

## REVIEW OF DETERMINATION ASSESSMENT REPORT

<b>Application Number:</b>	REV2021/0006
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<b>Responsible Officer:</b>	Thomas Prosser
<b>Land to be developed (Address):</b>	Lot 2615 DP 752038, 181 Allambie Road ALLAMBIE HEIGHTS NSW 2100
<b>Proposed Development:</b>	Review of Determination of Application DA2020/0552 granted for demolition works and construction of a Seniors Living Development
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<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>	Yes
<b>Owner:</b>	Allambie Heights Village Ltd Department Of Lands
<b>Applicant:</b>	Allambie Heights Village Ltd

<b>Application Lodged:</b>	15/02/2021
<b>Integrated Development:</b>	Yes
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	03/03/2021 to 02/04/2021
<b>Advertised:</b>	03/03/2021
<b>Submissions Received:</b>	43
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: %
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 17,920,858.00
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### Executive Summary

The application seeks a review of the determination of DA2020/0552 made by the Northern Beaches Local Planning Panel (NBLPP) on 24 November 2020.

This review application does not provide any change to the design of the proposed development. However, further information has been provided to address the reason of the refusal provided by the NBLPP on 24 November 2020 which is as follows:

*"The proposed development is contrary to the Environmental Planning and Assessment Act 1979 NSW*

*having regard to s 4.15 (1)(b),(c),(d) and (e) given the insufficient information provided with the development application to address the likely impacts of the development on the adjacent natural environment, the suitability of the site and matters raised by the public with respect to the likely impacts that would be caused."*

The application was referred to internal departments and external authorities. Council's Natural Environment Team does not support the application due to the impact on the natural environment caused by the Asset Protection zones required under Planning for Bushfire Protection. Despite the additional information and reasoning provided, Council's Biodiversity Officer has stated the proposed APZ will have an unreasonable impact on the natural environment. The facilitator of Manly Warringah War Memorial State Park also cannot support the application. Further, there has not been sufficient assessment of impacts of the proposed APZ on Sydney Water Land.

Notwithstanding the above issues and the recommendation for refusal of the application, the remainder of the assessment has found that the proposal is generally acceptable and can be supported subject to conditions. In particular, the assessment has found that the proposed development is satisfactory from an planning perspective with regards to its overall character, built form and amenity impact.

Under DA2020/0552, the applicant lodged a request under Clause 4.6 of the WLEP 2011 to vary the building height development standard under the SEPP (HSPD) 2004. The proposed building height is up to 0.65m above the permissible height of 8.0m under the SEPP, representing a variation of 8.1%. The variation was considered acceptable largely due to the topography of the land, the lack of adverse impacts and it is offset throughout the development. Specifically, the variation was not considered to result in excessive bulk and scale, does not result in adverse shadow and amenity impacts on surrounding properties and there is no impact on streetscape or the visual and scenic quality of the locality. This assessment also adopts this reasoning.

The public exhibition of the review application resulted in 43 submissions, all of which raised concerns with the proposed development. The majority of the submissions raised concerns with regards to environmental aspects of the proposal on bushland and biodiversity and generally on the Manly Dam catchment. The issues raised in the submissions have been addressed in the "Public Notification" section of this report. Included in the submissions is a submission made by the facilitator of the Manly Warringah War Memorial State Park who does not support the proposed APZ on the adjoining land. This lack of support is provided as an additional reason of refusal.

On balance, the assessment of the proposed seniors housing development on this site against the applicable planning controls and related legislation reveals that it is still unable to be recommended for approval, owing to the adverse impact on remnant bushland and biodiversity values of adjoining land.

Therefore, the application is recommended for refusal for the reasons detailed in the recommendation section of this report.

## **PROPOSED DEVELOPMENT IN DETAIL**

This application seeks consent for the demolition works and construction of a seniors housing development, which consists of partial demolition works, site preparation works, the removal of trees and the construction of an 24 independent units in two separate blocks (known as Building A and Building B) to be occupied as seniors housing.

In detail, the development includes the following:

- **Building A** – 8 units over two storeys (4 units per floor) . Units are accessible from two lifts located on the parking level.
- **Building B** – 16 units over two storeys (8 units per floor). Ground floor units are accessible directly from the parking level, through private courtyards. First floor units are accessible by two lifts and raised walkways above ground floor courtyards.
- **Carparking** - the carpark provides 30 resident parking spaces, which includes 2 visitor parking spaces and a loading bay.
- **Access** – existing vehicular access to the site is via Martin Luther Place and the existing internal driveway. A new loop road is proposed to expand from this internal driveway to the parking area for the proposed development.
- **Landscape works** - The landscape design comprises new tree plantings, turf areas, and community activity areas and structures.

## ASSESSMENT INTRODUCTION

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

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

## SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings

Warringah Development Control Plan - D6 Access to Sunlight

Warringah Development Control Plan - E2 Prescribed Vegetation

Warringah Development Control Plan - E5 Native Vegetation

Warringah Development Control Plan - E6 Retaining unique environmental features

Warringah Development Control Plan - E7 Development on land adjoining public open space

## SITE DESCRIPTION

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<b>Property Description:</b>	Lot 2615 DP 752038 , 181 Allambie Road ALLAMBIE HEIGHTS NSW 2100
<b>Detailed Site Description:</b>	<p>The subject site is generally rectangular, with long northern and southern boundaries, and narrow western and eastern boundaries. The site is located at No. 181 Allambie Road, Allambie Heights, and has a legal description of Lot 2615 in DP 752038. The land has total area of approximately 3.72 hectares (37,200m<sup>2</sup>).</p> <p>The site slopes in a westerly direction and contains large areas of bushland for approximately half of the area of the site, being the western portion. Bushland also extends along the northern boundary of the site adjacent to an existing Sydney Water pipeline.</p> <p>The site is currently occupied aged care facility known as William Charlton Village, which provides seniors housing development. The existing buildings are located on the eastern portion of the site and include ILUs in 2 storey walk-up buildings, administration/staff buildings and detached outbuildings. Vehicular access to the site is via Allambie Road and also Martin Luther Lane, to the south.</p> <p>The site adjoins on its southern boundary is another seniors development also operated by Allambie Heights Village, that provides a variety of ILUs, assisted living units, dementia care and a full range of catering, recreation, transportation and administration facilities. Located to the north of the site is a Sydney Water pipeline, which runs parallel to the northern boundary of the subject site and is surrounded by bushland. Further to the north of the pipeline is a retirement village known as Fred Hutley Village, which comprises a range of affordable ILUs.</p> <p>The bushland to the west and south west of the site forms part of the Manly Dam catchment and is under the ownership of the Crown.</p>

Map:



## **SITE HISTORY**

### **Pre-lodgement Meeting**

A pre-lodgement meeting (PLM) was originally held with Council relating to the proposed development of the site as seniors housing on 21 November 2017.

