the requirements of SEPP Transport and Infrastructure with regard to impact of road noise on residential accommodation can be satisfied.</li> <li>• The proposal contains four substantially reconfigured dwellings, in addition to three existing dwellings, but does not appear to provide dwellings with access in accordance with AS4299 adaptable housing to meet the requirements of the DCP. Further design consideration should be given to the inclusion of a lift.</li> <li>• Further design consideration should be given to the planning and screening of the proposed outdoor clothes drying area and services plant area to ensure that it is not visible from the public domain.</li> </ul> <p><u>Original Comments</u></p> <p>This advice is provided as an internal referral from the Urban Design unit to the development assessment officer for consideration and coordination with the overall assessment.</p> <p>Urban Design cannot support the proposal because of the following issues:</p> <ul style="list-style-type: none"> <li>• The Statement of Environmental Effects (SEE) notes that the existing structures are 'part three-storey.' As the proposal also includes at least 4 or more dwellings, SEPP 65 and the Apartment Design Guide may apply. Additional information should be provided to clarify and address this applicability of SEPP 65 in the SEE.</li> <li>• The proposal fronts Pittwater Road which appears to be classified as a 20,000 AADT+ busy road. Additional information should be provided illustrating how the proposal has been designed in response to the context of a busy road incorporating all pertinent design guidelines. Additional information should be provided regarding to appropriate design, space-planning and other measures to ensure acoustic control levels are not exceeded and the required amenity is provided.</li> <li>• The proposal contains four substantially reconfigured dwellings, in addition to three existing dwellings, but does not appear to provide dwellings with access in accordance with AS4299 adaptable housing. This is not considered to provide an improved level of access for people with disabilities or promote 'ageing in place'. Consideration should be given to the inclusion of a lift.</li> <li>• The proposal contains four substantially reconfigured</li> </ul>

Internal Referral Body	Comments
	<p>dwelling, two without individual private open spaces (Unit 2 and 3) and one with a small private open space (Unit 4). This is not considered to enhance the amenity of the dwellings.</p> <ul style="list-style-type: none"> <li>• It is noted that the proposal provides a relatively small communal open space for the use of the seven dwellings at the first floor. This is not considered to enhance the amenity of the dwellings. This aspect should be referred to Council's landscape section for comment.</li> <li>• The proposal includes a 1-bedroom unit (Unit 2) that is less than 50m<sup>2</sup> and includes a bathroom only accessible through the bedroom. This is not considered to provide an acceptable level of internal amenity.</li> <li>• The proposed footpath awnings are not continuous. This is not considered to be generally consistent with the streetscape.</li> <li>• There is an opportunity to use the roof plane to achieve increased solar access to south-tending units.</li> <li>• The location of any proposed air conditioning units and outdoor clothes drying areas should be located on the plans.</li> <li>• The proposal includes six retail tenancies. The plans should illustrate the likely location of any associated proposed services, exhaust vents and mechanical plant and address any impacts on residential uses, neighbours and the streetscape.</li> </ul>
Traffic Engineer	<p><b><i>Supported, subject to conditions.</i></b></p> <p><b><u>Further comments on amended plans - 01/09/2022</u></b></p> <p>To address concerns relating to the location of the waste storage areas, the applicant has provided further amended plans for the parking area which delete the single parking space located nearest to Golf parade and relocate it into a third car stacker unit. The style of car stacker proposed allows for independent access to each stacked space pair and the change is not therefore opposed. The applicant has also provided documentation from their traffic consultant dated 29/8/2022 that confirms that there is sufficient space within the parking area to allow for vehicles to enter and exit the new stacker unit in a forwards direction.</p> <p>The amended plans are therefore supported on traffic grounds.</p> <p><b><u>Revised comments on amended plans - 26/07/2022</u></b></p> <p>The Revised plans have relocated the proposed Loading Bay back into the carpark, which will accommodate a total number of 10 spaces.</p> <p>The parking required under the DCP for the existing development on the site is:  7 x units @ 1.0 space per dwelling = 7 spaces  7 x 0.16 visitor spaces per dwelling = 1.12 spaces (rounded up to 2)</p>

Internal Referral Body	Comments
	<p>296 sqm x 1 space per 40 sqm = 7.4 spaces (rounded up to 8) Total parking required = 17 spaces</p> <p>It is noted that the amended plans propose 10 parking spaces to be provided in the carpark include 2 pairs of tandem spaces and 2 pairs of spaces in mechanical car stackers. Given the constrained nature of the site this is an improvement on the existing situation and, in this case acceptable. The style of car stacker that is proposed to be used allows for independent access to each space and spaces within the mechanical car stackers could therefore be allocated to different units. Tandem spaces must be allocated to the same unit households and it is therefore possible that for all seven units to be allocated offstreet parking. The remaining offstreet parking space would be allocated as a retail staff space with retail customer parking accommodated on-street within the existing 2P Parking zones on Golf Parade or in the 1/2P zones on Pittwater Road.</p> <p>Considering the proposed location of loading bay, which will block access to and from parking spaces it is considered inappropriate to allocate offstreet parking for high turnover customer parking. Residential spaces turnover less frequently and accordingly all but one of the offstreet parking spaces should be allocated for residential use only. This will minimise conflict between parking space turnover and trucks performing delivery duties. All customers and shop employees not allocated parking will need to use public transport or find time restricted parking .</p> <p>Swept path plots in the latest version of Traffic Report have been reviewed, the swept path plots demonstrate that a Medium Rigid vehicle under 8.8 metres can enter and exit the site adequately.</p> <p>The proposal is therefore supported.</p> <p><b><u>Revised comments on amended plans - 24/06/2022</u></b></p> <p>The revised plans have removed the proposed Loading Bay from inside the carpark and propose to site it on street. A revised offstreet carparking arrangement which caters for 7 offstreet parking spaces has been submitted with an additional tandem parking space. A turning bay has also been added to allow for vehicles to turn around on site and enable forwards entry and egress to/from the site. The amended plans have also slightly reduced the retail area from the original proposal down to 296m<sup>2</sup>.</p> <p><u>Parking</u></p> <p>The above changes have not impacted the total parking requirement which remains at 17 spaces as detailed below:</p> <p>7 x units at 1.0 space per dwelling = 7 spaces 7 x 0.16 visitor spaces per dwelling = 1.12 spaces (round up to 2)</p>

Internal Referral Body	Comments
	<p>296 sqm x retail @ 1 space per 40m<sup>2</sup> = 7.4 spaces (round up to 8)</p> <p>This represents a deficiency of 10 offstreet parking spaces, an improvement in the magnitude of the parking deficiency of 1 space.</p> <p>The amended plans have 2 pairs of tandem spaces. As there are 7 units and 6 proposed retail tenancies and as each pair of tandem spaces will need to be allocated to the same unit or retail tenancy, the offstreet parking provision will only provide access to parking for 5 of the tenancies/units i.e 8 of the units/tenancies will have no access to any offstreet parking.</p> <p>The carparking arrangements are still considered to be inadequate and must cater more adequately for DCP requirements</p> <p>Council had suggested that mechanical stackers could be considered to increase the offstreet parking supply. Pit style stackers could potentially increase the number of offstreet spaces will also allowing both spaces in the stacked pair to be accessible at all times.</p> <p><u>On site manoeuvring</u></p> <p>Although an on-site turning bay has been provided swept paths plots to demonstrate that it can be used effectively to turn around have not been provided. These are required to demonstrate that the B85 vehicle can enter and exit the carpark in a forward direction utilising this bay, particularly from spaces P1-P4 .</p> <p><u>Loading bay</u></p> <p>The offstreet loading bay in the last version of plan was removed and it has been suggested that a kerbside Loading Zone should instead be considered. This alternative is not favoured as it removes on-street parking in a location which suffers from high parking demand. The Manly DCP states in clause 4.2.4.3 d) that "Off street Loading facilities are to be provided to service the entire development in the LEP Business Zones considering the uses proposed on the site ... where the use requires regular servicing by commercial vehicles". As there are to be size retail tenancies on the site the site will require regular servicing by commercial vehicles and an offstreet loading bay should be provided. For the above reasons the proposed kerbside Loading Zone is unsupported.</p> <p><u>Parking survey</u></p> <p>teh on-street parking survey provided by the applicants traffic consultant is noted with the traffic consultant suggesting that the on Thursday, 16 December 2021, up to 37 (34% of total) parking spaces were available for parking. This does not equate with Council's own observations of parking demand in the vicinity of the development however the undersupply of parking to service the development will result in an increased demand for on-street parking in the surrounding</p>

Internal Referral Body	Comments
	<p>streets. Parking which meets DCP requirements should be provided on site.</p> <p>The additional material and amended plans have not addressed the traffic concerns relating to this development and the revised proposal remains unsupported.</p> <p><b><u>Original comments - 29/03/22</u></b></p> <p>The existing development at 199-205 Pittwater Road is within a B1 zone and incorporates 9 residential units and 299m<sup>2</sup> of retail/commercial development. The proposal is for alterations and additions to convert the existing mixed use development into 7 residential units on the first floor with 7 retail units with a total GFA of 313m<sup>2</sup> on the ground floor. It is proposed to have 6 parking spaces serving this development and a loading bay capable of accommodating a medium rigid vehicle.</p> <p><u>Parking</u></p> <p>The parking required under the DCP for the existing development on the site is:</p> <p>9 x units @ 1.0 space per dwelling = 9 spaces            9x 0.16 visitor spaces per dwelling = 1.44 spaces (rounded up to 2)            299 sqm x 1 space per 40 sqm = 7.45 spaces (rounded up to 8)            total parking required = 19 spaces</p> <p>The parking required under the DCP for the proposed development are as follows:            7 X 1 bedroom units/studios @ 1.0 space per dwelling = 7 spaces            7 X 0.16 visitor space per dwelling = 1.12 spaces (rounded to 2)            313 sqm X 1 space per 40 sqm = 7.83 spaces (rounded to 8 )            The total number of the spaces required for the proposed development is 17. This is two less than the requirement for the existing development on site.</p> <p>The redeveloped site proposes to provide only 6 parking spaces. This represents a shortfall of 11 spaces</p> <p>The applicant's traffic consultant has justified the parking shortfall on the basis that the redeveloped site has a lower parking requirement (by two spaces) than the existing development on the site. The Traffic consultant also asserts that there is adequate spare capacity on street to accommodate the shortfall. To support the above the traffic consultant references parking surveys undertaken on a single day over a range of streets within approx. 130m of the site. The traffic consultant advises that there are some 108 parking spaces available for parking in the surveyed street sections. Council's estimate of the legal parking spaces in these street sections is only 85 available spaces. The surveys suggest that over 80 spaces were occupied in this area at most of the surveyed times suggesting little if any</p>

