

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1695
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Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 1 DP 22450, 77 Foamcrest Avenue NEWPORT NSW 2106 Lot 2 DP 22450, 75 Foamcrest Avenue NEWPORT NSW 2106
Proposed Development:	Construction of a Residential Flat Building
Zoning:	R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Project Venture Development NO 4 Pty Ltd
Applicant:	Project Venture Development NO 4 Pty Ltd

Application Lodged:	30/12/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	15/01/2021 to 29/01/2021
Advertised:	15/01/2021
Submissions Received:	4
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 4,329,276.00
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Executive Summary

The application is for the demolition of existing structures and the construction of a two (2) storey residential flat building containing 7 Units, basement car parking for 17 vehicles, landscaping works around the development and strata subdivision of the units. The application is referred to the Development Determination Panel (DDP) as the cost of works is in excess of \$1 Million and the application has received a minimum of 3 submissions.

The application was advertised and notified for a period of 14 days and four (4) submissions were received regarding the proposal. The public submissions raised the issue of dilapidation and construction impact on adjoining properties, visual privacy, front fencing, number of units and asbestos

hazards during construction. Each of these submission issues are addressed within the assessment report and conditions have been recommended to address issues as necessary.

The application seeks a variation of 0.5% to Clause 4.5A Density controls for certain residential accommodation. The application is accompanied by a Clause 4.6 Variation Request which establishes the environmental planning grounds relied upon to seek a departure from the development standard. Council has reviewed the written requested under Clause 4.6 and is satisfied there is sufficient environmental planning grounds to support the variation and the proposal to be within the public interest given the consistency with the objectives of the development standard and R3 Medium Density Residential Zone.

The proposal seeks a numerical variation to the landscape open space calculation and variation to the upper floor side setbacks which are limited to open balcony elements and roof overhangs. These variations are addressed within the report and are supported on merit as the proposed development is considered will designed, does not result in any unreasonable amenity impacts and the proposal meets the desired future character of the R3 Zone consisting of a medium density development with generous deep soil landscape gardens surrounding the building.

The application was referred to the Design Sustainability Advisory Panel (DSAP) for comment during the assessment of the application. A number of recommendations were provided by the DSAP which the applicant has addressed to the satisfaction of Council by way of amended plans, additional information and written responses from the project architect.

Overall, the proposed development is well considered scheme which will fit in with the existing and desired future character of the R3 Medium Density Residential zone. The proposal is recommended to the DDP for approval, subject to the conditions outlined at the end of this assessment report.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development is for a two (2) storey residential flat building consisting of seven (7) residential units. Specifically, the proposal consists of:

- Demolition of the existing structures on the land;
- Consolidation of the two lots into one;
- Construction of a Residential Flat Building Consisting of:

Basement Level

- Basement parking consisting of 15 residential spaces and 2 visitor spaces
- Plant rooms and storage

Ground Floor

- 2 x 2 bedroom apartments and 2 x 3 bedroom apartments. Each with a 16sqm terrace
- Entrance and circulation core along the southern extent of the building
- Residential waste storage area

First Floor

- 3 x 3 bedroom apartments with each a terrace of minimum 33.5sqm.
- Entrance and circulation space along the southern extent of the building
- Strata subdivision of the development
- Landscaping works around the development.
- Removal of trees in accordance with the submitted arborist report.

Amended Plans

Amended plans were received in response to recommendations raised by the Design Sustainability Advisory Panel. The amendments included minor internal alterations and a reduction of the roof form at the southern edge of the building. As these design changes did not increase the size of the development, the application was not required to be re notified.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

Pittwater Local Environmental Plan 2014 - 7.2 Earthworks

Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements

Pittwater 21 Development Control Plan - C1.4 Solar Access

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - D10.7 Front building line (excluding Newport Commercial Centre)

Pittwater 21 Development Control Plan - D10.8 Side and rear building line (excluding Newport Commercial Centre)

Pittwater 21 Development Control Plan - D10.12 Landscaped Area - General

Pittwater 21 Development Control Plan - D10.14 Fences - General

SITE DESCRIPTION

Property Description:	Lot 1 DP 22450 , 77 Foamcrest Avenue NEWPORT NSW 2106 Lot 2 DP 22450 , 75 Foamcrest Avenue NEWPORT NSW 2106
Detailed Site Description:	The subject site consists of two (2) allotment located on the eastern side of Foamcrest Avenue.

The site is regular in shape with a frontage of 30.48m along Foamcrest Avenue and a depth of 45.72m. The site has a surveyed area of 1393m².

The site is located within the R3 Medium Density Residential zone and accommodates a detached single storey dwelling on each lot.

The site is relatively level with very slight fall to the rear.

The site has established vegetation along the rear boundary consisting of medium and tall shrubs and canopy trees. There are two medium height exotic canopy trees in the rear setback of 77 Foamcrest. There are three palm trees within the front setback of 75 Foamcrest. There are two established canopy trees in the road reserve in front of the sites.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by two storey medium density residential development. Immediately to the north of the site is a two storey medium density development with basement parking. To the south of the site is a single storey cottage which is the last remaining single dwelling the eastern side of this block along Foamcrest Avenue. Across the road to the west are two storey medium density residential developments.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application .as SEPP 65 does not apply to the development.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to a response to the DSAP minutes. This resulted in minor amendments to the internal building layout and an updated BASIX Certificate.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p>

Section 4.15 Matters for Consideration'	Comments
	<p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 15/01/2021 to 29/01/2021 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 4 submission/s from:

Name:	Address:
Mr Ian Godfrey Heard	7 / 79 - 83 Foamcrest Avenue NEWPORT NSW 2106
Body Corporate Services Pty Ltd	Level 27/66-68 Goulburn Street SYDNEY NSW 2000
Ms Robyn Elizabeth Jones	9 / 71 Foamcrest Avenue NEWPORT NSW 2106
Nicole Jean Hosking	PO Box 38 MONA VALE NSW 2103

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

- Asbestos hazard during demolition.
- Request for dilapidation report for adjoining property 79-83 Foamcrest Avenue and 403 Barrenjoey Road.
- Noise from construction of development to the north of 79-83 Foamcrest Avenue and the subject site.
- Construction impact upon the common boundary fence and clarify fencing proposed between subject site and 79-83 Foamcrest.
- The development should be reduced to 5 units and each unit have 3 bedrooms.
- The bin storage area should be relocated to be in alignment with the bin storage location for the development at 56-58 Foamcrest Avenue.
- The front fence should be 'more substantial and in keeping with the street'.
- Request for privacy screens at 1.7m along the southern elevation to address privacy for Unit 9 at 71 Foamcrest Avenue.

The matters raised within the submissions are addressed as follows:

- *Asbestos hazard during demolition.*
Comment:
A condition of consent has been recommended for asbestos removal to be carried out in accordance with all relevant Australian Standards.
- *Request for dilapidation report for adjoining property 79-83 Foamcrest Avenue and 403 Barrenjoey Road.*
Comment:
A condition of consent has been recommended for a dilapidation report to be carried out for the above mentioned properties.
- *Noise from construction of development to the north of 79-83 Foamcrest Avenue and the subject site.*
Comment:
Standard conditions of consent have been recommended with regards to hours of work, construction traffic management and construction site management. Whilst unfortunate there is another approved development to the north that could be constructed at the same time, this would not be a reason to refuse the subject application.
- *Construction impact upon the common boundary fence and clarify fencing proposed between*

subject site and 79-83 Foamcrest.

Comment:

The applicant has indicated that they intend to carry out boundary fencing along the common boundary under the *Dividing Fences Act* as a lapped and capped timber fence. No common boundary fence is specified on the architectural plans or removal of fencing is proposed.