### **Development Application DA2018/1667**

This was the original application and was submitted in 2018 and referred to the Northern Beaches Local Planning Panel (NBLPP) for determination. The subject application is similar in nature to this application with the exception of changes such as relocation of the communal area and removal of the golf course.

On 12 June 2019, this application was deferred by the NBLPP as it still had not received the required approval from the NSW RFS.

The NSW RFS finally issued approval (General Terms of Approval) to the proposal, subject to conditions. However, the panel refused the application on 3 September 2019 on the grounds that the conditions of approval required substantial amendments to be made to the proposal.

### **Development Application DA2020/0552**

This is the application in which is being reviewed under the subject review application (REV2021/0006), submitted in 2020 and referred to the Northern Beaches Local Planning Panel (NBLPP) for determination.

On 24 November 2020, the NBLPP refused the application for the following reason:

*"1. The proposed development is contrary to the Environmental Planning and Assessment Act 1979 NSW having regard to s 4.15 (1)(b),(c),(d) and (e) given the insufficient information provided with the development application to address the likely impacts of the development on the adjacent natural environment, the suitability of the site and matters raised by the public with respect to the likely impacts*

*that would be caused."*

### **Review Application REV2021/0006 (subject application)**

This application was submitted on 2 February 2021. This application is a review application of DA2020/0552.

In the statement of review it is submitted that "the design of the development has not been altered as a part of the review request." Along with this, a further plan was submitted, *SK011 - Manly Reserve APZ Plan*. This plan is consistent with the plans that were submitted under DA2020/0552 dated 9/03/18.

The review application was provided with new information to address the reason of refusal provided by the panel. The following is the reason of refusal provided by the panel:

*The proposed development is contrary to the Environmental Planning and Assessment Act 1979 NSW having regard to s 4.15 (1)(b),(c),(d) and (e) given the insufficient information provided with the development application to address the likely impacts of the development on the adjacent natural environment, the suitability of the site and matters raised by the public with respect to the likely impacts that would be caused.*

The additional information including the letter from "Total earth care" in regard to the Asset Protection Zone Vegetation Removal dated 24th of January 2021 has been considered as a part of this assessment.

### **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

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

In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 12 months after the date of determination of the development application. The application was determined on 24/11/2020 and the notice of determination was issued on 24/11/2020. The review was lodged on 25 February 2021 and is to be considered by NBLPP on 16 June 2021, which is within 12 months of the date of determination.

Section 8.3 (3) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

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

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal and that the proposal satisfies the requirement of Section 8.3 (3) of the Act.

## **How has the 8.2 Application Responded to The Reasons for Refusal?**

The applicant has provided additional supporting information in regard to the reason of Refusal. Consequently, the reason for refusal of DA2020/0552 that is stipulated in the Notice of Determination is examined below to determine if it remains applicable or should be overturned:

***1. The proposed development is contrary to the Environmental Planning and Assessment Act 1979 NSW having regard to s 4.15 (1)(b),(c),(d) and (e) given the insufficient information provided with the development application to address the likely impacts of the development on the adjacent natural environment, the suitability of the site and matters raised by the public with respect to the likely impacts that would be caused.***

### Comment:

The additional information including the letter from "Total earth care" in regard to the Asset Protection zone Vegetation Removal dated 24th of January 2021 has been considered as a part of this assessment.

In this regard, it has been determined there is still insufficient information to ascertain the likely impacts of the development on the Natural Environment. Further to this, it is maintained by Council's Biodiversity officer that the proposed APZ would have an unreasonable impact on the natural environment, and that reliance on an existing APZ for adjoining development is unacceptable.

Council's Biodiversity officer has also provided that there is insufficient information to support the proposed APZ within the Sydney Water land to the north. This includes that there is a lack of assessment of this impact in the BDAR, and that a Sydney Water Environmental representative has not provided approval (as is required under the Property Environmental Management Plan 2018).

The lack of support from facilitator of Manly Warringah War Memorial State Park for the proposed APZ also raises concern with regard to the suitability of the site for this development.

As such, it is concluded that the reason of refusal provided by the NBLPP has not been satisfactorily addressed.

## **EXISTING USE RIGHTS**

Existing Use Rights are not applicable to this application.

## **BUSHFIRE PRONE LAND**

See assessment under the referral for Integrated Development – NSW Rural Fire Service - Rural Fires Act (s100B Subdivisions and Special Fire Protection Purposes under)

## **NOTIFICATION & SUBMISSIONS RECEIVED**

The subject development application has been publicly exhibited from 03/03/2021 to 02/04/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 43 submission/s from:

<b>Name:</b>	<b>Address:</b>
Mrs Ann Frances Collins	41 Gordon Street MANLY VALE NSW 2093
Mr Malcolm John Fisher	37 King Street MANLY VALE NSW 2093

Name:	Address:
Ms Clare Trevena	68 Parr Parade NARRAWEENA NSW 2099
Ms Edwina Laginestra	22 Wyndora Avenue FRESHWATER NSW 2096
Mr Christopher Joseph Buykx	1 Arnhem Road ALLAMBIE HEIGHTS NSW 2100
Shona Marjorie McKenzie	106 A Clontarf Street NORTH BALGOWLAH NSW 2093
Mrs Michelle Anne Dunlop	117 Warriewood Road WARRIEWOOD NSW 2102
Heike Roth	21 Tottenham Street NORTH BALGOWLAH NSW 2093
Jade Reynolds	240 Sydney Road FAIRLIGHT NSW 2094
Ms Leonie Gail Cowan	37 King Street MANLY VALE NSW 2093
Ms Susan Patricia Robertson	16 Thornton Street FAIRLIGHT NSW 2094
Mrs Margaret Ritchie	7 A Pitt Street MANLY VALE NSW 2093
Sonya Ku	Address Unknown
Ms Judith Claire Bennett	19 Elliot Street BEACON HILL NSW 2100
Mrs Eira Wynn Janet Battaglia	50 / 8 Koorala Street MANLY VALE NSW 2093
Ms Tiziana Beninati	13 Nenagh Street NORTH MANLY NSW 2100
Mrs Zena Debra Carter	5 Lewis Street AVALON BEACH NSW 2107
Emily Ann Fewster	25 Tottenham Street NORTH BALGOWLAH NSW 2093
Ms Saskia Kirsten Blanch	19 / 16 Campbell Parade MANLY VALE NSW 2093
Mr Raymond James Cox	3 Austin Avenue NORTH CURL CURL NSW 2099
Miss Diane Carolyn Willman	49 Upper Beach Street BALGOWLAH NSW 2093
Gary Cook	Address Unknown
Mrs Morgan Bee Irvine	C/- Bellriver Homes Po Box 7391 BAULKHAM HILLS NSW 2153
Mrs Margaret M Hogg	8 Armour Avenue MAROUBRA NSW 2035
Mr Nathan Lo	13 Nenagh Street NORTH MANLY NSW 2100
Mr Stephen Gray	Address Unknown
Mrs Denise Mary Keen	29 / 80 Evans Street FRESHWATER NSW 2096
Mr Gary Andrew O'Brien	16 Clifford Avenue FAIRLIGHT NSW 2094
Mr Lloyd Michael Keen	3 Birkley Road MANLY NSW 2095
Mr Robert Nicoll	6 Myrtle Street NORTH BALGOWLAH NSW 2093
Mrs Sandra Madeline Hudspith	1 / 10 Hilltop Crescent FAIRLIGHT NSW 2094
Mrs Susan Narelle Byrne	7 Arana Street MANLY VALE NSW 2093
Save Manly Dam Catchment Committee Inc	Address Unknown
Ann Elizabeth Sharp	77 Brighton Street CURL CURL NSW 2096
Ms Louise Elizabeth Ashley Williams	42 Baringa Avenue SEAFORTH NSW 2092
Mr Greg Wallis	19 Foam Street FRESHWATER NSW 2096
Mr Kevin John Collins	41 Gordon Street MANLY VALE NSW 2093
Mr Nick Reid	25 Eurobin Avenue MANLY NSW 2095
Ms Yvette Megan Eunson	5 / 20 Wheeler Parade DEE WHY NSW 2099