Internal Referral Body	Comments
	<p>available on-street parking. The actual raw data has not been provided to confirm the above.</p> <p>It is noted that two of the proposed parking spaces are in a tandem arrangement this would mean that the buried space would be inaccessible if the front space were occupied. In order to ensure that access to parking is not prevented the two spaces in the tandem arrangement would need to be allocated to the same unit or tenancy.</p> <p>It is considered that there is potential to provide additional parking on the site by incorporating mechanical car stackers over some of the spaces eg spaces P5 &amp; P6. This would reduce the shortfall in parking and minimise the parking impact of the development on surrounding on-street parking.</p> <p>It is also noted that the parking area has not been dimensioned and swept path plots have not been provided to demonstrate that access to and from parking spaces is possible. The compliance of the proposed parking spaces was not therefore able to be checked. This material should be provided.</p> <p><u>Property Access</u></p> <p>Access to the property is constrained. Access can only be obtained from Golf Parade as there is a One Way traffic flow restriction on Collingwood Street. Golf Parade can only be accessed via a left turn from Balgowlah Road as there is a median on Balgowlah Road preventing right turn ingress and Golf Parade is closed at Pittwater Road. Egress from the site is only available by turning left from Golf Parade onto Balgowlah Road or by proceeding south on Collingwood Street (in alignment with the One Way traffic flow) to reach Pittwater Road via Rolfe Street.</p> <p>The development is not however expected to generate a significantly different volume of traffic to the existing development on the site and concerns are not raised in terms of the traffic generation from the site.</p> <p><u>Loading</u></p> <p>The proposed loading bay is sited where it will block access to and from all parking spaces on the site when it is in use. This is inappropriate and likely to result in conflict between residents/tenants and delivery drivers. Access from the loading bay to the retail units is also poor with access from the loading bay impeded by parked vehicles in bays P3 and P4. Deliveries are unable to be completed other than from the footpath. Given the above it is likely that deliveries will tend to be undertaken by trucks double parking on-street or across drivers neither option is acceptable.</p> <p>Delivery trucks will also need to egress the site via Collingwood Street and turn left into Rolfe St to reach Pittwater Road. Given the narrow</p>

Internal Referral Body	Comments
	<p>width of Rolfe St it is unclear if this turn can be achieved by a medium Rigid Vehicle. A swept path shall be provided to demonstrate that this turn is achievable for a MRV noting existing parking arrangements.</p> <p><u>Summary</u></p> <p>In summary, further information is required in order to determine if this proposal can be supported:</p> <ul style="list-style-type: none"> <li>• raw parking data to confirm adequacy of parking survey undertaken in support of the application.</li> <li>• All related dimensions for parking spaces and parking aisles with swept path access to and from spaces</li> <li>• Additional stacked parking spaces.</li> <li>• Additional details to address the poor siting of the loading bay and poor access from it to the retail units.</li> <li>• A swept path for a MRV exiting the site via Collingwood Street and performing a left turn onto Rolfe Street.</li> </ul>
Waste Officer	<p><b><i>Supported, subject to conditions.</i></b></p> <p><u>Waste Services Assessment - Amended Plans (submitted 30/8/2022)</u> Recommendation - Acceptable, subject to conditions. Ray Creer Waste Services Officer</p> <p><u>Waste Services Assessment - Amended Plans (submitted 25/7/2022)</u> Recommendation - Unacceptable Specifically. The residential binroom is too far from the property boundary with the street. Maximum allowable distance is 6.5 metres Access to the residential binroom is via the vehicular driveway (unacceptable) OR via a pathway that is too long and with narrow pinchpoints (unacceptable).</p> <p>The original plans proposed a residential binroom that was in an acceptable location.</p> <p>Council does not permit residential multiple occupancy developments to place bins on the kerbside awaiting collection. All bins must be serviced via a "wheel out/wheel in" service from the binroom provided by Council's waste collection staff. Ray Creer Waste Services Officer</p> <p><b>Waste Services Referral Recommendation – Approval</b></p>

Internal Referral Body	Comments
	Please ensure both the Residential Waste and Commercial Waste storage rooms are graded and drained to a Sydney Water approved drainage system.

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

In accordance with the *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*, the application of the policy is outlined under Clause 4 Application of Policy:

- (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)*
  - (c) *the building concerned contains at least 4 or more dwellings.*
- (2) *If particular development comprises development to which subclause (1) applies and other development, this Policy applies to the part of the development that is development to which subclause (1) applies and does not apply to the other part.*
- (3) *To remove doubt, this Policy does not apply to a building that is a class 1a or 1b building within the meaning of the Building Code of Australia.*
- (4) *Unless a local environmental plan states otherwise, this Policy does not apply to a boarding house, co-living housing or a serviced apartment to which that plan applies.*

#### Comment

The proposal relates to the alterations and additions to an existing shop top housing development that is 2 storeys. Therefore, in this instance the application of the *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* is not applicable.

#### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No.1272545M dated 4 February 2022).

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

<b>Commitment</b>	<b>Required Target</b>	<b>Proposed</b>
<b>Water</b>	40	41
<b>Thermal Comfort</b>	Pass	Pass
<b>Energy</b>	50	45

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**

##### **Division 5 - Electricity transmission or distributions**

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.

##### **Division 17 - Roads and Traffic**

Section 2.119 - Development with frontage to classified road states:

*The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—*

*(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*

- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—
- (i) the design of the vehicular access to the land, or
  - (ii) the emission of smoke or dust from the development, or
  - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

Comment:

The proposal retains vehicular access via Golf Parade as per the existing arrangement on site. The proposal is for the alterations and additions of shop top housing and as such the development type is unchanged.

Section 2.120 - Impact of road noise or vibration on non-road development states:

- (2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.
- (3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—
- (a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,
  - (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.

Comment:

The proposed development is for alterations and additions to shop top housing, and as such is a type of residential accommodation as defined under Manly Local Environmental Plan 2013. A suitable condition has been recommended for the requirement of an Acoustic Report to ensure the noise levels do not exceed 35 dB(A) in the bedrooms at any time between 10 pm and 7 am, and the noise levels do not exceed 40 dB(A) at any time in the remainder of the residential accommodation (other than a garage, kitchen, bathroom or hallway).

**SEPP (Industry and Employment) 2021**

Section 3.6 and 3.11 of Chapter 3 require Council to determine consistency with the objectives stipulated under Subsection 3.1 (1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 5.

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

In accordance with the provisions stipulated under Schedule 5 of Chapter 3, the following assessment is provided:

Matters for Consideration	Comment	Complies
<b>1. Character of the area</b> Is the proposal compatible with the existing or	The proposal is compatible with the existing and future character of the	YES

desired future character of the area or locality in which it is proposed to be located?	area.	
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	There is no particular theme for outdoor advertising in this locality, as such this provision is not applicable.	N/A
<b>2. Special areas</b> Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The proposal does not unduly detract from the amenity or visual quality of the Pittwater Road Conservation Area.	YES
<b>3. Views and vistas</b> Does the proposal obscure or compromise important views?	The proposed signage will not obscure or compromise any important views.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed signage will not dominate the skyline or reduce the quality of vistas.	YES
Does the proposal respect the viewing rights of other advertisers?	As the proposed signage is affixed to subject site, the signage will not impact upon the viewing rights of other advertisers.	YES
<b>4. Streetscape, setting or landscape</b> Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The scale, proportion and form of the proposed signage is appropriate for the streetscape and setting.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposal will positively contribute to the visual impact of the streetscape.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposed signage will not result in any significant visual clutter. The proposal includes the reinstatement of existing signage, and new signage that is considered to be simple and visually appropriate.	YES
Does the proposal screen unsightliness?	The proposal is not considered to be unsightly, as such the proposal does not screen any unsightliness.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposed signage is affixed to the existing development, and as such will not protrude above buildings, structures, or tree canopies.	YES
<b>5. Site and building</b> Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The proposed signage is compatible with the scale and proportion of the building facades to which the proposed signage is to be affixed.	YES
Does the proposal respect important features of the site or building, or both?	The proposed signage respects the features of the site and building. The reinstatement of the existing building identification signage respects the	YES

	historical features of the site.	
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposed signage is appropriate to the site and building.	YES
<b>6. Associated devices and logos with advertisements and advertising structures</b> Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	There are no safety devices, platforms, lighting devices or logos proposed. Therefore, this provision is not applicable.	N/A
<b>7. Illumination</b> Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	The proposed signage is not illuminated. As such a suitable condition is recommend to ensure no signage is illuminated.	N/A
Can the intensity of the illumination be adjusted, if necessary?	The proposed signage is not illuminated.	N/A
Is the illumination subject to a curfew?	The proposed signage is not illuminated.	N/A
<b>8. Safety</b> Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The proposed signage will not result in reduced safety for public roads, pedestrians or bicyclists.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposed signage will not reduce the safety for pedestrians or obscure sightlines from public areas.	YES

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

## 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 it is located within land identified as "Coastal Environment Area". As such, the proposal is not likely to cause an adverse impact on items listed under Clause 2.10(1)(a-g) inclusive.

- 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 has been designed, sited, and managed to avoid an adverse impact to Clause 2.10(1)(a-g) inclusive.

**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 is not likely to cause increased risk of coastal hazards on the land or other land due to the significant set back from the coastal zone.

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 and commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential and commercial 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:	8.5m	Unaltered	-	N/A
Floor Space Ratio	FSR: 1:1 (684.6m <sup>2</sup> )	FSR: 1.02:1 (696.19m <sup>2</sup> )	1.69% (11.59m <sup>2</sup> )	No

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	N/A
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	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:	Floor space ratio
Requirement:	1:1 (684.6m <sup>2</sup> )
Proposed:	1.02:1 (696.19m <sup>2</sup> )
Percentage variation to requirement:	1.69%

###### 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 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:

*"1. The proposal appropriately addresses and achieves the LEP Objectives for FSR in relation to the site and the locality in rationalising existing floor areas, stairs, retail/commercial uses, and upgrade of residential shop top apartments; and especially addresses the visual appearance in the public domain. The proposal achieves the objectives of the Pittwater Road Conservation Area.*

*2. We support the architect's comments in their Heritage Design Statement and also the assessment and conclusion stated in Heritage consultant Ruth Daniel later report submitted to Council. The proposed works for 199-205 Pittwater Road will have a positive contribution to the streetscape of Pittwater Road.*

*3. The very small breach of the MLEP FSR is reasonable, appropriate, and justified in achieving the planning objectives. Strict compliance is unnecessary in the circumstances of the case as:*

- *The proposal is consistent with the objectives of the Floor Space Ratio standard and the zoning of the land when assessed against each individually, and as a whole.*
- *The proposal is in the public interest for the reason that it achieves the relevant planning objectives, proposes a reuse of existing internal space, and has no negative environmental impacts.*
- *The clause 4.6 application adequately address cl. 4.6(3) and the consent authority should be satisfied that the matters have in fact been demonstrated.*

*4. The consent authority should have no difficulty in being satisfied that this Clause 4.6 application demonstrates compliance with the MLEP Floor Space Ratio development standard is unreasonable and unnecessary in this circumstance, that the relevant planning objectives have been addressed and outcomes achieved, that there are sufficient environmental planning grounds to justify contravening the standard, and that the development is in the public interest."*

It is agreed that the proposed variation to Clause 4.4 Floor space ratio of Manly Local Environmental Plan 2013 is a minor breach. The Clause 4.6 written request has addressed the zone objectives and objectives of the development standard. It is agreed that compliance with Clause 4.4 Floor Space Ratio of Manly Local Environmental Plan 2013 is unreasonable and unnecessary in this circumstance and the applicant has demonstrated sufficient environmental planning grounds to justify the contravention of the standard.

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 B1 Neighbourhood Centre. An assessment against these objectives is provided below.

**Objectives of development standard**

**Zone objectives**

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

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

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

Comment:

The additional gross floor area is located internally on the ground floor and as such, is not visible from the existing streetscape.

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

Comment:

The proposal does not alter the existing maximum height of building and as a result the proposal will not obscure any important landscape and/or townscape features.

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

Comment:

The proposal will enhance the existing character of the area, and provide an appropriate visual relationship between the new development and the existing character and landscape of the area.

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

Comment:

The proposal will not result in unreasonable environmental impacts to the use or enjoyment of adjoining land 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:

The proposal includes six (6) retail premises to provide for the development, expansion, and diversity of business activities within the Manly locality.