- *The development should be reduced to 5 units and each unit have 3 bedrooms*

Comment:

The issue of dwelling density is addressed under Clause 4.6 of this report.

- *The bin storage area should be relocated to be in alignment with the bin storage location for the development at 56-58 Foamcrest Avenue.*

Comment:

Council's waste team have reviewed the bin storage location and are satisfied with the size, location and functionality of the bin storage room. The bin storage area has been integrated into the site design and is considered suitable.

- *The front fence should be 'more substantial and in keeping with the street'.*

Comment:

The front boundary fence has been integrated into the site design with a 1m wide landscape strip between the fence and front boundary, to offer privacy for the residents and being soften by landscaping to suit the landscape character of the street. Boundary fencing is discussed in detail later within the report.

- *Request for privacy screens at 1.7m along the southern elevation to address privacy for Unit 9 at 71 Foamcrest Avenue.*

Comment:

Privacy screens of 1.7m height are used along the southern circulation core to mitigate overlooking impacts. There is sufficient physical separation between the subject development and the flat building upon 71 Foamcrest Avenue to mitigate privacy impacts between the upper floors of the developments.

REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	<p>Not supported and recommended amendments</p> <p>The application was referred to the Design Sustainability Review Panel and eight recommendations came from the Panel to be addressed by the applicant.</p> <p>The applicant provided a response to each of the recommendations by way of amended plans, additional information and written responses as to how each recommendation had been addressed in the design.</p>

Internal Referral Body	Comments
	<p>Council has considered the responses provided by the applicant later within this assessment report under section 'SEPP 65 - Design Quality of Residential Apartment Development'. As discussed later in this report, the applicant has provided a satisfactory response to each of the recommendations to allow Council to support the proposed development.</p>
<p>Building Assessment - Fire and Disability upgrades</p>	<p>Supported (subject to conditions)</p> <p>The BCA report prepared by East Coast Approvals has now been supplied as requested by previous comments and my assessment is as shown below:</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>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate stage.</p> <p>The applicant is required to supply Council with a copy of the BCA Assessment Report from East Coast Approvals Group (Reference: 200527) dated 10/12/2020 as noted in the Fire Engineering Letter from Fire Safety Studio Pty Ltd dated 11/12/2020, so as to enable a full assessment of this proposed development.</p>
<p>Environmental Health (Acid Sulphate)</p>	<p>Supported (subject to conditions)</p> <p>General Comments</p> <p>Comment has been requested from Environmental Health in regard to this proposal for the "Construction of a Residential Flat Building" in relation to the potential disturbance of acid sulphate soils.</p> <p>The subject site is classified as class 4 acid sulphate soils meaning development consent is required for:</p> <p>"Works more than 2 metres below the natural ground surface.</p> <p>Works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface."</p> <p>The plans submitted with the proposal indicate a portion of the development (to basement level) requires excavation in excess of 2 meters in depth from existing ground level.</p> <p>Reference is made to Geotechnical Report numbered 2020/202 and dated 12 November 2020 by Crozier Geotechnical Consultants. This report states that "due to the ground conditions encountered in the</p>

Internal Referral Body	Comments
	<p>site investigation and the proposed works there is a “very low” likelihood of intersecting these soils or impacting the local water table. As such, an ASS Management Plan (ASSMP) is not considered necessary"</p> <p>Environmental Health supports this proposal provided that appropriate conditions are imposed that ensure adequate measures are undertaken should further evidence present in relation to acid sulphate soils during works.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
Environmental Health (Industrial)	<p>Supported (subject to conditions)</p> <p>General Comments</p> <p>Environmental Health have been requested to consider the proposal for "Construction of a Residential Flat Building". In this regard, the main consideration on relation to the proposed development is any potential noise impacts to the amenity of surrounding receivers that may be experienced. Generally, noise generating external mechanical plant is a common source of complaint by surrounding receivers if not adequately managed.</p> <p>The Statement of Environment Effects states:</p> <p>"...Air conditioning units are located within the basement, away from noise sensitive areas..."</p> <p>Despite this, the acoustic report numbered 200424 dated 14/12/20 by JHA states:</p> <p>"External mechanical plant will consist in external condenser units serving individually to each apartment. The proposed location of the condenser units is in the south-east of the development underneath an undercroft as shown in Figure 5"</p> <p>Accordingly, an appropriate condition is recommended be placed on the development requiring a noise assessment to be conducted (prior to the issuing of an occupation certificate) that confirms compliance with projected noise trigger levels as noted in the acoustic report numbered 200424 dated 14/12/20 by JHA.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
Landscape Officer	<p>Supported (subject to conditions)</p>

Internal Referral Body	Comments
	<p>The application seeks approval for the demolition of two single detached residences and the construction of a residential flat building, infrastructure and external landscape works.</p> <p>Council's Landscape section have assessed the application against the following documents relevant to landscape assessment:</p> <ul style="list-style-type: none"> • Pittwater 21 DCP, including B4.22 Preservation of Trees and Bushland Vegetation; C1.1 Landscaping; and D10 Newport Locality. <p>Landscape Plans and a Arboricultural Impact Assessment are provided with the development application in accordance with Council's DA Lodgement requirements.</p> <p>The landscape plan proposal generally provide adequate landscape treatment to deep soil areas around the perimeter of the site and on-slab structures to satisfy the landscape controls of the DCP.</p> <p>The Arboricultural Impact Assessment notes that three prescribed trees (requiring Council consent) existing on the development site with two impact by the building envelope and one other in poor condition that should be removed regardless of development. Four native trees within the site are recommended for retention and protection including trees identified as T11 and T2 (Waterhousia), T17 Swamp Mahogany, and T23 Coast Banksia. Existing Exempt Species as identified are proposed for removal and these do not require Council consent.</p> <p>All trees and vegetation within adjoining properties shall be protected. The existing Paperbark street trees fronting the development site shall be the subject of tree protection measures and engagement by a Project Arborist during the works.</p> <p>The landscape component of the proposal is acceptable subject to conditions.</p>
NECC (Coast and Catchments)	<p>Supported (subject to conditions)</p> <p>Officer comments</p> <p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>Coastal Management Act 2016</p> <p>The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development.</p>

Internal Referral Body	Comments
	<p>The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Coastal Management) 2018 As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.</p> <p>The subject land has been included on the 'Coastal Use Area' map but not the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 14 and 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>On internal assessment of the submitted Statement of Environmental Effects (SEE) report prepared by Richard Cole Architecture dated December 2020, Council accepts the assessment that the DA satisfies requirements under clauses 14 and 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>No coastal related issues identified.</p> <p>As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.</p>
NECC (Development Engineering)	<p>Supported (subject to conditions)</p> <p>No objections to the proposed residential flat building subject to conditions</p>
Strategic and Place Planning (Urban Design)	<p>Supported</p> <p>The proposal achieves the desired future character of the locality in height, bulk, scale, form and materiality. The bulk and scale of the built form is minimised as a two storey building with an articulated</p>

Internal Referral Body	Comments
	facades to break down the scale and provide modulation of sunlight and shade.
Traffic Engineer	<p>Supported (subject to conditions)</p> <p>The proposed development has been assessed under the existing LEP/DCP requirements for the site and the applicant has addressed all matters relevant to the requirements for the development of this nature on the subject site.</p> <p>The proposed development contains 7 Apartments 3 2-bedroom = 6 parking spaces 4 3-bedroom = 8 parking spaces Allocated 15 spaces</p> <p>Visitor spaces required is 2.3 under the DCP. Provided is 2 spaces, whilst not ideal is acceptable given that the reduction in driveways in Foamcrest Avenue creates 1 more on street space.</p> <p>Bicycle parking potential is included in the dedicated storage allocated for each unit, but not identified as such. Not ideal but acceptable in this development.</p> <p>Car park turning has been demonstrated to comply with the the Australian Standard 2890.1:2004 with all garage spaces accessible and the traffic being able to enter and leave the structure in a forward direction.</p> <p>The proposal is supported on Traffic and Transport grounds.</p>
Waste Officer	<p>Supported (subject to conditions)</p> <p>Proposal is approved with conditions.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	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, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

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

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

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

SEPP 55 - Remediation of Land

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

SEPP 65 - Design Quality of Residential Apartment Development

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

(a) the development consists of any of the following:

- (i) the erection of a new building,
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
- (iii) the conversion of an existing building, and

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and

(c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development is for the erection of a 2 storey residential flat 'housing' development plus basement car parking for the provisions of 7 self-contained dwellings.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are not applicable to the assessment of this application, as the building is only 2 stories.