Name:	Address:
Ms Jennifer Louise Buck	6 Lister Avenue SEAFORTH NSW 2092
Claudia Terstappen	Address Unknown
Terrence Flower	Address Unknown
Steven Lawler	1 Boondah Road WARRIEWOOD NSW 2102

The matters raised within the submissions have been considered and are addressed as follows:

### 1. Impact on the Natural Environment

A significant number of submissions raised concerns in relation to the impact of the development on the natural environment. The following specific concerns were raised:

- *Impact on threatened flora and fauna in the area and Manly Dam Catchment and sensitive bushland surrounds/ecosystems;*
- *Extensive tree removal (particularly including as a result of Asset protection Zones);*
- *The existing landscape area provides a transition between the bushland and existing buildings;*
- *Bushland and riparian buffer areas in Manly Dam Catchment should be protected (and not developed as a residential site)*
- *Surrounding detention basins adversely affected (Manly Warringah War Memorial Park and Manly Dam);*
- *Extensive excavation will intercept subsurface flow and result in irreversible changes to the natural hydrology of the site; and*
- *Natural features of the subject site should be protected.*
- *Stormwater Impacts*
- *Future environmental concerns*
- *Erosion and Pollution*

#### **Comment:**

These issues are addressed in the relevant referral sections by Council's Natural Environment Section (including Biodiversity, Riparian Lands and Creeks, Development Engineering, and Water Management) and the NSW RFS referral comments. In summary, the impacts on the natural environment, particularly as a result of the required APZ, are found to be unsatisfactory, and this reason is included as a reason for refusal.

### 2. Impact of Construction on existing residents (noise, dust, amenity)

Concern is raised regarding the excavation and construction impacts associated with the development and the potential impact on adjoining development.

#### **Comment:**

Appropriate conditions to minimise impact can be imposed on a consent to reduce and mitigate impacts associated with construction if this application was to be approved.

Therefore, this issue should not form a reason of refusal.

### 3. Development is not Suitable for this land; concern regarding crown land; concern regarding lease and appropriate owner's consent

Concerns have been raised that, as the site is Crown Land, it should be maintained as public open

space, and be available for bushwalking and picnic areas (rather than density of Seniors Living). Concerns are also raised in regard to the lease agreements, surrounding land, and the APZ, and whether the applicant is authorised to make the application.

Comment:

The site is owned by Department of Industry - Lands and is currently leased to Allambie Heights Village. The site is zoned to permit a seniors housing development, and the applicant has lodged the application with valid owners consent from the Department.

The issue as it relates to the lease agreement and whether the site should be used for public recreation purposes is not a matter for Council to consider as part of the assessment of the application.

Therefore, this issue should not be given determining weight.

#### **4. Bushfire Impact**

Concerns have been raised that the siting of a development of this type within an area that is bushfire prone is dangerous, due to the limited mobility of residents. In addition, concerns have also been raised that the Asset Protection Zones (APZ) required for the development will impact on the environmental qualities of the site and its surrounds.

Comment:

The site is identified as bushfire prone land. A Bushfire Report accompanies the application. In the report, recommendations are provided to ensure the safety of the residents of the facility in accordance with the provisions of 'Planning for Bush Fire Protection 2006' as published by the NSW Rural Fire Service (NSWRFS).

Further, as detailed in the referral response from the NSWRFS under the 'Referrals' section in this report, the Service is supportive of a license agreement along with Sydney Water, to manage the Asset Protection Zone.

However, Council's Natural Environment team does not support the proposal due to the environmental impact caused by the Asset Protection Zones.

Accordingly, this matter forms a reason for refusal.

#### **5. Visual Impacts, Character, Height of Buildings and Impact on the War Memorial Area (Heritage); Overdevelopment**

Concerns have been raised in relation to the visual impact of the development from many vantage points within the Manly-Warringah War Memorial Park. The submissions have also raised concern in relation to the impact of the development on the War Memorial area as it is heritage listed.

Comment:

The issue of the visual impact, building height and character of the development on the War Memorial Area is addressed under WLEP 2011 and State Planning Policies section of this report and found to be acceptable.

A Clause 4.6 variation request was been provided in relation to the building height for the original development application and was considered to sufficiently justified contravention of the building height standard. As further discussed, this assessment finds that a Clause 4.6 application could be supported for the reasons outlined in the previous Assessment report, and due to the lack of change in design.

Therefore, this issue should not be given determining weight.

## **6. Not consistent with the requirements of SEPP (HSPD) 2004**

Insufficient expert information

The submissions have raised concerns that the development does not comply with the following clauses of the SEPP:

- *Clause 12 of SEPP not addressed;*
- *Not compatible with the surrounding land uses*
- *Exceeds the maximum height requirement*

### Comment:

The issues above are discussed in the SEPP (HSDP) section of this report. In summary, it has been found that the development is consistent with the character of the area, as required under the provisions of *SEPP 65 - Design Quality of Residential Apartment Development* and SEPP HSPD and the non-compliance in relation to the 8.0m height is supported.

Clause 12 of SEPP HSPD is not applicable to the proposed development.

Therefore, the specific issues raised in relation to SEPP HSPD should not be given determining weight.