## Zone objectives

The underlying objectives of the B1 Neighbourhood Centre zone:

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

Comment:

The proposal provides six (6) retail premises to serve the needs of the community, and four (4) residential units to accommodate local residents.

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

Comment:

The proposal will ensure the Manly Neighbourhood Centre retains a village-like atmosphere that promotes safety and comfort for pedestrians.

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

Comment:

The land uses are retained as a result of the proposal, and as such the amenity of nearby residential land uses will be maintained.

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B1 Neighbourhood Centre 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: 684.6m <sup>2</sup>	Requirement	Proposed	% Variation*	Complies
4.2.8.1 Height	8.5m	unaltered	-	N/A
4.2.8.2 Setbacks	Primary Frontage (East): Established Building Line Secondary Frontage (South): Established Building Line Side Setback (North): Nil Side Setback (West): 1/3 wall height	Primary Frontage: Nil Secondary Frontage: Nil Side Setback (North): unaltered Side Setback (West): unaltered	- - - -	N/A Yes N/A N/A
4.2.8.3 Landscaping	Private Open Space: 20m <sup>2</sup> per dwelling (80m <sup>2</sup> )	Communal Private Open Space: 14.11m <sup>2</sup> Unit 1: 7.21m <sup>2</sup> Unit 4: 14.26m <sup>2</sup> Total: 35.58m <sup>2</sup>	55.53% (44.42m <sup>2</sup> )	<b>No</b>

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 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
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	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
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	No	Yes
4.2.8 Neighbourhood Centres (LEP Zone B1)	Yes	Yes
4.2.8.1 Height	Yes	Yes
4.2.8.2 Setbacks	Yes	Yes
4.2.8.3 Landscaping	No	Yes
4.2.8.5 Carparking, Vehicular Access and Loading Controls	Yes	Yes
4.2.8.6 Hours of Operation	Yes	Yes
4.2.8.8 Waste Management	Yes	Yes
4.2.8.9 Signage	Yes	Yes
4.2.8.10 Local Character provisions	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.3 Signage	Yes	Yes
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	No	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes

## Detailed Assessment

### **3.6 Accessibility**

Under Clause 3.6 of Manly Development Control Plan 2013 (MDCP 2013), these clauses aim to provide equitable, dignified and non-discriminatory access for all people who use the Manly community, regardless of abilities. Manly Council believe that all members of our community have a right to full access and participation in all aspects of community life.

Under Clause 3.6.1, all DAs are to have regard to state and federal accessibility requirements, particularly residential development with more than 4 dwellings and non-residential development.

The proposal includes the reconfiguration of the first floor to include 4 residential units.

The proposal is accompanied by an Access Report prepared by Credwell Consulting dated 24 August 2022. As detailed in the report the Access Consultant has outlined the following:

*In summary, the Premises Standards are applicable to a new building, a new part of a building, and an affected part of a building, (as is the case in this instances) and the construction standards applicable are contained within "Schedule 1 Access Code for Buildings".*

*It is noted the proposed works within Units 1, 2, 3, and 4 are not currently considered to trigger the "affected part" provisions of Premises Standard, being internal works only to an SOU [Sole-occupancy unit] within an existing Class 2.*

*As such the proposed works within Level 1 of the building, being the residential level is not considered to trigger the requirement to provide any upgrade to the Class 2 part with regard to the Premises Standards.*

Therefore, in this instance the proposal has been assessed against Clause 3.6.1.1 of MDCP 2013 and as such demonstrates appropriate application of the Premises Standards. Council's Building Assessment Officer has provided referral comments under Internal Referrals within this report and imposed suitable conditions to ensure compliance with Clause 3.6.1.2 The Building Code of Australia and Australian Standards.

### **4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor**

#### Description of non-compliance

The proposal provides 10 parking spaces that including 2 tandem spaces, and 3 parking stackers. The proposal provides a loading bay within the parking area.

Under Schedule 3 of Manly Development Control Plan 2013, the requirements for Shop Top Housing and Retail Premises are as follows:

#### **Shop Top Housing**

In other LEP Business Zoned land (i.e. other than Manly Town Centre)

- 1 resident parking space for each dwelling (irrespective of number of bedrooms),
- 0.16 visitor parking space for each dwelling.

## Retail Premises

- 1 parking space for every 40sqm of gross floor area

The proposal includes 4 residential units in the Shop Top Housing Development, and 3 existing Loft Apartments in the rear building. The retail premises amount to a total gross floor area of 296sqm. Therefore the requirements for car parking are as follows:

- 7 resident parking spaces, and
- $7 \times 0.16 = 1.12$  (rounded to 2) visitor parking spaces
- $296 \text{sqm} / 40 \text{sqm} = 7.4$  (rounded to 8) retail parking spaces

Therefore a total of 17 parking spaces are required. The proposal therefore presents a shortfall of 7 parking spaces.

A detailed assessment has been undertaken by Council's Traffic Engineer under Internal Referrals contained within this report. In summary, the variation to the car parking is supportable by Council's Traffic Engineer subject to recommended conditions.

Notwithstanding, an assessment against the objectives of the control has been undertaken, and it is considered the proposal meets the objectives in this regard.

### Merit consideration

With regard to the consideration of a variation, the proposal is considered against the underlying objectives of the control as follows:

***Objective 1) To ensure there is adequate provisions for car parking access and loading in future development and redevelopment in all business zones.***

### Comment

Despite the numerical shortfall of parking, it is considered the proposal provides an improvement to 10 parking spaces from the existing car parking arrangement on site that provides 6 parking spaces. Furthermore, the proposal reduces the number of residential units in the shop top housing from 6 units to 4 units. Therefore, the improvement in car parking spaces is considered acceptable, as parking spaces are provided for each residential unit, with one parking space provided for the retail premises. It is important to note, during the assessment period, the applicant has increased the proposed car parking from 6 parking spaces to 10 parking spaces through the use of mechanical parking sackers to generate 4 additional parking spaces. Therefore, it is considered that adequate provisions have been provided for car parking and loading. Furthermore, the subject site is located on Pittwater Road that is in proximity to public transport services.

***Objective 2) To minimise conflicts between pedestrian and vehicular movement systems within the business areas.***

### Comment

The existing vehicular access to the subject site is retained from Golf Parade, and as such conflict between pedestrian and vehicular movement systems is unlikely to be altered as a result of the proposal. Notwithstanding, Traffic Engineer have recommended suitable conditions including Fencing Height / Vegetation conditions to ensure pedestrian and/or driver visibility is not impeded.

### Conclusion

Based on the above assessment, and the assessment undertaken by Council's Traffic Engineer it is considered that the proposal satisfies the applicable objectives of this control and the car parking and loading bay provisions are supportable.

### **4.2.8.3 Landscaping**

#### Description of non-compliance

The Manly DCP 2013 requires, a minimum area of Private Open Space is 20m<sup>2</sup> for each dwelling within a shop top housing development with a minimum dimension of 3m and designed to receive a minimum of 3 hours direct sunlight between 9am and 3pm in midwinter.

The proposal includes a communal Private Open Space area of 14.11m<sup>2</sup>, and Unit 1 proposes a Terrace with an area of 14.26m<sup>2</sup>, and Unit 4 proposes a Balcony with an area of 7.21m<sup>2</sup>.

Therefore, in this instance a variation to the requirements is proposed. The proposal has been assessed against the objectives of the parent Clause 4.2.8, and as such is supportable in this specific circumstance.

#### Merit consideration

The Manly DCP 2013 does not include objectives for this clause. As such an assessment of the objectives of the parent clause 4.2.8 Neighbourhood Centres has been undertaken out below:

***Objective 1) To accommodate a range of small scale development permitted by the LEP within established residential neighbourhoods where such development is compatible with the amenity of the surrounding area.***

#### Comment:

The proposal is the alterations and additions of a shop top housing development, and as such is considered to be compatible with the amenity of the surrounding area. The proposal includes a communal private open space that was not providing in the existing shop top housing development, and as such provides an improvement to the amenity for future residents. It is considered the private open space is of an adequate size and dimension to service the proposed units.

***Objective 2) To provide side and rear setbacks which ensure the building height and distance of the building from its boundaries at various storeys, maintain the amenity of neighbouring residential sites and contributes to the amenity of the building and surrounds through landscape design.***

#### Comment:

The proposal does not alter the existing side setbacks, and as the site is a corner allotment there is no rear setback in this specific site. Notwithstanding, the portion of the site that adjoins the neighbouring residential site (to the west) retains the existing wall along the western side boundary, and as such the amenity to the site to the west is considered to be unaltered. Therefore, there is no capacity for landscaping along the side setbacks due to the retention of the existing walls along the northern and western side boundaries.

### **4.2.8.5 Carparking, Vehicular Access and Loading Controls**

Refer to Clause 4.2.4 Carparking, Vehicular Access and Loading Controls of Manly Development Control Plan 2013 contained within this report for a detailed assessment.

#### 4.2.8.9 Signage

A detailed assessment of the proposed signage has been conducted under Clause 4.4.3 Signage of Manly Development Control Plan 2013 contained within this report.

#### 4.4.3 Signage

##### Description of non-compliance

Under Clause 4.4.3.1 of Manly Development Control Plan 2013, the following requirements apply:

##### Maximum number of Signs

a) *In relation to shopfronts, a maximum of 2 identification signs will be permitted per frontage (for example 1 fascia and 1 hamper sign), in any 2 of the following preferred locations:*

- *Under awning;*
- *Awning fascia;*
- *A transom sign above the door or shopfront (top hamper);*
- *Inside the display window;*
- *Below the window sill; and*
- *Flush wall signs.*

As detailed on Signage (A-DA-205), typical signage design intent is detailed for top hamper signage and projecting wall signs. As detailed on the plans, there are placeholders for the proposed signage top hamper signage that includes thirteen (13) top hamper signs, and four (4) projecting wall signs. It is noted, that the signs include text only, however the specific wording is not detailed as the retail tenancies may have not been leased at this stage. To ensure the signage is consistent with that detailed on the plans a suitable condition has been recommended to ensure the signage is in accordance with the size, style, and details as depicted on A-DA-205.

Under Clause 4.4.3.3 of Manly Development Control Plan 2013, specific requirements apply for top hamper signage, projecting wall signs, and flush wall signs. The proposed signage is generally in accordance with these requirements, however to ensure the projecting wall signs are at least 2.6m above the ground, a suitable condition has been recommended.

The proposal includes the re-reinstatement of flush wall signs "Nixon's Building" and the two (2) "1914" signage as detailed on East Elevation (A-DA-201) and Elevations - Sheet 2 (A-DA-202). Additionally, as detailed on Elevations - Sheet 2 (A-DA-202) and Elevations - Sheet 4 (A-DA-204), a projecting wall sign is proposed for "Nixon Apartment".

##### Merit consideration

***Objective 1) To ensure that advertising does not detract from the scenic beauty and amenity of the Municipality; harmonises with its surroundings and the buildings to which they are attached.***

##### Comment

The proposal will ensure the signage does not detract from the scenic beauty and amenity of the Manly locality. The signage is appropriate with its surroundings and the building as developed.

***Objective 2) To minimise the visual impact by encouraging fewer more effective signs that may***

***otherwise degrade the existing and likely future quality of residential environments or result in excessive, unnecessary signage, visual clutter and confusion caused by a proliferation of signs in local and neighbourhood centres.***

Comment

Notwithstanding, the numerical non-compliance with the maximum number of signs for shopfronts, the proposal will ensure appropriate visual impact that is suitable to the design. The proposal will result in acceptable and effective signage in the local and neighbourhood centre.