Design Sustainability Advisory Panel (DSAP) Referral

The application was referred to the DSAP for review and advice. Although the proposal does not fall under SEPP 65, given the nature and scale of the development the application was referred to the DSAP for review.

The DSAP raised the following recommendations for the applicant to address and respond:

Recommendation 1. Internal spaces should not rely solely on light wells for daylight and outlook. Achieving adequate amenity may result in fewer and/or smaller apartments.

Recommendation 2. Privacy of habitable internal and external spaces should be improved by employing greater separations between proposed and existing buildings and vegetation, as distinctly preferable to relying on screening.

Recommendation 3. Overshadowing of 73 Foamcrest Avenue should be reduced to allow solar access to future North-facing ground floor apartments to the south of the proposal (equivalent to proposal).

Recommendation 4. The proposed development should be redesigned to comply with the 50% Landscape control

Recommendation 5. Re-arrange the layout of the common circulation to allow for greater privacy, outlook and daylight to apartments.

Recommendation 6. Increasing the proportion of landscaped area should also allow for a more generous entryway and allow for planting.

Recommendation 7. Increase performance of Apartments 5 and 7 to above NatHERS 6 star.

Panel Conclusion:

The Panel does not support the proposal in its current form.

The Panel is of the view that the recommended changes in the design, particularly those related to landscape area, outlook, privacy and overshadowing should be given priority.

Applicant Response

Following the referral comments provided by the DSAP, the applicant provided a response by way of minor amendments to the plans, updated BASIX/Nathers certificate and written responses to explain how each of the issues have been investigated and attempted to be resolved. It is noted that one of the change suggested by the DSAP involved rearrangement of circulation core on the southern side of the building, which would constitute a significant redesign of the proposal. The applicant's written response details how the redesign of the circulation core was investigated, however ultimately was not incorporated into the amendments for the reasons outlined in the written response. The applicant's response forms part of the documentation submitted with the development application and the latest issue of plans and BASIX certificate are considered as part of the final assessment.

Council's Assessment/Response

An assessment of the information submitted by the applicant in response to the DSAP comments are made below:

Recommendation 1 - The applicant has submitted amended plans increasing the width of the internal courtyards at both the ground floor and first floor, as well as increasing the roof opening to provide increase levels of solar access, ventilation and outlook to the internal landscaped courtyard. A series of internal view montages have been submitted in support of the arrangement. The design and orientation of the development to include all 7 units having a north facing terrace area and living area is considered a significant benefit of the development and the resulting internal courtyard outlook for the bedrooms within units 2, 3 and 6 a reasonable outcome in favor of north facing living rooms and balconies. The applicant has responded appropriately to the minutes.

Recommendation 2 - The proposal includes a combination of screening, planter boxes, existing established boundary vegetation and proposed vegetation to mitigate overlooking and looking between properties. The orientation towards the northern side boundary allows for all units to have a optimal

solar access outcome, without unreasonable overlooking upon adjoining sites with the above measures implemented. The proposal is considered satisfactory with regards to visual privacy and overlooking and would not be recommended for refusal based on the proposed design and implementation of the above mentioned solutions.

Recommendation 3 - The applicant has reduced the extent of the southern eave overhang by 600mm to increase solar access for the southern property and provided a written response to this issue. In addition, the submitted shadow diagrams demonstrate compliant solar access is achieved to the existing single storey dwelling on at 73 Foamcrest Avenue. The proposal is compliant with the building envelope on the southern elevation and the height of the southern facade is up to 6.8m, well within the maximum 8.5m height limit. It is considered the development will not preclude the reasonable development potential of the southern site.

Recommendation 4 - The applicant has provided further clarification regarding the landscape open space calculation in accordance with the permitted variations under the control, totaling 44% including variations. A merit assessment of the landscape open space control is carried out later in this report. The proposal is considered to achieve the landscaped character of the locality and is consistent with the outcomes of the control and therefore, a variation is acceptable in this particular circumstance.

Recommendation 5 - The applicant has undertaken a review of this recommendation and noted this would require substantial redesign of the development. The reasons put forward within the applicants written response are generally agreed with and are as follows:

"The views provided in response to Recommendation 1 demonstrate that adequate outlook and daylight are provided to the bedrooms adjacent to the circulation areas. Amenity has been improved by increasing the width of the courtyards on both levels. The views below demonstrate that excellent privacy is provided to these bedrooms as well. The architect has looked at alternative arrangements for the circulation, however it resulted in inferior spaces and outcomes. A key design direction and highly desirable attribute was to provide north facing living areas. This results in a linear circulation core along the southern side of the building to access all apartments, compromising a small number of bedrooms. This compromise has been mitigated by generous, open circulation spaces, adjacent planting, intersecting volumes, high quality materials and an abundance of natural daylighting. The architect would argue that this outcome is far superior to the alternative, a central core with apartments on the corners of the building and at least half of the apartments with no northerly aspect to their living areas."

Recommendation 6 - The applicant has provided montages and perspectives of how landscaping has been incorporated into the pedestrian entrance. The total amount of landscaping for the site is addressed in recommendation 4 above. The proposal is considered a suitable outcome and would not be refused based on the current design.

Recommendation 7 - The applicant has provided an updated BASIX and NatHERS to result in an improvement from 4.8 stars to 6.3 stars for Apartment 5 and 6.1 stars for Apartment.

Concluding Comment

The applicant has provided a response to the recommendations provided by DSAP by way of additional information, amendments and written responses advising how each recommendation has been attempted to be resolved. On balance, the applicant has provided a genuine attempt to resolve the recommendations where possible where those amendments would not result in a substantial redesign of the development, such as significant changes to the southern circulation core/access. There are not considered any issues left unresolved that would warrant refusal of the application in its current form and therefore, the proposal is recommended for approval.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1157603M_02 dated 9 April 2021). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0005501720 dated 9 April 2021.)

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	65

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. No objections subject to their standard conditions.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

10 Development on certain land within coastal wetlands and littoral rainforests area

- (1) *The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*
- (a) *the clearing of native vegetation within the meaning of Part 5A of the Local Land*

Services Act 2013,

- (b) *the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
- (c) *the carrying out of any of the following:*
 - (i) *earthworks (including the depositing of material on land),*
 - (ii) *constructing a levee,*
 - (iii) *draining the land,*
 - (iv) *environmental protection works,*
- (d) *any other development.*

Comment:

Not within coastal wetland or littoral rainforest area.

11 Development on land in proximity to coastal wetlands or littoral rainforest

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
 - (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
 - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

Not on land in proximity to coastal wetlands or littoral rainforest.

12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) *if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) *the proposed development:*
 - (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
 - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
 - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures are in place to ensure that there are*

appropriate
responses
to, and
management
of,
anticipated
coastal
processes
and
current
and
future
coastal
hazards.

Comment:

Not within the coastal vulnerability area.

13 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:

Not within the coastal environment area.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (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:

Not within coastal environment area.