## **7. Inconsistent with the R2 Zone Objectives**

Concerns have been raised that the proposed development is incompatible with the objectives and future form of development envisaged for the zone.

### Comment:

The proposal is consistent with the objectives of the zone as the development would contribute to the housing needs of the community within a low density residential environment.

## **8. Traffic**

Submissions have raised concern in regard to the impact the proposal would have on surrounding traffic issues including Allambie Road.

### Comment:

Council's Traffic Officer has assessed the application and is supportive of the proposal, subject to conditions. This is partly due to the general peak generation period for a Seniors Living development not coinciding with the Network Commuter Peak Period.

## **9. Concern regarding multiple applications submitted.**

Submissions have raised concern in regard the multiple applications submitted and the lack of change to the applications.

### Comment:

There is no legislative requirement to restrict the number of applications that can be submitted by an applicant, nor any requirement for applications to change.

## **10. Lack of reason for refusal under SEPP in regard to environmental impact**

### Comment:

Under the previous application this was recommended as an additional reason for refusal under a supplementary memo provided to the Northern Beaches Local Planning Panel. As further discussed in this report, this assessment also adopts this reason as a recommended reason of refusal due to environmental impact caused by the proposed APZ.

### **11.Lack of support of proposed APZ by facilitator of Manly Warringah War Memorial State Park**

Comment:

This is included as a reason of refusal.

### **12. Review of LEP**

Concerns have been raised that the current review of the LEP should impact the assessment of this application

Comment:

Consideration of a new LEP cannot be made until it is adopted as legislation.

Therefore, this issue should not be given determining weight.

### **13. Insufficient Parking**

Concerns have been raised that there is insufficient parking provided for the development.

Comment:

The parking requirement for the development is stipulated under the provisions of SEPP (HSPD) 2004. An assessment of the car parking provision and location on the site has been undertaken. In summary, the proposed amount of car parking spaces is 30, and the required amount is 24.

Accordingly, this issue does not warrant the refusal of the application.

### **REFERRALS**

<b>Internal Referral Body</b>	<b>Comments</b>
Building Assessment - Fire and Disability upgrades	<b>Supported -Subject to conditions</b>  The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.  Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
Landscape Officer	<b>Supported -Subject to conditions</b>  The review application relates to the refused development application under DA2020/0552 for the demolition of existing buildings, tree removal and the construction of 24 Independent Living Units under SEPP (Housing for Seniors or People with a Disability) 2004.

Internal Referral Body	Comments
	<p>An alternate Landscape Officer has undertaken the landscape assessment of the review application REV2021/0006.</p> <p>The design of the development has not been altered as part of the review request as the reasons for refusal state that the information provided within the submitted Biodiversity Development Assessment Report (BDAR) was insufficient to determine the extent of impact on the Manly Warringah War Memorial Park, including the required Asset Protection Zone.</p> <p>Further, the assessment of the development against the relevant planning instruments remains identical to that which is carried out in the Statement of Environmental Effects lodged with DA2020/0552.</p> <p>Landscape Referral raise no objection to the landscape proposal, and the conditions of consent under DA2020/0552 are appropriate with no other additional nor amendments required to the conditions.</p>
NECC (Bushland and Biodiversity)	<p><b>Not Supported</b></p> <p>The review application relates to the refused development application under DA2020/0552 for the demolition of existing buildings, tree removal and the construction of 24 Independent Living Units under SEPP (Housing for Seniors or People with a Disability) 2004.</p> <p>The design of the development has not been altered as part of the review request as the reasons for refusal state that the information provided within the submitted Biodiversity Development Assessment Report (BDAR) was insufficient to determine the extent of impact on the Manly Warringah War Memorial Park, including the required Asset Protection Zone.</p> <p>The assessment of the development against the relevant planning instruments remains identical to that which is carried out in the Statement of Environmental Effects lodged with DA2020/0552.</p> <p>As identified in the previous biodiversity referral response, the application included a Biodiversity Development Assessment Report (BDAR) that has quantified the biodiversity values of the land and applied the avoid, minimise and offset hierarchy and assessed the direct and indirect impacts associated with the proposed development. While the potential impacts of the development design have been reduced from that of the previous application, the development in its current format is not supported due to unacceptable impacts to the natural environment.</p> <p>The location and design of the proposed development does not satisfy the objectives and/or requirements of the Warringah Development Control Plan 2011, including</p> <ul style="list-style-type: none"> <li>• E2 Prescribed Vegetation</li> <li>• E5 Native Vegetation</li> <li>• E6 Retaining unique environmental features, and</li> </ul>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>• E7 Development on land adjoining public open space.</li> </ul> <p>The proposed development will directly and indirectly impact native vegetation and fauna habitat, including threatened species or vegetation communities with potential for a serious and irreversible impact as mapped on the Biodiversity Values Map. The development is located on land adjoining public open space, and should protect, preserve and enhance the native bushland and natural qualities of the adjoining Park, and not threaten the protection or preservation of the bushland and fauna habitats.</p> <p>Additional impacts that require further assessment, and potentially additional biodiversity offsets, have not been adequately addressed as described below.</p> <p>The Asset Protection Zone (APZ) requirement of 85 metres to the south-west increases the extent and ongoing reliance of vegetation management of land within the adjoining public reserve. The adjoining public reserve has some existing asset protection requirements, both as a result of a historic agreement with the adjoining development and the Fire Management Plan requirements. However, to achieve the full 85m setback (Manly Dam APZ (4) as shown in Map 2 of the Bush Fire Management Plan (Total Earth Care Feb 2020)), the development relies on the modification of native vegetation to create an asset protection zone beyond what currently exists. Further, Council does not support the use of adjoining lands for the provision of an asset protection zone required as part of new development.</p> <p>In accordance with the Biodiversity Assessment Method, all of the direct and relevant indirect impacts on native vegetation, threatened species and their habitat must be assessed. The impacts of the proposed APZ within the adjoining Sydney Water land to the north (APZ (3) of Map 2) have not been assessed in the BDAR. The future value of the biodiversity value attributes must be amended to reflect the impacts from the partially clearing of each vegetation zone, including areas such as asset protection zones. The Property Environmental Management Plan (Sydney Water Oct 2018 ) for the water pipeline corridor site maps the area as Environmental Protection: Restricted. Activities within this area such as burning, intensive weed control, cutting or trimming, such as the APZ works proposed, requires Sydney Water Environmental Representative approval.</p> <p>The inclusion of pedestrian walkways into the native bushland area of the site mapped on the Biodiversity Values map is not supported, and these elements should be deleted.</p> <p>Based on the comments above, the review application is recommended for refusal as it does not satisfy the NSW Biodiversity Conservation Act 2016, and Warringah Development Control Plan 2011 requirements.</p>