***Objective 3) To permit building and business identification signs which communicate the facilities (including tourist facilities), amenities, goods and services in local and neighbourhood centres which do not interfere with the streetscape or amenity of residents.***

Comment

The proposed signage will effectively communicate the proposed retail premises and provide clear building identification that will not interfere with the streetscape.

***Objective 4) Signs should enhance the distinctive urban character and scenic amenity of the Municipality and contribute to the atmosphere of the streets in local and neighbourhood centres and should be designed in sympathy with both the building to which it is attached and any adjoining buildings, taking into account the architectural styles and finishes of buildings in local and neighbourhood centres.***

Comment

The proposed signage is considered to be designed with appropriate finishes and styles that has been designed in a way to reinstate the original signage and mirror the signage style for the proposed retail tenancies.

***Objective 5) To prevent signage from impacting on the presentation of the heritage item or area to the general public on heritage items and conservation areas.***

Comment

The proposed signage is considered appropriate for the heritage conservation area, and is consistent with the existing signage to be reinstated.

***Objective 6) To ensure all signage is of high standards of graphic and textural content.***

Comment

The signage as detailed on A-DA-205 will be of high standards of graphic and textural content that includes metal finishes.

***Objective 7) To encourage co-ordinated advertising in the Industrial Zone by the use of appropriately sized street numbers and complex names, and the use of directory boards to identify multiple unit complexes, so as to reduce adverse impact on the streetscape and confusion to traffic.***

Comment

The subject site is not located in an Industrial Zone and therefore this objective is not relevant.

#### **4.4.4.1 Awnings in LEP B1 and B2 Business Zones**

Description of non-compliance

The proposed development proposes separated awnings along Pittwater Road and Golf Parade.

The control states that continuous footpath awnings must be provided on all street frontages, generally consistent with the streetscape.

The control outlines the requirements for the awnings, to be a minimum height of 3.5m and a width of 0.6m from the kerb. The proposed awnings are 3.5m from the ground level and as such demonstrate compliance with this height requirement. However, the width from the kerb is greater than 0.6m along Pittwater Road.

Merit Consideration:

The proposed awnings have been discussed in detail by Council's Heritage Advisor as outlined under Internal Referrals within this report. As such, Council's Heritage Advisor has recommended a condition for a continuous awning. In summary, the proposed condition will ensure compliance with Clause 4.4.4.1 of Manly Development Control Plan 2013, that outlines continuous footpath awnings are to be provided on all street frontages to ensure consistency with the existing streetscape.

### **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 \$9,350 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$935,000.

### **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

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.

## PLANNING CONCLUSION

This proposal, for Alterations and additions to shop top housing has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to eleven (11) unique submissions received by way of objection.

The concerns raised in the objections have been addressed and resolved by justification in regards to compliance with the objectives of the control, and recommendation of appropriate conditions satisfying requirements of the controls.

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 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.

Furthermore, issues include Car Parking (Clause 4.2.4 and Clause 4.2.8.5 of Manly Development Control Plan 2013), Landscaping (Clause 4.2.8.3 of MDCP 2013), Signage (Clause 4.2.8.9 and Clause 4.4.3 of MDCP 2013), and Awnings in LEP B1 zone (Clause 4.4.4.1 of MDCP 2013).

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 4.4 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 DA2022/0193 for Alterations and additions to shop top housing on land at Lot B DP 382992, 199 - 205 Pittwater Road, MANLY, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Site Plan - A-DA-003, Rev 03	29 August 2022	Chrofi Architects
Demolition Plan - Ground Floor - A-DA-004, Rev 01	03 February 2022	Chrofi Architects
Demolition Plan - Level 1 - A-DA-005, Rev 01	03 February 2022	Chrofi Architects
Ground Floor Plan - A-DA-101, Rev 04	29 August 2022	Chrofi Architects
First Floor Plan - A-DA-102, Rev 03	22 July 2022	Chrofi Architects
Roof Plan - A-DA-103, Rev 02	16 June 2022	Chrofi Architects
Elevations - Sheet 1 (East Elevation) - A-DA-201, Rev 04	29 August 2022	Chrofi Architects
Elevations - Sheet 2 (South Elevation) - A-DA-202, Rev 03	29 August 2022	Chrofi Architects
Elevations - Sheet 3 (North Elevation) - A-DA-203, Rev 03	22 July 2022	Chrofi Architects
Elevations - Sheet 4 (West Elevation) - A-DA-204, Rev 03	22 July 2022	Chrofi Architects
Signage - A-DA-205, Rev 01	16 June 2022	Chrofi Architects
Sections - Sheet 1 - A-DA-301, Rev 01	3 February 2022	Chrofi Architects
Sections - Sheet 2 - A-DA-302, Rev 01	3 February 2022	Chrofi Architects

<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Ground Floor Concept Stormwater	20 July 2022	Michael Frost &

Drainage - SW01, Rev P1		Associates
First Floor Concept Stormwater Drainage - SW02, Rev P1	20 July 2022	Michael Frost & Associates
Roof Concept Stormwater Drainage - SW03, Rev P1	20 July 2022	Michael Frost & Associates

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Access Report (Ref.C21716-Letter-r1)	24 August 2022	Credwell Consulting
Accessibility Report	25 August 2022	Colco Consulting
BASIX Certificate (No.1272545M)	04 February 2022	Gradwell Consulting
BCA Assessment Report (Ref.C21726-NCC-r2)	17 January 2022	Credwell Consulting
Engineering Report	19 January 2022	Waddington Consulting
Heritage Report	n.d.	Chrofi Architects
Heritage Report	n.d.	Ruth Daniell
Heritage Report - Addendum	29 August 2022	Ruth Daniell
Materials & Finishes - A-DA-904, Rev 01	3 February 2022	Chrofi Architects
Traffic Report (Ref.21455)	4 February 2022	The Transport Planning Partnership
Traffic Report (Ref.21455) - Addendum	17 June 2022	The Transport Planning Partnership
Traffic Report (Ref.21455) - Addendum	22 July 2022	The Transport Planning Partnership
Traffic - Reponse Memo	29 August 2022	The Transport Planning Partnership
SEPP 65 Report	16 June 2022	Colco Consulting
Stormwater Report (Ref.22059 LO1)	n.d.	Michael Frost & Associates

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:

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Landscape Plan - A-DA-104, Rev 02	16 June 2022	Chrofi Architects

<b>Waste Management Plan</b>		

Drawing No/Title.	Dated	Prepared By
Waste Management Report	14 January 2022	MRA Consulting Group (MRA)

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	29 April 2022

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://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 site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of **shop top housing**.

**Shop top housing** is defined as:

"means one or more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities".

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

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

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

4. **Retail Tenancy Signage**

The signage for the retail tenancies are to be in accordance with the size, style, and details as depicted in the Signage (A-DA-205) of the Plans - Master Set dated 22 July 2022 by Chrofi Architects as detailed in Condition 1.

Reason: Control of signage.

5. **Billboard Signage**

No approval is granted under this Development Consent for the existing Billboard Signage.

Reason: The existing billboard does not form part of this consent.

## 6. 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.

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

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

## FEES / CHARGES / CONTRIBUTIONS

### 8. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$9,350.00 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 \$935,000.00.

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.

### 9. 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](http://www.northernbeaches.nsw.gov.au)).

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

### 10. Construction, Excavation and Associated Works Security Bond (Crossing / Kerb)

The applicant is to lodge a Bond of \$20000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, footpath works and removal of any redundant driveways required as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

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

### 11. Car Parking Standards

The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. The dimensions of car parking bays and aisle widths in the car park are to comply with Australian/New Zealand Standard for Off-Street Parking AS/NZS 2890.1-2004.

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

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

### 12. Car Parking Finishes

All driveways, car parking areas and pedestrian paths are to be surfaced and sealed. Details of treatment to these areas are to be submitted to the Certifying Authority prior to issue of the Construction Certificate.

Reason: To provide suitable stormwater disposal and to prevent soil erosion and runoff.

### 13. Construction Traffic Management Plan

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

Due to heavy traffic congestion throughout the town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site

- Make provision for parking onsite. All Staff and Contractors are to use the on-site off-street parking
- Temporary truck standing/queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on-site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

14. **Waste and Service Vehicle Access**

Access to the on-site loading bay area including ramp grades, transitions and height clearance shall be designed for safe forward in and forward out access of a 8.8m MRV removalist truck, as a minimum requirement. The height clearance required is 4.5m, measured from the floor level to any overhead structures.

Plans showing the ramp grades, transitions and height clearance and swept path diagrams of 8.8m removalist vehicle shall be submitted to and approved by the Certifying Authority prior to the issue of the Construction Certificate. Swept path diagrams must include details of the road

including, kerb line, line marking, signs, traffic devices, power poles, other structures and neighbouring driveways.

Trucks are not to egress the site to the west (towards Balgowlah Road). Trucks must reverse into the site and exit in a forwards direction to Pittwater Road

Reason: To ensure adequate service vehicle access.

15. **Removal of Redundant Driveways**

All redundant driveways shall be removed and reinstated to Council standard kerb and gutter. Suitably prepared plans shall be submitted to for an approval under and approved by Council prior to the issue of the Construction Certificate. All costs associated with the works shall be borne by the applicant.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approval.

Reason: To maximise on street car parking by removing driveways that are no longer needed in accordance with Council policy.

16. **Pedestrian sight distance at property boundary**

A pedestrian sight triangle of 2.0 metres by 2.5m metres, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property and where internal circulation roadways intersect with footpaths or other pedestrian access areas. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To maintain pedestrian safety.

17. **Building Code of Australia Fire Safety Requirements**

The Building Code of Australia fire safety measures for the building as detailed and recommended in the BCA Assessment Report prepared by the Credwell, dated 17/1/2022, Report Ref No. C21726-NCC-r1 and including any proposed 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.

18. **Building Code of Australia Access**

Access and facilities to and within the building are to be provided for Persons with a Disability and are to comply with the Building Code of Australia and AS 1428.1.

Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

19. **On-site Stormwater Disposal Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site

stormwater disposal in accordance with Northern Beaches Council's WATER MANAGEMENT FOR DEVELOPMENT POLICY PL850, and generally in accordance with the concept drainage plans prepared by Michael Frost & Associates Pty Ltd, Project No 22059, dated 20/07/2022.

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.

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

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of paved footpath and driveway crossing which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

- 1 ) a full width paved footpath along the property frontages on both Pittwater Road and Golf Parade. The materials of the paved footpath must be designed in accordance with Council's Public Space Vision & Design Guideline.
- 2 ) a 5 m wide concrete driveway crossing on Golf Parade.
- 3 ) all utilities service must be plotted on the site plan.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate

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

21. **Continuous Awning**

The proposed individual awnings are to be replaced by a continuous awning design which respects the character of the area and better relates to the existing heritage context. Details are to be submitted to Council's Heritage Officer for approval, prior to the issue of a Construction Certificate.

Details demonstrating compliance with this condition are to be provided to the Principal Certifying Authority.

Reason: To respect the context and preserve the heritage significance of the Pittwater Road Conservation Area.

22. **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.

23. **Hazardous Building Materials Survey**

A hazardous building materials survey is to be conducted by a suitably qualified and experienced person. The survey is to include a survey of hazardous building materials including but not limited to asbestos, lead, SMF and PCBs. Following the survey a Hazardous Building Materials Register is to be prepared for the premises providing recommendations for the safe management/removal of hazardous building material.

Reason: To protect human health.

24. **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.

25. **Sydney Water "Tap In"**

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

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

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

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

26. **Acoustic Report**

An Acoustic Report prepared by a suitably qualified consultant to ensure the noise levels do not exceed 35 dB(A) in the bedrooms at any time between 10 pm and 7 am, and the noise levels do not exceed 40 dB(A) at any time in the remainder of the residential accommodation (other than a garage, kitchen, bathroom or hallway).