14 Development on land within the coastal use area

(1)

- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
- (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The development has been designed as sited to avoid impact upon the matters described in (a) and Council is satisfied there will be no unreasonable impact upon the matters listed in (a).

As such, it is considered that the application complies with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

15 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:

Does not increase coastal hazards.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m	N/A	Yes
Density controls for certain residential accommodation	1 dwelling per 200sqm	1 dwelling per 199sqm (7 dwellings on 1393sqm)	0.5%	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.5A Density controls for certain residential accommodation	No
4.6 Exceptions to development standards	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Density controls for certain residential accommodation
Requirement:	1 dwelling per 200sqm of site area
Proposed:	1 dwelling per 199sqm of site area
Percentage variation to requirement:	0.5%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.5A - Density controls for certain residential accommodation 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 4.5A - Density controls for certain residential accommodation 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 (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

standard.

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

Strict compliance with the development control will result in one less dwelling on the site, but as the proposed development complies with the height, setback, landscape area and building envelope controls, whether there are six larger apartments or seven apartments with a mix of sizes in the development will not affect the overall form of the building. The proposed building will be consistent with the desired character of the locality whether there are six or seven apartments, and seven allows for a greater range of sizes and choice for residents and the local community. At 1393sqm the site area falls just short of the required 1400sqm under this control, and results in a density of 199sqm site area per unit. Council recently approved a development at 6 Foamcrest Avenue (adjacent to the subject site Consent No: N0313/17) with a density of 185sqm site area per unit, and 2-4 Foamcrest Avenue with a density of 196sqm site area per unit. The proposed development meets all the required amenity controls including height, setbacks, parking, private open space, landscape areas, solar access, privacy, and bulk and scale. The development site is immediately adjacent to the village centre, beach and transport facilities, and limiting the number of dwellings restricts the potential of the site to fewer households. Given the very small difference between the required and actual site area for seven

apartments, in this instance it is appropriate that the development proposal be judged on its merits.

The requirement to build six rather than seven apartments would hinder the following objects of the Act: (a) to encourage:

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

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

Limiting the number of apartments has no impact on the overall form of the development or amenity of occupants and neighbours, but it limits the diversity of apartment types and encourages a greater size of apartment when the majority of residents for this type of building typology in this locality are looking for a compact floor area with a high level of amenity. In terms of environmental impact it is preferable to maximise the land resource, particularly when it is directly adjacent to existing infrastructure such as a shopping village and transport hub, by increasing density when it has little to no impact on amenity.

It would be unreasonable to require strict compliance with the standard when Council has recently approved a development at 6 Foamcrest Avenue with a density of 185sqm site area per unit, and 2-4 Foamcrest Avenue with a density of 196sqm site area per unit, and which is less than that of the proposed development (199sqm site area per unit).

The proposed development meets all the required amenity controls including height, setbacks, parking, private open space, landscape areas, solar access, privacy, and bulk and scale. The proposed development is appropriate in scale for the medium density locality surrounding the village. One of the objectives of the zone is to provide a variety of housing types. Seven variably sized apartments provides more housing types than six larger apartments.

In terms of environmental impact the difference between six and seven apartments is minimal. The development meets all amenity requirements for occupants and neighbours and the locality has adequate infrastructure that is more than capable of servicing an additional household. The peninsula is an area that is dominated by the single detached house on large residential blocks and it will benefit by more diversity of housing types and a range of apartment sizes close the amenity of shops, recreational facilities and transport.

The assertions made by the application within the written request are generally agreed with by Council. To require the applicant to delete one unit due to a shortfall of 7sqm is considered unreasonable and unnecessary, given that the applicant has provided a building form that is consistent with the desired future character and general density previously accepted in recent approvals within the vicinity of the site.

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 Density Controls for certain residential accommodation development standard and the objectives of the R3 Medium Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.5A – ‘Density controls for certain residential accommodation’ of the PLEP 2014 are:

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

a) to achieve planned residential density in certain zones,

Comment:

The 1 per 200m² maximum dwelling yield is not a site specific development standard, but rather applies to all equivalent R3 zoned land throughout the locality (excluding Warriewood Valley which is site specific). Noting that there are unlikely to be any sites that are perfectly divisible by 200m², it would be reasonable to assume that some sites would more appropriately round down and there would be others that are reasonably rounded up, whilst the overall planned residential density is still achieved for the R3 zone as a whole. In relation to the subject site, the 1 per 200m² dwelling density equates to 6.965 dwellings which is considered to be reasonably rounded up to 7 dwellings in the circumstances of this case.

b) to ensure building density is consistent with the desired character of the locality,

Comment:

The proposal has generous landscaped setbacks with deep soil planting throughout to provide medium and tall canopy trees, to soften the building form as viewed from the street and adjoining properties. The area is characterised by medium density developments within a landscaped setting. The proposed development meets this character test by virtue of the well articulated building form and landscaping provided around the development.

Zone objectives

The underlying objectives of the R3 Medium Density Residential zone are:

- To provide for the housing needs of the community within a medium density residential environment.

Comment: The proposal provides for 7 new dwellings which attributes to the housing stock for the community.

- To provide a variety of housing types within a medium density residential environment.

Comment: The proposed residential flat building provides for additional housing choice within the Newport Locality which is close to services and public open space.

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

Comment: Not applicable to this development.

- To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.

Comment: Not applicable to this development.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential zone.

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Density Controls for certain residential accommodation Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

7.2 Earthworks

The objective of Clause 6.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

(b) the effect of the proposed development on the likely future use or redevelopment of the land

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

(c) the quality of the fill or the soil to be excavated, or both

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

(e) the source of any fill material and the destination of any excavated material

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

(f) the likelihood of disturbing relics

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment: Conditions are included in the recommendation of this report that will minimise the impacts of the development.

(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.

Comment: The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed
Front building line	6.5m as established by north development	Basement 6.5m Ground floor 6.5m First floor 5.4m-6.5m
Rear building line	East - 4.2m	5.4m - 6.5m
Side building line	North - 3.6m - 4.05m	3m - 4.5m
	South - 4.2m	3.27m - 4.5m

Building envelope	North - 3.5m	Within
	South - 3.5m	Within
Landscaped area	50% (696.5sqm)	41% (575sqm) *44% with permitted variations

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B2.5 Dwelling Density and Subdivision - Medium Density Residential	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.15 Storage Facilities	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C5.1 Landscaping	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.3 Scenic protection - General	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	No	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	No	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	Yes	Yes
D10.12 Landscaped Area - General	No	Yes
D10.14 Fences - General	No	Yes
D10.16 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

B6.3 Off-Street Vehicle Parking Requirements

The DCP requires that 2 spaces per unit are provided, where the units are a minimum 2 bedrooms.

All units have a minimum of 2 bedrooms. A total of 15 spaces are provided within the basement carpark for the residents (a surplus of 1 space).

The DCP Requires that 3 visitor spaces are provided for the development (1 space per 3 units rounded up).

The proposal provides 2 visitor spaces. However overall, the proposal does not result in a deficit of car spaces with the total amount of off-street spaces provided within the site.

The applicant has put forward that there is sufficient capacity within the street for visitor parking and the additional car space allocated as a residential space has more utility for the development.

Council's traffic engineers have raised no issue with the allocation of parking spaces or impact upon on-street parking as a result of this allocation. Therefore, this arrangement is supported.

C1.4 Solar Access

All living room windows and private open space areas are orientated to the north to maximum solar access for all units within the development. The applicant has provided solar access diagrams which demonstrate that the private open space and a reasonable portion of the living room windows of each unit will receive a minimum of 3 hours solar access.