Internal Referral Body	Comments
NECC (Development Engineering)	<p><b>Supported - Subject to conditions</b></p> <p>No objection to the proposed development subject to conditions.</p>
NECC (Riparian Lands and Creeks)	<p><b>Supported - subject to conditions</b></p> <p>The review application relates to the refused development application under DA2020/0552 for the demolition of existing buildings, tree removal and the construction of 24 Independent Living Units under SEPP (Housing for Seniors or People with a Disability) 2004.</p> <p>The design of the development has not been altered as part of the review request as the reasons for refusal state that the information provided within the submitted Biodiversity Development Assessment Report (BDAR) was insufficient to determine the extent of impact on the Manly Warringah War Memorial Park, including the required Asset Protection Zone.</p> <p>The proposal was assessed under the current creek and water management legislation framework, the relevant parts of the Warringah LEP, DCP and Protection of Waterways and Riparian Lands Policy (Policy PL740). The Warringah Creek Management Study 2004 principles and NRAR waterfront land principles were also used in the assessment.</p> <p>The supplied reports and plans were considered.</p> <p>The community submissions for the review were considered.</p> <p>The supplied documentation has been assessed satisfactory.</p> <p>On balance the proposed location of the development and proposed riparian land treatment measures have been determined as acceptable under Northern Beaches riparian controls.</p> <p>The proposal is therefore supported subject to conditions Refer to water management referral for water quality and sediment and erosion control assessment and conditions.</p>
NECC (Water Management)	<p><b>Supported - Subject to Deferred Commencement Condition</b></p> <p>The review application relates to the refused development application under DA2020/0552 for the demolition of existing buildings, tree removal and the construction of 24 Independent Living Units under SEPP (Housing for Seniors or People with a Disability) 2004.</p> <p>The design of the development has not been altered as part of the review request as the reasons for refusal state that the information</p>

Internal Referral Body	Comments
	<p>provided within the submitted Biodiversity Development Assessment Report (BDAR) was insufficient to determine the extent of impact on the Manly Warringah War Memorial Park, including the required Asset Protection Zone.</p> <p>The proposal was assessed under the current creek and water management legislation framework, the relevant parts of the Warringah LEP, DCP and Protection of Waterways and Riparian Lands Policy (Policy PL740). The Warringah Creek Management Study 2004 principles and NRAR waterfront land principles were also used in the assessment.</p> <p>The supplied reports and plans were considered.</p> <p>The community submissions for the review 2021/0006 were considered.</p> <p>The supplied documentation has been assessed satisfactory.</p> <p>The proposed stormwater treatment chain includes a biofiltration system with two cells and a vegetated pond prior to the connection to the creek.</p> <p>The biofiltration system and the pond allow infiltration. The proposed treatment chain size and location is satisfactory and meets the Council stormwater quality objectives for high quality catchments.</p> <p>Due to the sensitivity of the downstream environment it is imperative that an erosion and sediment management strategy is developed to ensure protection of this area. .</p> <p>Construction activity and scheduling impacting on the downstream environment requires further assessment to determine acceptable water quality and water quantity thresholds during construction.</p> <p>It is required that a project ecologist is involved before and during construction to ensure the sediment and erosion controls measure are suitable to guarantee the protection of the downstream environment with specific attention to preservation of the Galaxias brevipinnis population.</p> <p>Should the applicant demonstrate that this is achieved, the application can be supported, and on this basis conditions of consent are provided.</p>
Parks, reserves, beaches, foreshore	<p><b>Supported - Subject to Conditions</b></p> <p>The review application relates to the refused development application under DA2020/0552 for the demolition of existing buildings, tree removal and the construction of 24 Independent Living Units under SEPP (Housing for Seniors or People with a Disability) 2004.</p> <p>An alternate Parks Officer has undertaken the parks referral response to review application REV2021/0006.</p> <p>The Ecological Report dated 24th January 2021 identifies that the development proposes no removal of existing vegetation from the Manly Dam Reserve.</p>



Internal Referral Body	Comments
	<p>All new development land shall incorporate the Asset Protection Zone as defined within Planning for Bush Fire Protection 2019 wholly within development sites, and shall be managed by the development site owner in perpetuity. No Asset Protection Zones are permitted within the Manly Dam Reserve, and the applicant must demonstrate this by evidence including the extent of the management agreement between the former Warringah Council and Allambie Lutheran Homes Inc (now Allambie Heights Village Ltd) dated 2009 upon the land under that agreement.</p> <p>Should the applicant demonstrate that this is achieved, the application can be supported, and on this basis conditions of consent are provided.</p>
Strategic and Place Planning (Urban Design)	<p><b>Supported -Subject to conditions</b></p> <p>Urban Design has considered the Revision (REV2021/0006) and notes that no revisions have been made to the drawings that require further assessment from that previously provided in Urban Design Referral.</p> <p>PREVIOUS COMMENTS</p> <p>The proposal seeks approval for a scheme revised (DA 2018/1667) in accordance with the recommendations of the Northern Beaches Local Planning Panel (NBLPP) on the grounds that insufficient information was provided to properly and fully assess the environmental impacts as a result of the RFS prescribed Asset Protection Zones (Section 4.15 (1)(a) of the Environmental Planning and Assessment Act 1979 (NSW)) and inconsistency with Clause 12(1)(a) of the Warringah Development Control Plan 2011, in particular the following clauses;</p> <ul style="list-style-type: none"> <li>· Clause E2 Prescribed Vegetation;</li> <li>· Clause E5 Native Vegetation;</li> <li>· Clause E6 Retaining unique environmental features; and</li> <li>· Clause E7 Development on land adjoining public open space.</li> </ul> <p>And that the required revisions would substantiate a significantly different proposal.</p> <p>As a result of the application of the required 85m APZ setback the revised scheme proposes moving the communal activity centre further to the east with the provision of a landscaped open space including spaces for varying levels of occupation and interaction with the natural environment and mediates the transition between built form and the natural bushland setting adequately.</p> <p>Urban Design is satisfied with the revisions and is therefore supportive of the proposal.</p>
Traffic Engineer	<b>Supported - Subject to conditions</b>