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

Reason: To ensure compliance with Clause 2.120 of *State Environmental Planning Policy (Transport and Infrastructure) 2021*.

27. **Projecting Wall Signs**

The projecting wall signs must be at least 2.6m above the ground.

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

Reason: To ensure suitable height of signage.

28. **Waste and Recycling Requirements**

Details demonstrating compliance with Northern Beaches Waste Management Guidelines, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with the Northern Beaches Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans, a modification(s) to the development may be required.

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

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

29. **Work Zones and Permits**

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane and a Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

Reason: To ensure Work zones are monitored and installed correctly.

30. **Road Occupancy Licence**

Prior to commencement of the associated works, the applicant shall obtain a Road Occupancy License from Transport Management Centre for any works that may impact on traffic flows.

Reason: Requirement of TMC for any works that impact on traffic flow.

31. **Public Liability Insurance - Works on Public Land**

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

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

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

32. **Road Reserve**

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

Reason: Public safety.

33. **Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

34. **Ongoing Management**

The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

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

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

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

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

36. **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 Certifying Authority, 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.

37. **Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). 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.

38. **Onsite Encapsulation of Contaminated Material**

No onsite encapsulation of contaminated material is to occur without approval under a separate DA or modification submitted to Council.

Reason: To allow for a proper evaluation of any proposed encapsulation works and to ensure that any contaminated material is effectively capped and managed long term.

39. **Asbestos**

All removal, repair or disturbance of or to asbestos materials must comply with the relevant guidelines and legislation including the following:

- The Work Health and Safety Act 2011;
- The Work Health and Safety Regulation 2017;
- NSW SafeWork Code of Practice - How to Safely Remove Asbestos; and
- NSW SafeWork Code of Practice - How to Manage and Control Asbestos in the Workplace.

All asbestos waste must be disposed of at a lawful waste disposal facility that accepts asbestos waste.

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.

Following the removal of asbestos containing materials an asbestos clearance certificate is to be issued by a suitably qualified and experienced professional such as an Occupational Hygienist or Licenced Asbestos Assessor before the recommencement of any work.

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

Reason: To protect human health.

40. **Compliance with Recommendations within Hazardous Building Materials Register**

Any recommendations within the Hazardous Building Materials Register are to be implemented during works.

Reason: To protect human health.

41. **Requirement to Notify about New Contamination Evidence**

Any new information revealed during demolition works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifier.

Reason: To protect human health and the environment.

42. **Classification of waste & Off-site Disposal of Waste (fill and/or soil material)**

Prior to the exportation of waste (fill and/or soil) from the site, the waste materials must be tested and classified in accordance with the provisions of the Protection of the Environment Operations Act 1997 and the NSW EPA Waste Classification Guidelines, Part 1: Classification of Waste (November 2014).

Testing is required prior to off-site disposal. In accordance with DECC Waste Classification Guidelines (2014) materials identified for off-site disposal must be removed by a suitably qualified contractor to an appropriately licensed waste facility.

'Chain of Custody' documentation including receipts shall be kept for the exportation of waste (fill and/or soil material) from the site.

Details demonstrating compliance are to be submitted to the Principal Certifier within seven (7) days of transport and made available to Council upon request.

Reason: Appropriate disposal of waste and protection of environment.

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

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan dated 14 January 2022.

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

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

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

retained on site.

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

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

45. **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.

46. **Loading Bay Management Plan**

A Loading Bay Management Plan shall be prepared by the applicant and submitted to and approved by the Principal Certifying Authority prior to the issue of any Occupation Certificate.

The Plan will need to demonstrate how the loading bay will be managed to ensure that there will be only one vehicle entering and exiting the loading bay at any time and how safe servicing arrangements including waste collection will be undertaken without interrupting general traffic and minimising obstruction of other on-site parking bays. Vehicle queuing on public road(s) is not permitted.

Reason: to ensure the loading bay is managed appropriately and that tenants are aware of responsibilities and procedures for drivers undertaking loading/unloading activities.

47. **Mechanical Servicing of car stackers**

The applicant is to include a Section 88E instrument on the title permitting Council to provide direction as to the repair/maintenance of the mechanical car stacker devices. In the instance where the building manager does not comply with the direction of Council, or fails to address repair/maintenance requirements in a timely manner, Council reserves the right to undertake the repairs and all fees associated will be borne by the building manager.

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

Reason: To ensure the mechanical services are maintained in a serviceable state at all times.

48. **Reinstatement of Kerb**

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

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

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

49. **Garbage and Recycling Facilities**

All internal walls of the waste rooms shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close

proximity to facilitate cleaning.  
Waste room floors shall be graded and drained to an approved Sydney Water drainage system.

Waste rooms shall be clear of any other services or utilities infrastructure such as gas, electricity air-conditioning, plumbing, piping ducting or equipment.

Reason: To prevent pollution of the environment, provide a safe workplace for contractors and residents and to protect the amenity of the area.

50. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and 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.

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

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

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

Reason: To ensure waste and recycling facilities are provided.

52. **Waste/Recycling Compliance Documentation**

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

Reason: To ensure waste is minimised and recycled.

53. **Positive Covenant for Council and Contractor Indemnity**

A positive covenant shall be created on the title of the land prior to the issue of an Interim/Final Occupation Certificate requiring the proprietor of the land to provide access to the waste storage facilities. The terms of the positive covenant are to be prepared to Council's requirements, (Appendix E of the Waste Management Guidelines), at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

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

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

The original completed request form (NSW Land Registry Services form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation

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

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

Reason: To create encumbrances on the land.

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

55. **Sight Lines Within Carparks**

The required sight lines to pedestrians and other vehicles in and around the carpark and entrance(s) are not to be obstructed by landscaping or signage.

Reason: To maintain unobstructed sight distance for motorists.

56. **Tandem and Stacked Parking Spaces**

Tandem parking spaces are to be assigned to the same residential unit. Spaces in mechanical stackers may be allocated to different units.

Reason: To minimize conflicts regarding parking areas.

57. **Allocation of Spaces**

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

- 9 - Residential
- 1 - Retail

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

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

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

58. **Hours of Operation**

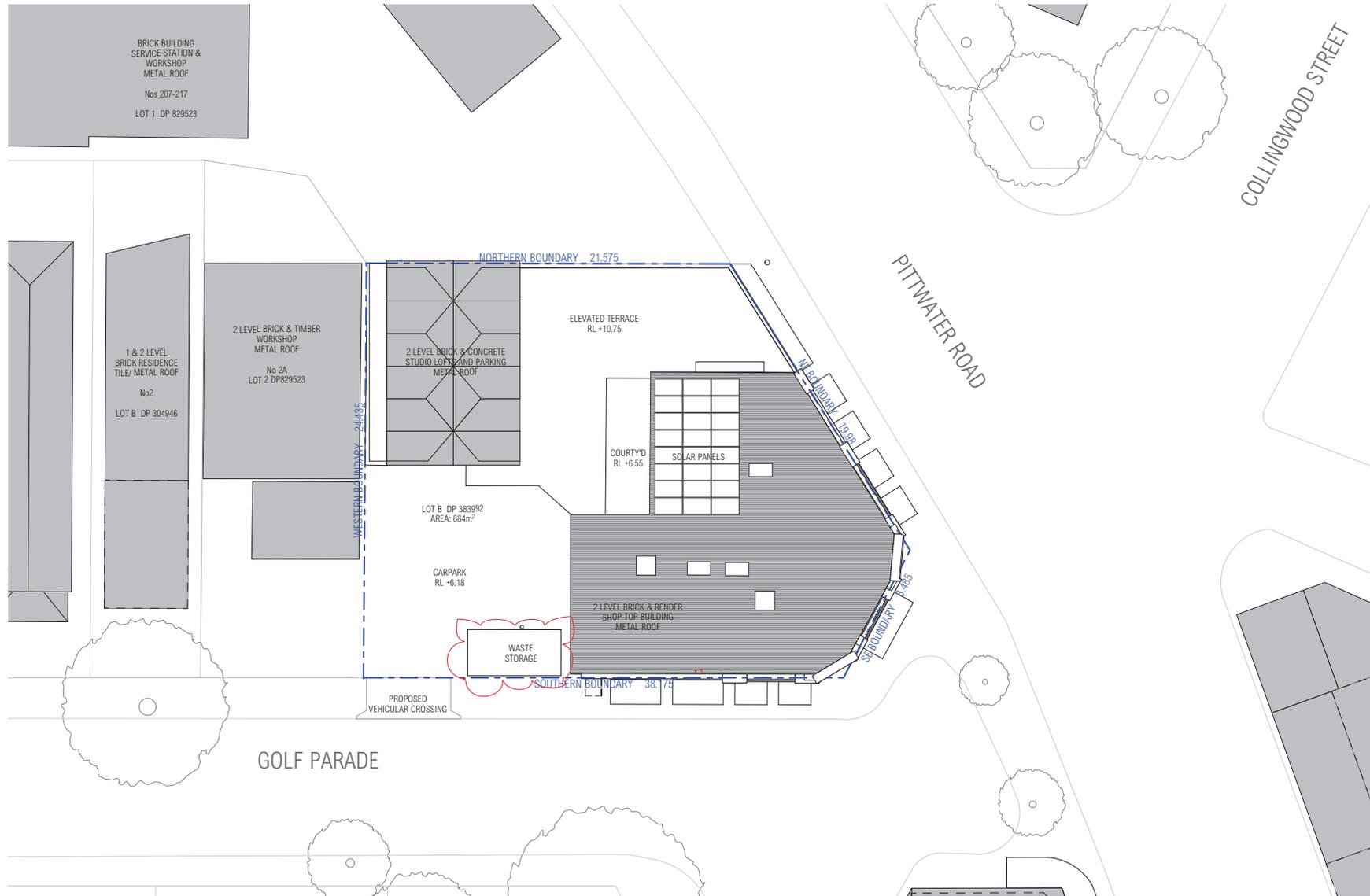
The hours of operation for the six (6) retail premises are to be restricted to:

- o Monday to Friday – 9:00AM to 5:00PM
- o Saturday – 9:00AM to 5:00PM
- o Sunday and Public Holidays – 9:00AM to 5:00PM

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

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

59. **No Illumination**  
No consent is given or implied for any form of illumination or floodlighting to any sign or building or other external areas other than that approved.
- Reason: To ensure appropriate forms of illumination that are consistent with Council's controls, and do not interfere with amenity of nearby properties.
60. **Commercial Waste and Recycling Storage**  
Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins as shown on the approved plans.
- Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed.
61. **Deliveries**  
No deliveries, loading or unloading associated with the retail premises are to take place between the hours of 7:00PM and 6:00AM on any day.
- Reason: To protect ensure the acoustic amenity of surrounding properties.
62. **Commercial Waste Collection**  
Waste and recyclable material, generated by the retail premises, must not be collected between the hours of 10:00PM and 6:00AM on any day.
- Reason: To protect the acoustic amenity of surrounding properties.
63. **Acoustic Management**  
The retail premises 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.
64. **Fencing Height / Vegetation**  
All fencing and/or vegetation along the frontage road(s) shall not impede pedestrian or driver visibility. This requires that vegetation does not exceed one (1) metre in height. Appropriate plants shall be selected within the 2.0 x 2.5m splay to ensure this condition is met.
- Reason: To ensure maximum vehicular and pedestrian visibility.
65. **Resident Parking Permits**  
Any residents and/or tenants of the subject site are not eligible for resident parking permits. This condition is to be provided on the property Title.
- Reason: To ensure the residents & tenants are aware that they are not entitled to a permit regardless if they are within a Resident Parking Scheme (RPS).