The applicant has provided shadow diagrams demonstrating that the adjoining dwelling to the south will

receive 3 hours solar access mid-winter to a reasonable portion of the rear yard, noting that the area directly adjoining the rear facade of the dwelling on 73 Foamcrest is already self shadowed.

The provided shadow diagrams demonstrate that 3 hours of solar access will be retained to the northern elevation and western elevation of the dwelling on 73 Foamcrest between 12pm and 3pm, thus achieving 3 hours.

C1.5 Visual Privacy

The northern facing upper floor terraces are provided with landscape planter boxes and 1.7m height privacy screens to mitigate direct overlooking of the northern property and downward views to the private open space of the ground floor units. On the southern elevation entrance/circulation space, 1.7m privacy screens are provided to limit direct overlooking of the southern property.

Established landscape screening exists along the southern boundary of 79-83 Foamcrest Avenue, to limit looking between sites and the upper floor balconies of the units on the northern property. In addition, new landscape plantings are proposed along the northern boundary of the subject site to further obscure views between sites.

There is 11m of physical separation measured glass to glass between the upper elevation of the northern property, with 7m separation between between the balcony of the subject site upper floor terrace. This physical separation, coupled with the established landscaping, privacy screens and planter boxes are considered sufficient to mitigate direct overlooking impacts between properties. This is also noting the balconies on the northern adjoining site are 'juliette' style balconies and not the principle private open space.

D10.7 Front building line (excluding Newport Commercial Centre)

DCP Control

The DCP requires the front setback to be 6.5m or consistent with the prevailing, whichever is the greater. As the existing development to the north has a setback of 5.4m (with a balcony at 5m), 6.5m is taken to be the numerical control to be applied to the subject site.

Merit Consideration

The ground floor and majority of the first floor of the proposed development is setback a compliant 6.5m. A small 'pop-out' section of the first floor is setback at 5.42m and represents a minor portion of the front facade. This element is taken to provide additional building articulation and break up the horizontal bulk of the building as viewed from the street. The development to the north has a balcony feature that is setback at 5m as an articulation feature and the proposed development is not inconsistent with this.

In consideration a variation, the proposal is assessed against the outcomes of the control as follows:

Achieve the desired future character of the Locality. (S)

Comment: The proposal has deep soil zone surrounding all perimeters of the building and the front setback area is predominantly deep soil zone with the exception of the driveway and bin storage area, which are both permitted within the front setback. The building as presenting to the street will be softened by landscape planting and setback consistent with the adjoining property, thus achieving the character of the locality.

Equitable preservation of views and vistas to and/or from public/private places. (S)

Comment: The proposed development will not result in a view impact.

The amenity of residential development adjoining a main road is maintained. (S)

Comment: The building does not adjoin a main road.

Vegetation is retained and enhanced to visually reduce the built form. (En)

Comment: Significant trees within the road reserve are retained and no significant trees within the front setback area are required to be removed. New medium/tall height landscape plantings are proposed to soften the building form.

Vehicle manoeuvring in a forward direction is facilitated. (S)

Comment: Forward exit from the site is achieved as demonstrated in the submitted swept paths.

To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.

Comment: The proposal is compliant with the 8.5m height limit and is in keeping with the surrounding buildings which are generally below the tree canopy level.

To encourage attractive street frontages and improve pedestrian amenity.

Comment: The articulating element which encroaches the front setback zone breaks up the bulk and scale by addition variation to the facade and providing an attractive, articulated building facade. Pedestrian pathway is provided from the street to the building entrance which is separate from the vehicle access.

To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.

Comment: The proposed front setback is consistent with the existing development to the north, which includes a 6.5m setback to the majority of the facade with a minor articulating element to provide visual interest.

The proposed development achieves the objectives of the control with the PDCP and therefore, the variation to the control is supported in this particular circumstance.

D10.8 Side and rear building line (excluding Newport Commercial Centre)

DCP Control

The DCP requires for residential flat buildings, walls up to 3m in height are to have a setback of 3m. For walls above 3m in height the setback is to be in accordance with the following formula :