Internal Referral Body	Comments
	<p>The proposed development (as depicted in Annexure A for reference), includes the construction of infrastructure and other works required to facilitate the proposed senior living development consisting of 24 dwellings. The proposed development has the following features relevant to this Traffic and Parking Impact Assessment:</p> <ul style="list-style-type: none"> <li>• 24 x two-bedroom seniors living units distributed across two apartment buildings;</li> <li>• Construction of an ancillary Communal building;</li> <li>• 30 x resident parking spaces located in a basement / lower ground level carpark and one (1) car wash bay on the ground floor;</li> <li>• 17 x visitor parking spaces with 2 provided within the basement / lower ground level carpark and the remaining 15 provided on ground level;</li> <li>• Construction of an emergency egress road to the north of the site.</li> </ul> <p>All vehicular access to the site will be from the proposed two-way driveway off Martin Luther Place with the exception of waste collection and loading by vehicles up to a Small Rigid Vehicle (SRV) which will utilise the driveway of the adjacent William Charlton Village site which is located at the intersection of Allambie Road / Mortain Avenue.</p> <p><b>Traffic:</b> The general peak generation period of a Seniors Living does not coincide with the Network Commuter Peak Period. As such, the impact of the traffic volumes is deemed negligible on the local traffic network.</p> <p><b>Parking:</b> The parking number satisfies the SEPP and DCP requirements. As such, no objections are raised.</p> <p><b>Conclusion:</b> The proposal is supported subject to conditions.</p>
Waste Officer	<p><b>Supported - Subject to Conditions</b></p> <p>Recommendation - approval with conditions.</p> <p>Council is not, and will not, be the waste service provider to this property.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The following comments were provided by an Ausgrid: <i>Ausgrid has no objection with the proposed development as long as we can still maintain access through the existing roadway from pole FF48711 on the western side of the property.</i></p>
Integrated Development – NSW Rural Fire Service - Rural Fires Act (s100B Subdivisions and Special Fire Protection Purposes under)	<p>The application was referred to the NSW RFS as Integrated Development.</p> <p>Section 100B of the Rural Fires Act 1997 enables the Commissioner of the NSW RFS to issue a Bush Fire Safety Authority for 'Special Fire Protection Purpose' development. Section 100B (6) of that Act identifies Seniors Housing (within the meaning of the State Environmental Planning Policy (Housing for Seniors or People with a</p>

External Referral Body	Comments
	<p>Disability) 2004) as such development.</p> <p>In their response on 18 May 2021, the NSW RFS advised the following:</p> <p><i>"Subject to Northern Beaches Council management of the Manly Warringah War Memorial Park (specifically APZ3) identified in Figure 6 – Prescribed Fire Management Zones in the document Manly Warringah War Memorial Park Fire Regime Management Plan 2006. This bush fire safety authority is also subject to the provision of an licence agreement being provided by Sydney Water allowing Allambie Heights Village Ltd and its nominated Bushfire Management subcontractors to manage the portion of Sydney Water controlled land, situated immediately north of 181 Allambie Road Allambie Heights 2100."</i></p> <p>Associated conditions of consent were also provided.</p> <p><u>Sydney Water Letter</u></p> <p>Sydney Water have provided a letter which gives support for a license agreement to Allambie heights Village Ltd and nominated Bushfire management contractors for the purpose of an Asset Protection zone.</p> <p><u>Lack of support for APZ</u></p> <p>As further discussed in this report, the provision of an APZ cannot be supported by Council's Biodiversity officer nor the facilitator of Manly Warringah War Memorial State Park. As such, these form recommended reasons of refusal for the proposal.</p>
Nominated Integrated Development – Natural Resources Access Regulator - Water Management Act 2000 (s91 Controlled Activity Approval for works within 40m of watercourse)	<p>The Natural Resources Access Regulator (NRAR) has reviewed documents for the above development application and considers that, for the purposes of the Water Management Act 2000 (WM Act), the proposed works are exempt from the need to obtain a controlled activity approval and no further assessment by this agency is necessary.</p> <p><u>Controlled Activity Not Required</u></p> <p>The proposed works are not located on waterfront land as defined by the WM Act - The proposed works are greater than 40m from top of bank of the watercourse.</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

### **SEPP 55 - Remediation of Land**

The SEPP establishes State-wide provisions to promote the remediation of contaminated land.

SEPP 55 states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed. The policy makes remediation permissible across the State, defines when consent is required, requires all remediation to comply with standards, ensures land is investigated if contamination is suspected, and requires councils to be notified of all remediation proposals. The Managing Land Contamination: Planning Guidelines were prepared to assist councils and developers in determining when the land has been at risk.

Clause 7 of the SEPP requires that a consent authority must not grant consent to a development unless it has considered whether a site is contaminated, and if it is, that it is satisfied that the land is suitable (or will be after undergoing remediation) for the proposed use.

Council's records indicate that the site has been used for residential (Seniors Housing) purposes for a long period of time. It is therefore considered that the site poses no risk of contamination and as such no further consideration is required under Clause 7(1) (b) and (c) of the SEPP 55.

### **SEPP 65 - Design Quality of Residential Apartment Development**

The proposed development is required to comply with SEPP 65 and the associated Apartment Design Guide (ADG). In this regard, the proposed car parking level is more than 1.2m above ground level, with two storeys of residential above the car park, therefore the development is in part a three storey development, triggering the application of SEPP 65.

Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a Design Verification Statement from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires that, in determining a DA for consent to carry out development to which SEPP 65 applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

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

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

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

Clause 28 of SEPP 65 requires:

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

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

## **DESIGN REVIEW PANEL**

The original application DA2020/0552 was submitted prior to the implementation of Council's Design and Sustainability Review Panel.

## **ASSESSMENT UNDER THE REVIEW APPLICATION**

The application does not propose any change to the built form as was proposed under DA2020/0552.

Further, this assessment adopts the assessment of DA2020/0552 (attached to this report) in full, being that the proposal is consistent with the requirements of SEPP 65.

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

A BASIX certificate has been submitted with the application (see Rev Certificate No. 934623M\_05).

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	40
<b>Thermal Comfort</b>	Pass	Pass
<b>Energy</b>	45	45

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

## **SEPP (Housing for Seniors or People with a Disability) 2004**

The development application has been lodged pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)) as the development is for

Seniors Housing.

The application does not propose any change to the design as was proposed under DA2020/0552.

Further, this assessment adopts the assessment of DA2020/0552 (attached to this report) in full, being that the proposal is consistent with the requirements of SEPP (HSPD) 2004.

It is also noted that a supplementary memo was provided to the NBLPP recommending the following reason of refusal:

*The proposed development is found to inconsistent with the requirement of Clause 25 (5) (b) (ii) as the proposal will have impacts on its natural environment and due this impact, the proposal is found to be unacceptable.*

There has not been sufficient information provided nor sufficient amendment to the design to address the impacts on the natural environment. As such, this is again recommended as a reason of refusal for the reasons outline in the attached Assessment report.

## **SEPP (Infrastructure) 2007**

### Ausgrid

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

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

### Comment:

The following comments were provided by an AUSGRID officer:

"Ausgrid has no objection with the proposed development as long as we can still maintain access through the existing roadway from pole FF48711 on the western side of the property."