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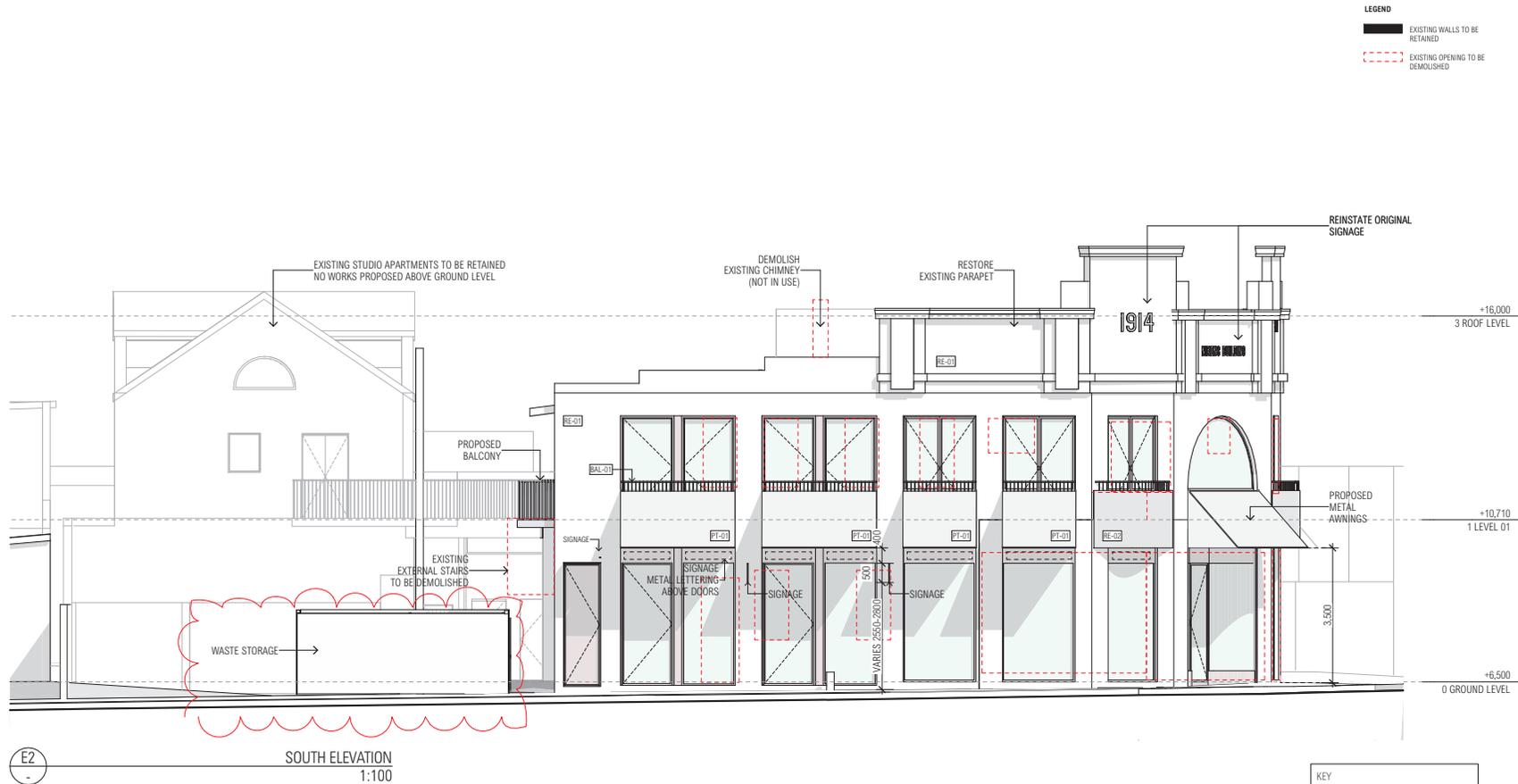
REV	DATE	ISSUE
01	3/2/22	DEVELOPMENT APPLICATION
02	16/5/22	DA RFI 1
03	29/8/22	DA RFI 2

REV	DATE	ISSUE

PROJECT	PROJECT NUMBER	PLOT DATE	DRAWN	CHECKED	SHEET SCALE	SHEET SIZE	NORTH	SHEET TITLE
199-205 Pittwater Rd, Manly	21057	29/8/22	MG	TR	1:200	A3		SITE PLAN

SHEET NUMBER	REVISION
A-DA-003	03





**LEGEND**  
 ■ EXISTING WALLS TO BE RETAINED  
 - - - EXISTING OPENING TO BE DEMOLISHED

**KEY**  
 BAL-01 METAL BALUSTRADE  
 BR-01 EXISTING BRICK  
 BR-02 NEW BRICK TO MATCH EXISTING  
 BRS-01 BRICK SCREEN  
 CN-01 EXISTING EXPOSED CONCRETE  
 CN-02 PROPOSED CONCRETE AWNING  
 LC-01 LIGHTWEIGHT CLADDING  
 PT-01 POWDERCOATED METAL SHEET  
 PT-02 POWDERCOATED METAL SHEET  
 RE-01 RENDER OFF-WHITE  
 RE-02 RENDER TEXTURED OFF-WHITE  
 RE-03 RENDER MEDIUM DARK  
 ST-01 TERRAZZO TILE  
 TF-01 TIMBER FENCE

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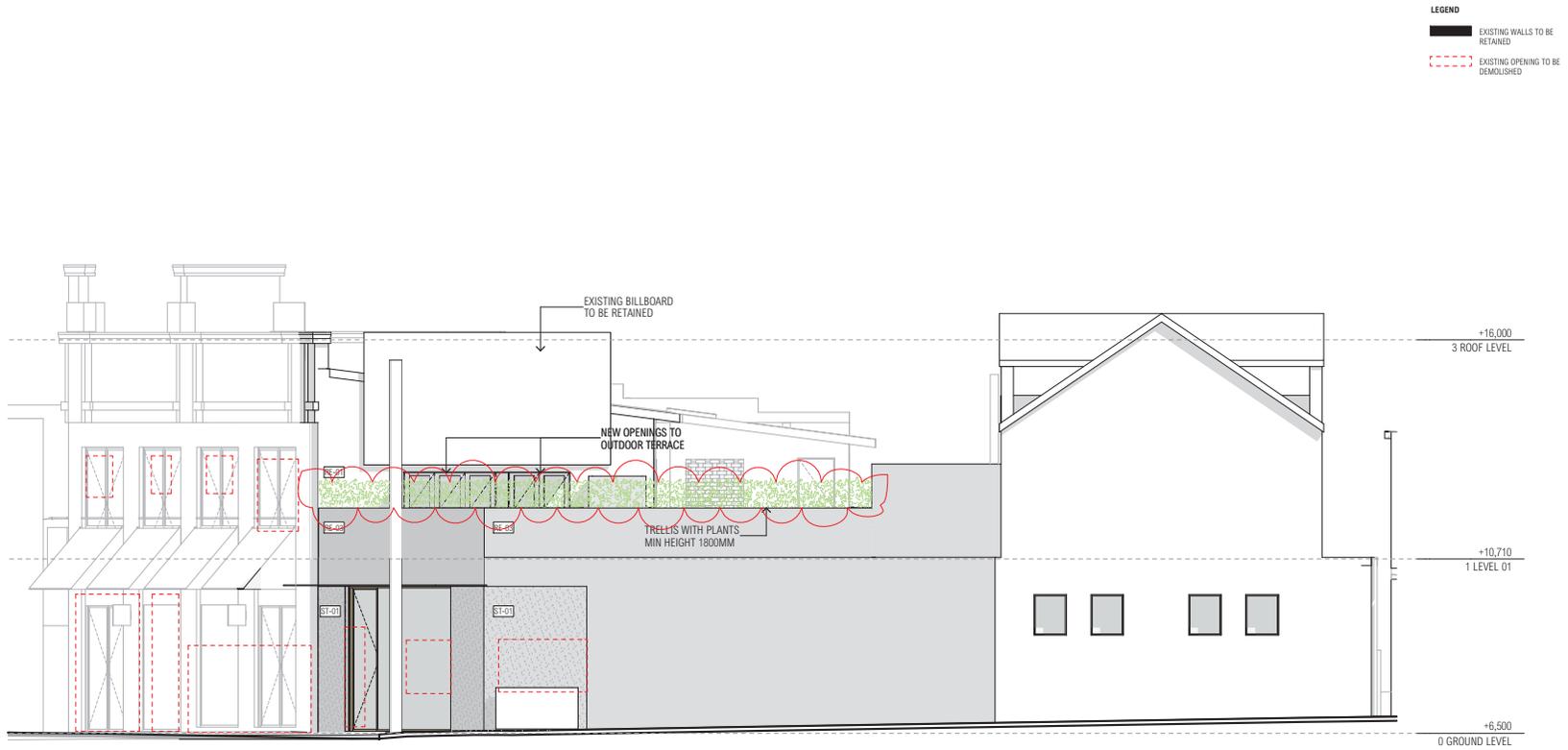
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REV	DATE	ISSUE
01	3/2/22	DEVELOPMENT APPLICATION
02	16/5/22	DA RFI 1
03	28/8/22	DA RFI 3

REV	DATE	ISSUE

PROJECT	
199-205 Pittwater Rd, Manly	
PROJECT NUMBER	21057
PLOT DATE	29/8/22
DRAWN	MG
CHECKED	TR
SHEET SCALE	1:100
SHEET SIZE	A3
NORTH	⬆

SHEET TITLE	
ELEVATIONS - SHEET 2	
SHEET NUMBER	A-DA-202
REVISION	03



E4

**NORTH ELEVATION**  
1:100

**KEY**

- BAL-01 METAL BALUSTRADE
- BR-01 EXISTING BRICK
- BR-02 NEW BRICK TO MATCH EXISTING
- BRS-01 BRICK SCREEN
- CN-01 EXISTING EXPOSED CONCRETE
- CN-02 PROPOSED CONCRETE AWNING
- LC-01 LIGHTWEIGHT CLADDING
- PT-01 POWDERCOATED METAL SHEET
- PT-02 POWDERCOATED METAL SHEET
- RE-01 RENDER OFF-WHITE
- RE-02 RENDER TEXTURED OFF-WHITE
- RE-03 RENDER MEDIUM DARK
- ST-01 TERRAZZO TILE
- TF-01 TIMBER FENCE