$$S = 3 + \frac{H - 2}{4}$$

where

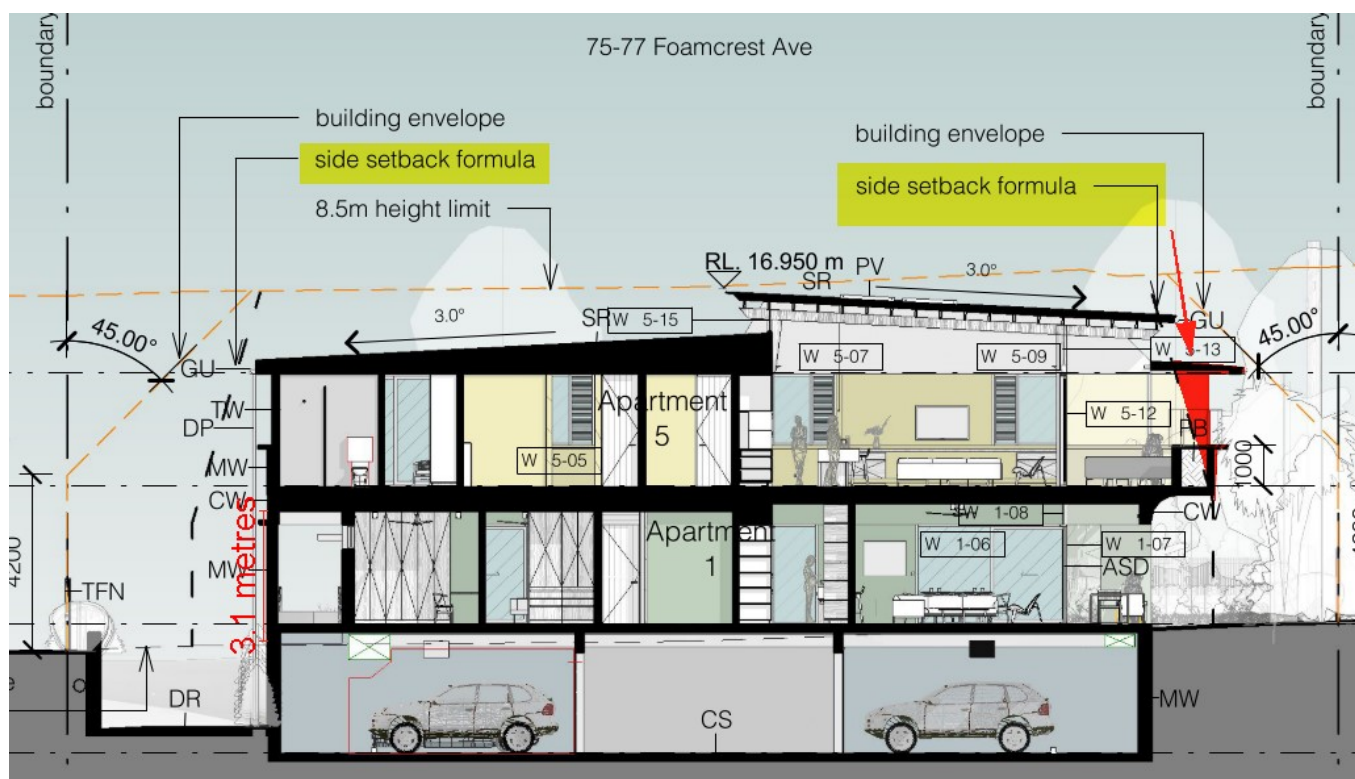
S = the distance in metres

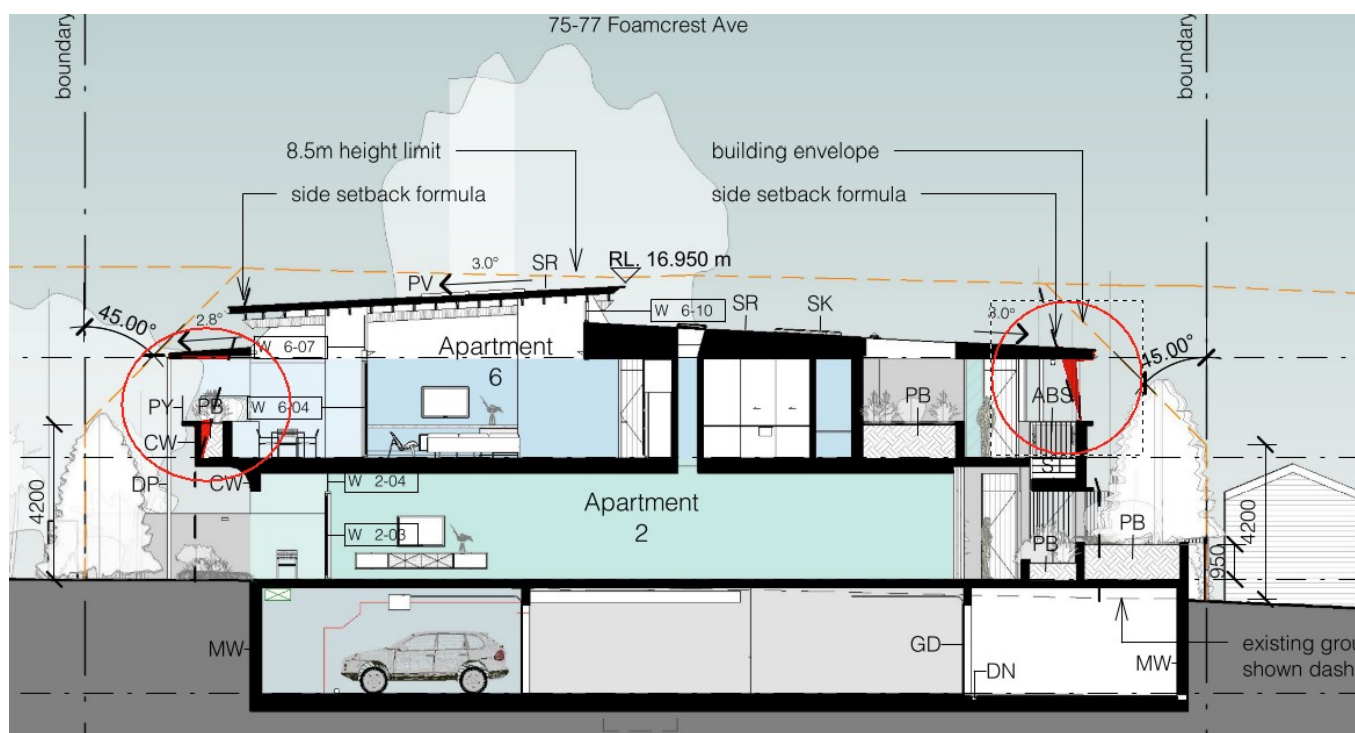
H = the height of the wall at that point measured in metres above existing ground level

The ground floor of the development (which is up to 3m in height) provides setbacks of 3.32m (south/side), 6.5m (east/rear) and 4.5m (north/side). The ground floor setbacks are compliant.

The upper floor setbacks present a minor non-compliance on the side elevations. These elements include projecting roof eaves, balcony balustrade and planter boxes and the southern circulation/entrance area which consists of an open element and privacy screen.

These encroaching elements are all open elements, not consisting of solid walls and therefore do not add unreasonable building bulk as viewed from the side boundaries or street. The DCP includes a variation clause for residential flat buildings which allow minor encroachments of roof eaves and the control to be varied where it can be demonstrated the objectives of the control are achieved without strict adherence to the standards.. Extract of the plans below showing the encroachments, including encroachment of roof eaves.





Merit Consideration

In considering the merits of the variation, the proposal is assessed against the outcomes of the control as follows:

To achieve the desired future character of the Locality. (S)

Comment: The proposed development is surrounded by deep soil landing to provide a building form within a landscaped setting, with landscaped front and rear setbacks which is consistent with the surrounding character and desired future character of the locality. The building is well articulated and uses robust materials to reflect the coastal setting of Newport. The proposal is consistent with the desired character of the Newport R3 Medium Density Residential area.

The bulk and scale of the built form is minimised. (En, S)

Comment: The encroaching elements are limited to open balconies with planter boxes, roof overhangs and the entrance lobby which does not have a solid wall, rather, privacy screening to provide cross ventilation and additional light for the southern side of the development. As the encroaching elements do not consist of solid walls, the non-compliance does not attribute to unreasonable building bulk and the side elevations of the building are considered well articulated to limit visual bulk and scale.

Equitable preservation of views and vistas to and/or from public/private places. (S)

Comment: The proposal does not result in a view impact.

To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.

Comment: The proposal does not result in a view impact for adjoining sites.

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)

Comment: The proposed development mitigates direct overlooking of adjoining properties by use of planter boxes and privacy screening upon the upper level balconies on the northern elevation. The submitted shadow diagrams demonstrate the southern property will receive a compliant amount of solar access.

Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)

Comment: A comprehensive landscape plan is provided which demonstrates canopy tree planting can be provided around the development.

Flexibility in the siting of buildings and access. (En, S)

Comment: Access is maintained around the development.

Vegetation is retained and enhanced to visually reduce the built form. (En)

Comment: No significant canopy trees are removed and landscape planting is retained along the rear boundary. Deep soil zones are provided around the building to allow for new canopy tree planting as demonstrated in the submitted landscape plan.

To ensure a landscaped buffer between commercial and residential zones is established. (En, S)

Comment: Not applicable to the subject development.

The proposed development has demonstrated that the outcomes of this particular control is achieved and a variation to the control may be supported in this particular circumstance.

D10.12 Landscaped Area - General

DCP Control

The DCP requires the site be provided with 50% landscaping. Council has assessed the proposal as consisting of 575.5sqm or 41.3% soft landscaping.

In accordance with the DCP clause, planter boxes with a minimum depth of 800mm and impervious areas less than 1m in width (pathways and the like) may be permitted on the landscaped portion of the site providing the outcomes of the control are achieved. When including the above variations, the proposal results in a total landscaped area of 611sqm or 44%.

The applicant's landscape calculations include the ground floor terrace open space areas in the variation calculation, bringing the total to 50% including these areas. However, the inclusion of 6% of the site area consisting of paved outdoor recreation areas in the landscape variation is only applicable to single dwelling houses, therefore not applying to this development.

Therefore, Council assesses the proposal as 44% when including the variations for the development.

Merit Consideration

In considering the merits of the control, the proposal is assessed against the outcomes of the control as follows:

Achieve the desired future character of the Locality. (S)

Comment: The character of the R3 Medium Density Residential zone and immediate vicinity is two storey, medium density residential development in a landscape setting with generous setbacks to allow for vegetation. The proposed development is consistent with this, providing a two storey form and landscape gardens surrounding the building.

The bulk and scale of the built form is minimised. (En, S)

Comment: The building is well articulated with stepped facade and a varied roof form. Open balconies are used to break up the facade and bulk of the building. The proposal is generally compliant with the setbacks and compliant with building envelope.

A reasonable level of amenity and solar access is provided and maintained. (En, S)

Comment: The proposal maintains a reasonable level of amenity with planter boxes and privacy screens used for the first floor terraces, along with established vegetation to limit views between sites. The adjoining site to the south will receive a compliant amount of solar access.

Vegetation is retained and enhanced to visually reduce the built form. (En)

Comment: Significant vegetation along the rear boundary is retained and new landscape plantings consisting of medium and tall canopy trees are proposed to soften the building form.