### Clause 102 - Roads and Maritime Service (RMS)

With regards to requirements of Clause 104(2) (b) and Schedule 3 of the SEPP, the development does not have a capacity for 200 or more motor vehicles. Therefore, the SEPP Infrastructure does not apply in this respect and does not require the referral of the application to the RMS.

## **Warringah Local Environmental Plan 2011**

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

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	The height requirement is covered by SEPP (HSPD) 2004	N/A	N/A

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

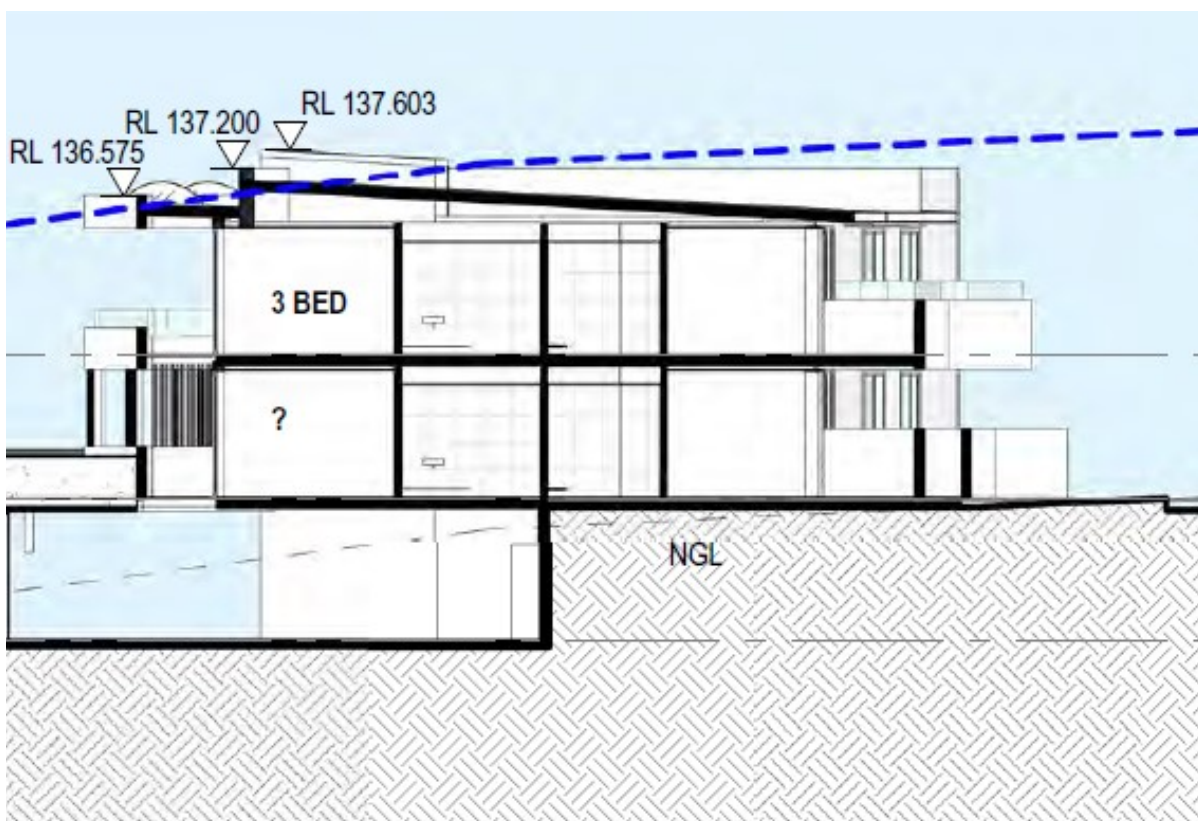
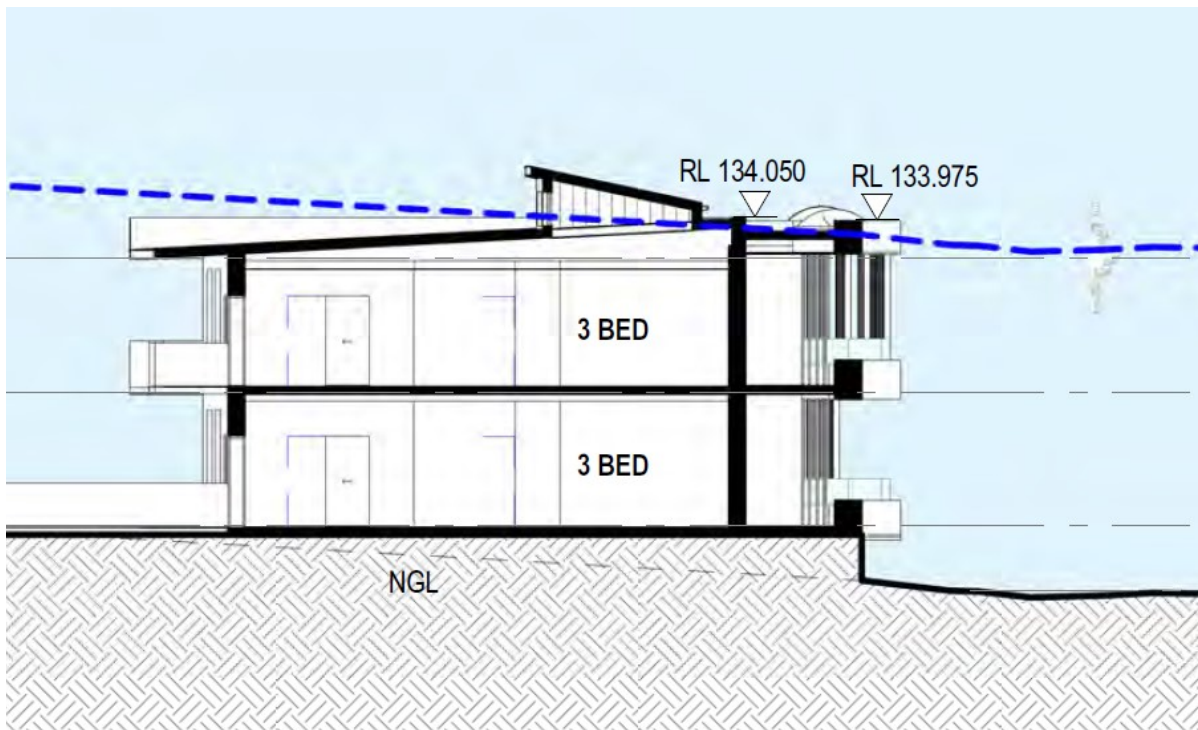
#### Detailed Assessment

#### **4.6 Exceptions to development standards**

#### **ASSESSMENT OF CLAUSE 4.6 VARIATION REQUEST**

This application relies on the application that was submitted. There is no change to the design of the proposed Senior's Living, and this assessment accepts the Clause 4.6 variation for the reasons outlined in the attached assessment report.