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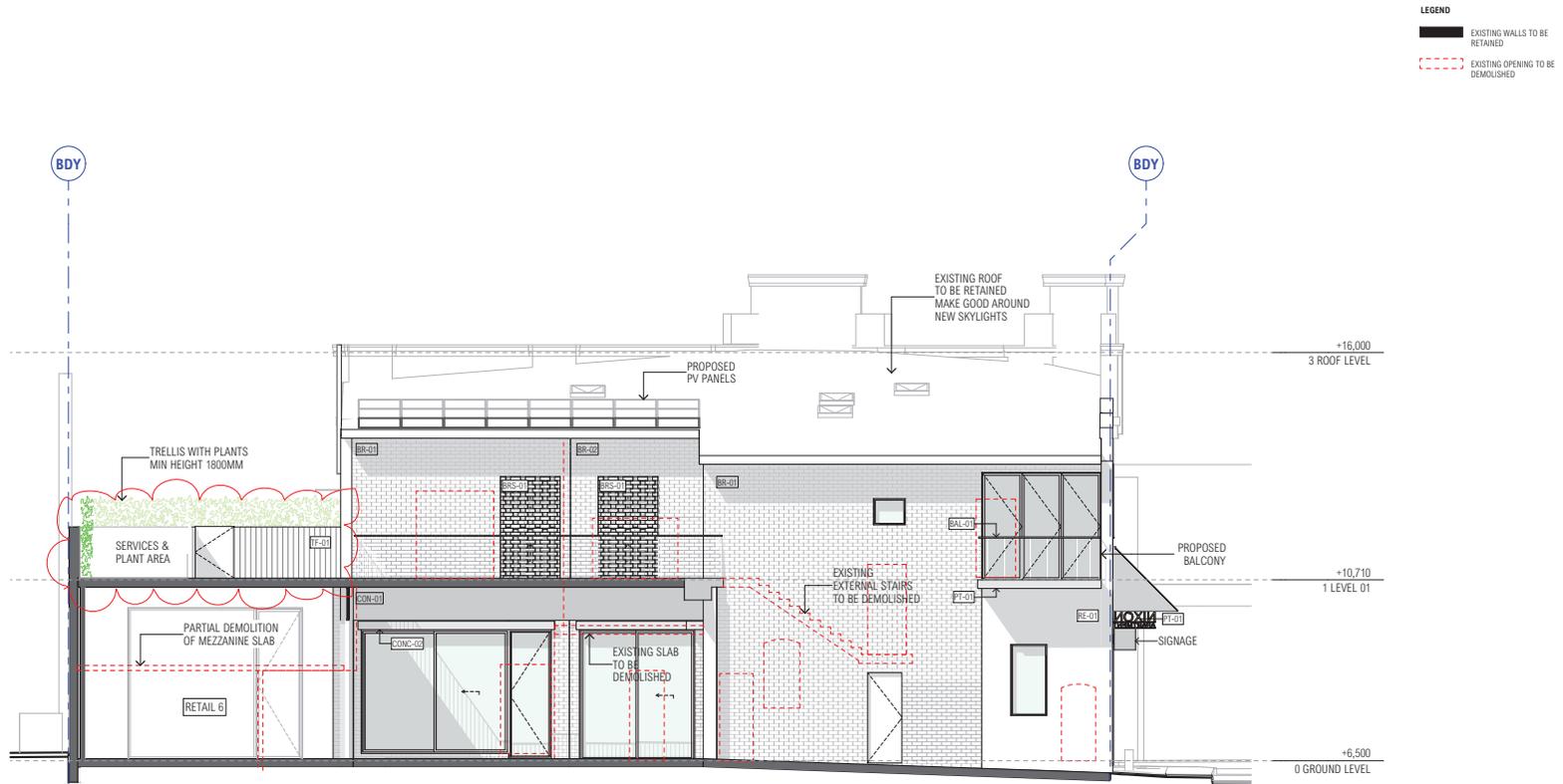
REV	DATE	ISSUE
01	3/2022	DEVELOPMENT APPLICATION
02	16/6/22	DA RFI 1
03	22/7/22	DA AMENDMENT

REV	DATE	ISSUE

PROJECT	
199-205 Pittwater Rd, Manly	
PROJECT NUMBER	21057
PLOT DATE	22/7/22
DRAWN	MG
CHECKED	TR

SHEET SCALE	SHEET SIZE	NORTH
1:100	A3	

SHEET TITLE		REVISION
ELEVATIONS - SHEET 3		
SHEET NUMBER	A-DA-203	
		03



**WEST ELEVATION**  
1:100

KEY	
BAL-01	METAL BALUSTRADE
BR-01	EXISTING BRICK
BR-02	NEW BRICK TO MATCH EXISTING
BRS-01	BRICK SCREEN
CN-01	EXISTING EXPOSED CONCRETE
CN-02	PROPOSED CONCRETE AWNING
LC-01	LIGHTWEIGHT CLADDING
PT-01	POWDERCOATED METAL SHEET
PT-02	POWDERCOATED METAL SHEET
RE-01	RENDER OFF-WHITE
RE-02	RENDER TEXTURED OFF-WHITE
RE-03	RENDER MEDIUM DARK
ST-01	TERRAZZO TILE
TF-01	TIMBER FENCE

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REV	DATE	ISSUE
01	20/02/22	DEVELOPMENT APPLICATION
02	22/07/22	DA AMENDMENT

REV	DATE	ISSUE

PROJECT	
199-205 Pittwater Rd, Manly	
PROJECT NUMBER	21057
PLOT DATE	22/7/22
DRAWN	MG
CHECKED	TR
SHEET SCALE	1:100
SHEET SIZE	A3
NORTH	

SHEET TITLE	
ELEVATIONS - SHEET 4	
SHEET NUMBER	A-DA-204
REVISION	03

Revised Clause 4.6 application-FSR-199-205 Pittwater Road Manly- DA2022/0193-Responding to Amended Drawings

**Revised Attachment 1 to Statement of Environmental Effects issued 8 February 2022**

## **Colco Consulting Pty Ltd**

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6 August 2022

### **To Northern Beaches Council**

**Revised Clause 4.6 Application -Property 199-205 Pittwater Road Manly** – DA2022/0193 in response to amended drawings for Alterations to Existing Building. Exception to Development Standard - Merit Assessment and Justification for Non Compliance with Manly Local Environmental Plan 2013 clause 4.6 Floor Space Ratio (FSR). The amended drawings reduce the proposed gross floor area from 715.93m<sup>2</sup> (FSR 1.05:1) to 696.19m<sup>2</sup> and an FSR of 1.02:1. The Manly LEP numerical control is 1:1 = 684.60m<sup>2</sup> GFA. The amended proposal exceeds the FSR GFA by 11.59m<sup>2</sup> and 1.693%.

## 1.0. Introduction and Summary

1.1. This revised application responds to amended drawings submitted to development application No. DA2022/0193 now before the Northern Beaches Council. This application is submitted under the provisions of Clause 4.6 of the Manly Local Environmental Plan 2013 – Exceptions to Development Standards which provides for exceptions to be granted to noncompliance with development standards. Objectives include:

- Provide an appropriate degree of flexibility in applying certain development standards.
- Achieve better outcomes from development by allowing flexibility in particular circumstances.

The purpose of the clause is to allow flexibility in the FSR numerical control provided that the consent authority is satisfied there are good reasons to substantiate a variation. The clause requires a written request and submission to justify the contravention of the development standard by demonstrating that compliance with the standard is unreasonable or unnecessary; and there are sufficient environmental planning grounds to justify contravening the development standard.

This application should be read in conjunction with our Statement of Environmental Effects (SEE) dated 8 February 2022 accompanying the development application.

1.2. The FSR controls provide that the maximum floor space ratio is not to exceed the FSR shown for the land on the Floor Space Ratio Map. The applicable Floor Space Ratio for the subject land is 1:1. A summary of this proposal is as follows:

- Site area = 684.6m<sup>2</sup>.
- The FSR for this site is 1:1 (684.6m<sup>2</sup>)
- Existing gross floor area = 675.74m<sup>2</sup>
- Proposed gross floor area = 696.19m<sup>2</sup>
- Proposed FSR = 1.017:1 (rounded up to 1.02:1), and exceeds the numerical control by 1.693%.

1.3. The proposal results in 20.45m<sup>2</sup> of additional gross floor space increasing the gross floor area to 696.19m<sup>2</sup>. The additional floor area is minor, is contained within the existing building envelope, and has no negative impact. The proposal will in fact, have a positive impact to the building, the streetscape and conservation area.

**1.4. This application submits that the variation of FSR is justified in the circumstances and should be accepted by the consent authority. The consent authority should be satisfied that this application demonstrates the proposal:**

- Does not increase the existing external building envelope, height or building bulk.
- Does not conflict the FSR planning objectives.
- Has no negative environmental issues.
- Achieves the objectives to retain existing buildings and the Pittwater Road Conservation area.

Revised Clause 4.6 application-FSR-199-205 Pittwater Road Manly- DA2022/0193-Responding to Amended Drawings

- There are sufficient environmental planning grounds to justify contravening the standard.
- The development is in the public interest.

## 2.0. The Site and Locality

2.1. Details of the site and locality are contained in our Statement of Environmental Effects submitted with the development application. Summary:

1. The property is described as Nos. 199-205 Pittwater Road Manly being Lot B DP382992 and is located on the northern corner of Golf Parade at the intersection of Pittwater Road, Collingwood Street, Golf Parade and Ruby Lane. The allotment is a pentagon shape with the smallest length splayed across the corner of Golf Parade and Pittwater Road. The site area of 684.6m<sup>2</sup>.

2. The site is high visibility and has a prominent frontage to Pittwater Road and located in the Pittwater Road Conservation Area. The existing building is a two storey and part three storey double brick building which was built in 1914 known as “Nixons Corner”. The site is part of the historical ribbon development along Pittwater Road, in what was originally a four-way intersection (prior to the closing of Golf Parade). Refer to the architect’s Heritage design statement submitted with the development application.

3. Existing structures comprise multiple interconnected buildings with existing use rights, including a “cluster” of poorly designed shops, poor mix of retail/commercial spaces, workshop/repairs, storage, parking and service area and residential apartments. Refer to photos below. The building is in poor condition.



Above – Fig. 2.0-1 Pittwater Road frontage



Above – Fig. 2.0-2 Golf Parade frontage – (Chrofi Architecture)



Above – Fig. 2.0-3 Level 1 Infilled openings- (Chrofi Architecture)



Above – Fig. 2.0-4 Inconsistent/ low quality Ground openings

Revised Clause 4.6 application-FSR-199-205 Pittwater Road Manly- DA2022/0193-Responding to Amended Drawings

### 3.0. Proposed Modifications - leading to an internal change to floor space.

3.1. The proposal is to undertake alterations and additions to the existing buildings, including building upgrade and structural repairs – rationalization of existing ground floor retail/commercial spaces, streetfront upgrade, footpath paving, rationalization of existing first floor shop top housing apartment, National Construction Code of Australia compliance upgrade, restoration of key features of the corner street façade. The internal rearrangements include rationalizing the existing multiple stairs and corridors on the ground floor and first floor residential apartments to comply with Shop top housing accommodation and achieve effective use of existing floor areas for retail. The proposal also includes internal ground floor courtyard, the small enlargement of the ground floor area to the courtyard by Retail space No. 6, and the new amenities.

The upgrade to the street appearance responds to the Pittwater conservation zone. The later constructed two level brick and concrete studio lofts apartments remain as existing. Refer to the accompanying architects’ drawings and Statement of Environmental Effects for additional details.

3.2. The minor increase in Gross Floor Area results from the internal rationalisation of existing floor areas, wherein the existing multiple stairs, access corridors did not count for inclusion in the calculation of gross floor area, the internal ground floor courtyard, the small enlargement of the ground floor area to the courtyard by Retail space No. 6, and the new amenities also adds to gross floor area. This additional area is located under an existing concrete slab.

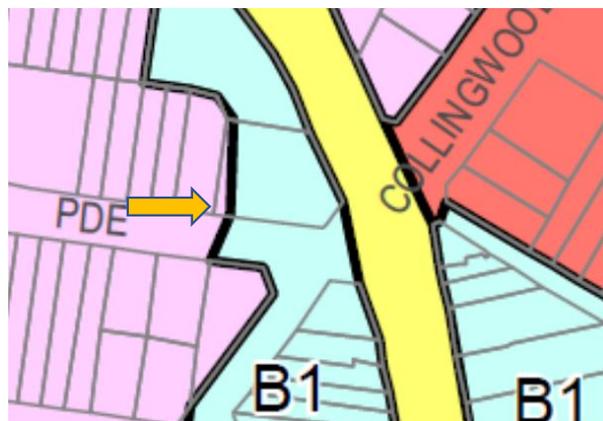
### 4.0. Manly Local Environmental Plan 2013 (MLEP)

#### 4.1. The subject site is - Zone B1 Neighbourhood Centre - with a small slither zoned General Residential R1 (\*).

1. Permits with consent - a variety of uses including retail, restaurants, cafes, shops, take away food and Shop top housing. Zone B1 Objectives – “To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.”