Conservation of natural vegetation and biodiversity. (En)

Comment: The proposal does not result in the removal of any significant canopy trees which would be detrimental to the biodiversity value of the area.

Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels. (En)

Comment: Council's development engineers are satisfied with the stormwater drainage for the site.

To preserve and enhance the rural and bushland character of the area. (En, S)

Comment: The site will provide new locally native landscape planting to enhance the landscape setting of the locality.

Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management. (En, S)

Comment: Council's stormwater engineers are satisfied with the stormwater management for the site and conditions have been recommended.

The proposed development is considered to achieve the desired character of the area, being a building within a landscaped setting with generous deep soil areas around the site. Notwithstanding the numerical non-compliance, the proposal achieves the outcomes of the control and a variation to the control is supported in this particular circumstances.

D10.14 Fences - General

The DCP requires front fencing at a maximum of 1m. The proposed front boundary fence is between

1.3m and 2m above ground level, varying with the site slope.

However, a variation clause exists for front fencing to be up to 1.8m where there is private open space visible from the street. A portion of the open space for Unit 1 is partially within the front setback area, and therefore fencing exceeding 1m may be considered subject to the variation requirements below.

- i. be setback a minimum of one metre for any fence higher than one metre (in the case of corner lots or lots with more than one frontage this setback may be varied based on merits); and
Comment: A setback of 1m is provided in front of the fencing with deep soil landscaping.
- ii. be articulated to provide visual interest and further opportunities for landscaping, and
Comment: The fencing is of high quality materials and landscaping is proposed within the 1m setback zone.
- iii. be screened by landscaping within the setback area; and
Comment: Landscaping is proposed, as detailed on the plans.
- iv. not restrict casual visual surveillance of the street, and
Comment: Casual surveillance is provided from the first floor of the development.
- v. provide a 45 degree splay (or equivalent) either side of any vehicular entrance, minimum dimensions of 2 metres by 2 metres; and
Comment: The fencing stops 2.5m short of the driveway to provide for the pedestrian access on the northern side of the driveway.
- vi. 50% or more of the fence is transparent.
Comment: The fencing proposed is 50% transparent.

Upon review of the eastern and western side of Foamcrest Avenue, there are a variety of fencing between 1m-1.5m with landscaping in front, however generally no front fencing above 1.5m. Therefore, to respect the character of the street, whilst providing some additional privacy, a condition of consent is recommended that the front fence shall not exceed 1.5m in height from the existing ground level. Front fencing of up to 1.5m will offer increased privacy for the residents within the development and is not inconsistent with the style of fencing provided along the street and the landscape treatment will provide an outcome suitable for the locality.

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 2019

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

A monetary contribution of \$43,293 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$4,329,276.

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;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

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

In summary, a detailed assessment has been required for the following specific issues:

- Public submissions;
- Setbacks and landscape open space
- Response and consideration of the Design Sustainability Review Panel
- Privacy and overshadowing.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2020/1695 for Construction of a Residential Flat Building on land at Lot 1 DP 22450, 77 Foamcrest Avenue, NEWPORT, Lot 2 DP 22450, 75 Foamcrest Avenue, NEWPORT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Staff and Contractor Parking

The applicant is to make provision for parking for all construction staff and contractors for the duration of the project. All Staff and Contractors are to use the basement parking once available. All necessary facilities are to be provided to accommodate this requirement including lighting in the basement, security cameras, etc.

Reason: To ensure minimum impact of construction activity on local parking amenity.

2. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA02 - Issue G	11/12/2020	Richard Cole Architecture
DA03 - Issue G	11/12/2020	Richard Cole Architecture
DA04 - Issue H	9/04/2021	Richard Cole Architecture
DA05 - Issue H	9/04/2021	Richard Cole Architecture
DA06 - Issue H	9/04/2021	Richard Cole Architecture
DA07 - Issue H	9/04/2021	Richard Cole Architecture
DA08 - Issue H	9/04/2021	Richard Cole Architecture
DA09 - Issue H	9/04/2021	Richard Cole Architecture
DA10 - Issue H	9/04/2021	Richard Cole Architecture
DA11 - Issue H	9/04/2021	Richard Cole Architecture
DA21 - Issue G	11/12/2020	Richard Cole Architecture
DA22 - Issue G	11/12/2020	Richard Cole Architecture
DA23 - Issue G	11/12/2020	Richard Cole Architecture
DA27 - Issue G	11/12/2020	Richard Cole Architecture
DA30 - Issue G	11/12/2020	Richard Cole Architecture
DA31 - Issue H	9/04/2021	Richard Cole Architecture
DA32 - Issue G	11/12/2020	Richard Cole Architecture
DA33 - Issue G	11/12/2020	Richard Cole Architecture
DA34 - Issue H	9/04/2021	Richard Cole Architecture
DA36 - Issue G	11/12/2020	Richard Cole Architecture
Plan of subdivision Sheet 1 of 4	27/11/2020	Copeland C. Lethbridge
Plan of subdivision Sheet 2 of 4	27/11/2020	Copeland C. Lethbridge
Plan of subdivision Sheet 3 of 4	27/11/2020	Copeland C. Lethbridge
Plan of subdivision Sheet 4 of 4	27/11/2020	Copeland C. Lethbridge

Engineering Plans		
Drawing No.	Dated	Prepared By
SW1 - Issue DA	27/11/2020	Barrenjoey Consulting Engineers
SW2 - Issue DA	27/11/2020	Barrenjoey Consulting Engineers
SW3 - Issue DA	27/11/2020	Barrenjoey Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1157603M_02	9/04/2021	Insight Energy
Geotechnical Report No 2020-202, Issue 0	12/11/2020	Crozier Geotechnical Consultants
Aboricultural Impact Report Ref 20520	15/12/2020	Raintree Consulting
Acoustic Report 200424 Rev A	14/12/2020	JHA Services
Access Report 220271	12/12/2020	ABS Access
BCA Report 200527	11/12/2020	East Coast Approvals Group Pty Ltd
Fire Engineering Letter 2020278-L01-V02	11/12/2020	Fire Safety Studio

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

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
LA-00 to LA-07 (inclusive)	11/12/2020	Karen Ruthvan Landscape Architect

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	15/12/2020	Martin Cook

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

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

3. **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.

4. **General Requirements**

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$43,292.76 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 2019. The monetary contribution is based on a development cost of \$4,329,276.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

6. Security Bond

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

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

7. Construction, Excavation and Associated Works Bond (Drainage works)

The applicant is to lodge a bond of \$10000 as security against any damage or failure to complete the construction of stormwater drainage works as part of this consent. The works include the construction of a stormwater inlet pit within the road and 375mm RCP connection.

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

8. On Slab Landscape Works

Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall also be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following soil depths are required to support landscaping as proposed:

- i) 300mm for groundcovers and grasses
- ii) 600mm for shrubs

Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

9. Traffic Management and Control

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

10. 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.

11. 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 Transport 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 7.30-9.00am and 4.30-6.00pm. Truck movements

must be agreed with Council's Traffic and Development 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 basement parking once available
- 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 traffic
- 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 Seven (7) 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.

12. **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.

13. **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.

14. **Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- The front boundary fencing is to be a maximum height of 1.5m, measured from the existing ground level.

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

15. **Building Code of Australia Report**

The Building Code of Australia fire safety measures as detailed and recommended in the Building Code of Australia Assessment Report prepared by the East Coast Approvals Group dated 11/12/2020, Report Ref No. 200527 and the Fire Engineering Letter prepared by Fire Safety Studio, dated 11/12/2020, report reference 2020278-L01-v02 are to be taken into consideration 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.