As demonstrated below, the proposed height is 8.65m, and this does not comply with the requirement under *SEPP (Housing for Seniors or People with a Disability) 2004 which is 8m* (measured vertically from ceiling of topmost floor to ground level immediately below).



Figures 1 & 2: Demonstration of height non-compliance.

#### **Clause 4.6 (4) (b) (Concurrence of the Secretary) Assessment**

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

Planning Circular PS-18-003, as issued by the NSW Planning and Environment on 21 February 2018,



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 clause 40 of SEPP (HSPD) 2004 Development Standard can be assumed by the Local Planning Panel.

## Warringah Development Control Plan

### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	The height is covered by SEPP (HSPD) 2004	N/A	N/A
B5 Side Boundary Setbacks	0.9m	In excess of 0.9m to both north and south boundaries	N/A	Yes
B7 Front Boundary Setbacks	10m	The proposed development provides in excess of 10m	N/A	Yes
B9 Rear Boundary Setbacks	6m	The proposed development will not encroach on the rear setback area	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	50%	The LOS is covered by SEPP (HSPD) 2004	N/A	N/A

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
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
E2 Prescribed Vegetation	No	No
E5 Native Vegetation	No	No
E6 Retaining unique environmental features	No	No
E7 Development on land adjoining public open space	No	No
E8 Waterways and Riparian Lands	Yes	Yes
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment

#### **D6 Access to Sunlight**

##### Site Specific Requirement

Clause 35 under SEPP (HSPD) 2004 establishes precedence for solar access over the WDCP 2011 and states that development is to ensure that adequate daylight is received to the main living areas of neighbours in the vicinity and residents receive an adequate provision of sunlight to substantial areas of private open space.

In the addition to the above, the development is also assessed against the requirements of clause D6 of the WDCP 2011.

In this regard, this assessment adopts the assessment under DA2020/0552 which found the design satisfies the solar access requirement of the SEPP (HSPD) 2004 and WDCP 2011.

#### **E2 Prescribed Vegetation**

Council's Natural Environment section (Biodiversity) does not support the proposed development due to the potential impact on the development on the bushland within the site and within the adjoining public land.

This impact is caused by the requirement for an APZ under the GTA provided by the NSW Rural Fire Service.

Based on the assessment provided by Council's Natural Environment Section, the application is recommended for refusal.

#### **E5 Native Vegetation**

Council's Natural Environment section (Biodiversity) does not support the proposed development due to the potential impact on the development on the bushland within the site and within the adjoining public land.

This impact is caused by the requirement for an APZ under the GTA provided by the NSW Rural Fire Service.

Based on the assessment provided by Council's Natural Environment Section, the application is recommended for refusal.

#### **E6 Retaining unique environmental features**

Council's Natural Environment section (Biodiversity) does not support the proposed development due to the potential impact on the development on the bushland within the site and within the adjoining public land.

This impact is caused by the requirement for an APZ under the GTA provided by the NSW Rural Fire Service.

Based on the assessment provided by Council's Natural Environment Section, the application is recommended for refusal.

#### **E7 Development on land adjoining public open space**

Council's Natural Environment section (Biodiversity) does not support the proposed development due to the potential impact on the development on the bushland within the site and within the adjoining public land.

This impact is caused by the requirement for an APZ under the GTA provided by the NSW Rural Fire Service.

Based on the assessment provided by Council's Natural Environment Section, the application is recommended for refusal.

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2019**

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

A monetary contribution of \$179,209 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$17,920,858.

### **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- 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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

## **Conclusion**

The assessment of the application has been carried out having regard to the provisions of Section 4.15 of the EP&A Act, 1979, the provisions of relevant EPIs, including SEPP 55, SEPP (HSPD) 2004, SEPP Infrastructure, WLEP 2011, the relevant codes and policies of Council, including the relevant provisions of the WDCP 2011.

The proposal seeks to review the determination of DA2020/0552. The Northern Beaches Local Planning Panel refused the original DA on the grounds that there was "insufficient information provided with the development application to address the likely impacts of the development on the adjacent natural environment, the suitability of the site and matters raised by the public with respect to the likely impacts that would be caused."

Despite the additional information and reasoning provided, Council's Biodiversity Officer has stated the

proposed APZ will have an unreasonable impact on the natural environment. The facilitator of Manly Warringah War Memorial State Park also cannot support the application. Further, there has not been a sufficient assessment of impacts of the proposed APZ on Sydney Water Land.

The natural environment issues which stem from the APZ requirement are unreasonable and this provides a situation in which the application cannot be recommended for approval. This is despite the fact that the planning, urban design, character, landscaping, traffic, stormwater, services infrastructure and noise assessments reveal the application has significant merit on those grounds.

The development contains non-compliances with the 8.0m Height of Buildings Development Standard as prescribed under Clause 40 (4) (a) of the SEPP (HSPD). The variations sought have been assessed under the provisions of Clause 4.6 of the WLEP 2011 and the departure from the development standard is supported for the reasons mentioned in the Clause 4.6 section of this report.

The public exhibition of the review application resulted in 43 submissions, all of which raised concerns with the proposed development. The majority of the submissions raised concerns with regards to environment impact, incompatibility with character, non-compliance with SEPP (HSPD) 2004 and construction related impacts. The issues raised in the submissions have been addressed in the "Public Notification" section of this report and the natural environment related concerns are concurred with and form reasons for refusal.

Accordingly, it is recommended that the Northern Beaches Local Planning Panel refuse the request to review the determination of the original application for the reasons detailed within the "Recommendation" section of this report.

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 REFUSE Development Consent to Development Application No REV2021/0006 for the Review of Determination of Application DA2020/0552 granted for demolition works and construction of a Seniors Living Development on land at Lot 2615 DP 752038,181 Allambie Road, ALLAMBIE HEIGHTS, for the reasons outlined as follows:

1. The proposed development is found to inconsistent with the requirement of Clause 25 (5) (b) (ii) as the proposal will have impacts on its natural environment and due this impact, the proposal is found to be unacceptable.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
3. Pursuant to Section 4.15 (1)(a) of the Environmental Planning and Assessment Act, 1979 and Clause 12(1)(a) of Warringah Development Control Plan 2011, the development is inconsistent with the following Clauses as follows:
  - Clause E2 Prescribed Vegetation;
  - Clause E5 Native Vegetation
  - Clause E6 Retaining unique environmental features; and
  - Clause E7 Development on land adjoining public open space
4. The proposed development is unsatisfactory in respect to the Environmental Planning and Assessment Regulation 2000, particularly in relation Schedule 1, as the NSW Rural Fire Service (RFS) General Terms of Approval include a APZ requirement that cannot be supported by the facilitator of Manly Warringah War Memorial State Park.