2. (\*) Part Zone General Residential R1 for a small slither of land at the rear. The Objectives of the R1 General Residential zone are – “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.” Permissible uses include dwellings, multi-dwelling housing and neighbourhood shops. NOTE:

- The small area of land at the rear of the subject site is zoned as Residential R1 and makes no logical sense. This suggests it may be a drafting error.
- The MLEP zone map ought to be amended to coincide with the property boundary.
- This slither of land zoned R1 is retained for car parking.



Above – Fig. 4.0-1 - Yellow arrow indicates the two MLEP land zones

Revised Clause 4.6 application-FSR-199-205 Pittwater Road Manly- DA2022/0193-Responding to Amended Drawings

**3. The proposed modifications and retail uses are permissible in the zone and zone objectives.**

- Objectives of the B1 zone being: “To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.” Residential Shop-top housing is a permissible use.
- Objectives of the R1 General Residential zone are – “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.” Permissible uses include dwellings, multi-dwelling housing and neighbourhood shops.

**4.2. MLEP 2013 –Clause 4.4 Floor Space Ratio – Objectives**

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

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

(2A) Despite subclause (2), the floor space ratio for a building on land in Zone B2 Local Centre may exceed the maximum floor space ratio allowed under that subclause by up to 0.5:1 if the consent authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises.

**5.0. Authority to contravene a development standard.**

The authority to contravene a development standard is contained in clause 4.6 of the Manly Local Environmental Plan (MLEP). This clause 4.6 application is submitted to support the development application and Vary Development Standard – Exceptions to Development Standards.

**6.0. Assessment Clause 4.6 - Exceptions to development standards**

6.1. In preparing this clause 4.6 application we had regard to relevant L&E Court judgements including *Winton Property Group Limited v North Sydney Council* [2001] NSWLEC 46; and *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90; and judgement *Randwick City Council v Micaul Holdings Pty Ltd* [2016]; and *Initial Action Pty Ltd v Woollahra Municipal Council* (2018) NSWLEC 118; and *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 ('Al Maha'); and L&E Court judgement in *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61; and the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

We are not lawyers, and our understanding of these judgments is that there existed confusion and tension as to the matters that must be addressed and satisfied in a clause 4.6 application and the extent of satisfaction in the eyes of a consent authority. We understand that the legal principles were settled in the 2019 Court of Appeal judgement (*RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.). We note the advice stated in an article published by Lindsay Taylor Lawyers on 5 August 2019 which summarises the legal situation. We quote in part as follows (our Italics):

*“On appeal, the applicant argued that Moore J had misconstrued and misapplied cl 4.6 by finding that to ‘adequately address’ the matters required to be demonstrated in cl 4.6(3), the request had to actually demonstrate those matters, rather than merely seek to demonstrate those matters.*

Revised Clause 4.6 application-FSR-199-205 Pittwater Road Manly- DA2022/0193-Responding to Amended Drawings

*The Court rejected this argument. After setting out Preston CJ’s conclusions in Baron Corp, the Court reaffirmed (at [51]):*

*... in order for a consent authority to be satisfied that an applicant’s written request has “adequately addressed” the matters required to be demonstrated by cl 4.6(3), the consent authority needs to be satisfied that those matters have in fact been demonstrated. It is not sufficient for the request merely to seek to demonstrate the matters in subcl (3) (which is the process required by cl 4.6(3)), the request must in fact demonstrate the matters in subcl (3) (which is the outcome required by cl 4.6(3) and (4)(a)(i)).*

*“In our view, the decisions in Baron Corp and RebelMH make clear that the position set out in Al Maha is now the settled law on cl. 4.6 requests. A request under cl. 4.6 will only adequately address cl. 4.6(3) if the consent authority is satisfied that the matters have in fact been demonstrated. This is, in our view, a different test and a higher standard than was required under the test in Initial Action.”*

### 6.2. Variation Summary

The development application proposes alterations to the existing building including the rationalisation of existing floor areas. The internal rearrangements include rationalizing the existing multiple stairs and corridors on the ground floor and first floor residential apartments to comply with Shop top housing accommodation and achieve effective use of existing floor areas.

The increase in Gross Floor Area results from this internal rationalisation of existing floor areas, wherein the existing multiple stairs, access corridors and storage did not count for inclusion in the calculation of gross floor area. This results in an increase in measured gross floor area and a resultant FSR of 1.05:1. The MLEP FSR for the site is 1:1. Refer to Table below.

LEP Requirement – Floor Space Ratio	1:1
Existing FSR	0.99:1
Proposed FSR	1.017:1 (rounded up to 1.02:1) gross floor area = 696.19m <sup>2</sup>
Is the planning control in question a development standard?	Yes
Is the non-compliance relating to the clause requirement a Numerical and/or Performance based variation?	Numerical
Numerical variation as a % variation to the requirement.	Maximum variation = 1.693%

### 6.3. Relevant Questions and Assessment Response

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

#### **Q1. Is the planning control in question a development standard?**

**Response:** The prescribed FSR limitation pursuant to Clause 4.4 of the MLEP 2013 is a development standard.

#### **Q2. What are the underlying objectives of the development standard?**

**Response:** The underlying objectives and response is set out in the following Table:

<b>The objectives of clause 4.4 are:</b>	<b>Response</b>
(1) The objectives of this clause are as follows— (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character, (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,	1. The bulk and scale of the building and density remain unchanged and significantly upgraded. 2. The visual relationship between the proposal and the existing visual character of and landscape of the area remains.

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<p>(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area, (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain, (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.</p> <p>(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.</p> <p>(2A) Despite subclause (2), the floor space ratio for a building on land in Zone B2 Local Centre may exceed the maximum floor space ratio allowed under that subclause by up to 0.5:1 if the consent authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises.</p>	<p>3. There are no adverse environmental impacts - noting that the increased FSR is located within the existing built form.</p> <p><b>Conclusion: The proposal achieves the clause 4.4 planning objectives.</b></p>
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**Q3. What are the underlying objectives of the zone?**

**Response** - set out in the following table:

The objectives of the zone B2 Local Centre	Response
<p>1 Objectives of zone</p> <ul style="list-style-type: none"> <li>To provide a range of retail, business, entertainment, and community uses that serve the needs of people who live in, work in, and visit the local area.</li> <li>To encourage employment opportunities in accessible locations.</li> <li>To maximise public transport patronage and encourage walking and cycling.</li> <li>To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.</li> </ul>	<p>1. The proposed uses are for retail, commercial, offices and residential.</p> <p>2. Employment opportunities remain positive.</p> <p>3. The proposed gross floor area relates to the reuse of internal floor space, and there is no change to the visible bulk, scale, height, or amenity of the building.</p> <p><b>3. Conclusion: The proposal achieves the planning objectives of the zones, and the minor additional internal floor area and FSR would not be discernible to a casual observer or neighbour.</b></p>

**Q4. Is the variation to the development standard consistent with the objectives of Clause 4.4 of MLEP 2013?**

**Response** – as stated in the following table:

The objectives of clause 4.4 are:	Response
<p>Exceptions to development standards</p> <p>(1) The objectives of this clause are as follows—</p> <p>(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,</p> <p>(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</p> <p>(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.</p> <p>(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—</p>	<p>1. The additional floor area and FSR is internal and is the result of rationalisation of existing floor areas and uses.</p> <p>2. The reallocation of internal space is an anomaly and flexibility in the numerical control is logical and common sense.</p> <p>3. The strict compliance with the standard is unreasonable and unnecessary and would not be discernible to a casual observer. To not use the space as proposed would result in the space existing for storage use only and potentially impact on the viability of the scheme.</p> <p>4. There are sufficient environmental planning grounds to justify contravening the development standard.</p> <p><b>5. Conclusion: The application has adequately addressed the matters required to be demonstrated. In this circumstance strict compliance with the development standard is unreasonable and unnecessary and there are sufficient environmental planning grounds to justify contravening the standard.</b></p> <p><b>It is in the public interest for the above reasons.</b></p>

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<p>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</p> <p>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</p>	
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**Q5. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?**

**Response:**

1. Strict compliance with the numerical control would mean that this existing floor area would either remain unused or used for storage purposes only, and potentially impact the project commercial viability.
2. The proposal does not result in any negative environmental impacts and to enforce strict compliance would serve no useful purpose.

***3. Conclusion: A requirement to strictly comply with the numerical control is unnecessary and would result in with no benefits achieved other than satisfying a numerical compliance. The variations sought result in no loss of views or negative environmental impacts to neighbours or the public. The space is internal and does not involve any additional external built form. The proposal is appropriate to the site, the existing building and locality, is in the public interest and worthy of consent.***

***We note that it is a matter for the consent authority to form such opinion and we recommend such.***

**Q6. Does the noncompliance with the development standard raise any matter of significance for State or Regional Environmental Planning?**

**Response:**

The non-compliances do not raise any matter of significance.

**7.0. Concurrence of the Director-General**

**Comment:** NSW Department of Planning Circulars, advise the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. Given the consistency of the variation to the objectives of the zone, we consider the concurrence of the Director-General for the variation may be assumed in accordance with authority delegated.

**8.0. Conclusion**

1. The proposal appropriately addresses and achieves the LEP Objectives for FSR in relation to the site and the locality in rationalising existing floor areas, stairs, retail/commercial uses, and upgrade of residential shop top apartments; and especially addresses the visual appearance in the public domain. The proposal achieves the objectives of the Pittwater Road Conservation Area.
2. We support the architect's comments in their Heritage Design Statement and also the assessment and conclusion stated in Heritage consultant Ruth Daniel later report submitted to Council. The proposed works for 199-205 Pittwater Road will have a positive contribution to the streetscape of Pittwater Road.
3. The very small breach of the MLEP FSR is reasonable, appropriate, and justified in achieving the planning objectives. Strict compliance is unnecessary in the circumstances of the case as:
  - The proposal is consistent with the objectives of the Floor Space Ratio standard and the zoning of the land when assessed against each individually, and as a whole.

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- The proposal is in the public interest for the reason that it achieves the relevant planning objectives, proposes a reuse of existing internal space, and has no negative environmental impacts.
- The clause 4.6 application adequately address cl. 4.6(3) and the consent authority should be satisfied that the matters have in fact been demonstrated.

**4. The consent authority should have no difficulty in being satisfied that this Clause 4.6 application demonstrates compliance with the MLEP Floor Space Ratio development standard is unreasonable and unnecessary in this circumstance, that the relevant planning objectives have been addressed and outcomes achieved, that there are sufficient environmental planning grounds to justify contravening the standard, and that the development is in the public interest.**

Yours faithfully,



Wayne Collins  
Director

**Qualification/Disclaimer**

This report, Statement of Environmental Effects (SEE), is based on information provided by the instructing party and relates only to the information provided at the date of issue of this report and planning legislation applicable at that date. Colco has made what it considers reasonable enquiries in preparing this report; however, it cannot confirm the accuracy of architectural drawings or supporting consultant's specialist reports. Colco accepts these documents in good faith. The Statement of Environmental Effects is for the benefit of the client in regard to a development application for development on the subject site and not for any other purpose. Colco cannot forecast an outcome of a consent authority.

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