16. **On-site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's **WATER MANAGEMENT POLICY**, and generally in accordance with the concept drainage plans prepared by Barrenjoey Consulting Engineers, drawing number SW1DA,SW2DA,SWDA, dated 27/11/2020. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NER) or RPENG (Professionals Australia) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. The OSD storage volume is to be increased by 2 cumecs.
- ii. 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 stormwater management arising from the development.

17. **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 the 375mm stormwater line and inlet pit in **Foamcrest Avenue** 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: 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.

18. **Vehicle Driveway Gradients**

The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

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

Reason: To ensure suitable vehicular access to private property.

19. **Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. 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 facilitate suitable vehicular access to private property.

20. **Waste Storage Area**

- Any doors fitted on the Residential Waste Storage Area, pathway and access must be:
 - a) A minimum width of 1200mm.
 - b) Able to be latched in an open position
 - c) Unobstructed by any locks and security devices
- A tap for washing out the bins/binroom is to be provided nearby. Tap must not be located inside the bin room. Wash water can either be drained to the sewer or into the garden.
- No plant or infrastructure such as utility meters, pumps, air conditioning compressors etc is permitted to be located in the bin room.

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

21. **Pre-commencement Dilapidation Report**

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public property and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

The pre-construction / demolition dilapidation report must be submitted to Council for written approval and the written approval is then to be submitted to the Certifying Authority prior to the issue of the any Construction Certificate and the commencement of any works including demolition.

Reason: Protection of Council's infrastructure during construction.

22. **Compliance with Standards**

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

(Note: At the time of determination the following (but not limited to) Australian Standards applied:

- (a) AS2601.2001 - Demolition of Structures**
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
- (e) AS 4970 - 2009 'Protection of trees on development sites'**
- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking**
- (g) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities**
- (h) AS 2890.3 - 1993 Parking facilities - Bicycle parking facilities**
- (i) AS 2890.5 - 1993 Parking facilities - On-street parking**
- (j) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities**
- (k) AS 1742 Set - 2010 Manual of uniform traffic control devices Set**
- (l) AS 1428.1 – 2009* Design for access and mobility - General requirements for access – New

building work**

(m) AS 1428.2 – 1992*, Design for access and mobility - Enhanced and additional requirements
- Buildings and facilities**

*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website [www.hreoc.gov.au/disability rights /buildings/good.htm](http://www.hreoc.gov.au/disability%20rights%20/buildings/good.htm). <www.hreoc.gov.au/disability%20rights%20/buildings/good.htm>

**Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to.)

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

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

23. **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

24. **Project Arborist**

A Project Arborist, with minimum AQF Level 5 in arboriculture, shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection and ground protection.

The Project Arborist is to supervise all demolition, excavation and construction works near all trees to be retained including construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works unless approved by the Project Arborist.

Existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by the Project Arborist.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment including:

- i) section 2.2 Recommended tree management & protection principles

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifying Authority that all recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded including at commencement, during the works and at completion.

- Note:
- i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.
 - ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

25. **Tree Removal Within the Property**

This consent approves the removal of the following tree(s) within the property (as recommended in the Arboricultural Impact Assessment):

- i) tree 14 - She Oak,
- ii) tree 20 - Coast Banksia,
- iii) tree 21 - Bottlebrush.

Note: Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal.

- i) the following Exempt Species are proposed for removal under the species exemption: 3, 5, 6, 7, 8, 10, 13, 15, 18 and 19.
- ii) the following Exempt Species are proposed for removal under the height exemption: 4, 9, 16 and 22.

Reason: To enable authorised building works.

26. **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.

27. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those

properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Properties: 79-83 Foamcrest Avenue, 403 Barrenjoey Road, 405 Barrenjoey Road and 73 Foamcrest Avenue.

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

28. 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.

29. Noise Assessment

Prior to the issuing of an occupation certificate, a noise assessment must be undertaken by a suitably qualified person, and a report submitted to the Principal Certifying Authority, that any external mechanical plant complies with projected noise trigger levels as noted in the acoustic report numbered 200424 dated 14/12/20 by JHA.

Reason: To preserve the amenity of surrounding properties (DACHPDPC5)

30. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

31. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected including:
 - i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all road reserve trees and vegetation.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
 - viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
 - ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

- c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment.

The Certifying Authority must ensure that:

- d) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites do not occur within the tree protection zone of any tree and any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained on the site during the construction is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking or removal of any tree(s) is prohibited.

Reason: Tree and vegetation protection.

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);

- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

36. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

37. **Footpath Construction**

The applicant shall reconstruct all damaged lifted sections of existing concrete footpath within the Foamcrest Ave frontage. The works shall be in accordance with the following:

- (a) Councils engineering drawings.
- (b) Council is to inspect the formwork prior to pouring of concrete . Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

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

38. **Notification of Inspections (infrastructure works to be handed over to Council)**

Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

- (a) Installation of Silt and Sediment control devices
- (b) Prior to backfilling of pipelines
- (c) Prior to pouring of stormwater gully pits
- (d) Prior to pouring of kerb and gutter

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification.

Reason: To ensure new Council infrastructure is constructed in accordance with Auspec 1 Council's design and specification standards.

39. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business->

industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

40. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 5.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ Normal and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

41. **Requirement to notify about new Acid Sulfate Soils evidence**

Any new information revealed during excavation works that has the potential to alter previous conclusions about Acid Sulfate Soils shall be immediately notified to the Council and the Principal Certifying Authority prior to further commencement.

Reason: protection of the environment

42. **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 15 December 2020.

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

43. **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

44. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plans.

Prior to the issue of any Occupation Certificate details (from a landscape architect or landscape designer) shall be submitted to the Principal Certifying Authority certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

45. **Condition of Retained Vegetation - Project Arborist**

Prior to the issue of any Occupation Certificate a report prepared by the project arborist shall be submitted to the Certifying Authority assessing the health and impact on all existing trees required to be retained including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

46. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with the approved drainage plans, Councils Water Management policy and all relevant Australian Standards and Codes by the design person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

47. **Post-Construction Road Reserve Dilapidation Report (Major Development)**

The applicant must bear the cost of all restoration works to Council's road, footpath and drainage assets damaged during the course of this development.

A Post Construction Dilapidation Report after the completion of all building works is to demonstrate that there is no damage to Council infrastructure prior to the refund of any security deposits.

Reason: To ensure security against possible damage to Council property.

48. **Basement Garage Traffic Signal System**

To prevent conflicting vehicle flows on the internal basement garage ramp and avoid vehicles having to reverse up/ down the ramp, a traffic signal system must be installed at each ramp entry, designed to warn drivers about to enter the road of any conflicting vehicle approaching.

The signal system must;

- o be clearly visible from ramp entrances,
- o is to clearly indicate to an approaching driver, by way of red light or wording, that an opposing vehicle has entered the ramp,
- o Incorporate linemarking to delineate traffic flow and nominate waiting bay locations to allow vehicles to overtake another.

Details of the system, including the system operation, components and placement within the development, must be specified by a practising Traffic Engineer. This engineer is to submit a compliance certificate to the Principal Certifying Authority that the system has been installed and operating as designed, in accordance with the requirements of this condition, prior to the issue of any Occupation Certificate issued for the development.

Reason: To ensure no vehicle conflicts within the basement carpark.

49. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

50. 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.

51. Positive Covenant for the Maintenance of Stormwater Pump-out Facilities

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance of the pump-out facility on the property being developed. Northern Beaches Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the NSW Land Registry Services. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

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

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

Reason: To ensure adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard.

52. 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.

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

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

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website Unit Numbering for Multi-Unit Developments Form

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

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

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

Reason: To ensure consistent numbering for emergency services access.

54. **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.

55. **Lot Consolidation**

Prior to the issue of any occupation certificate, the two sites 75 and 77 Foamcrest Avenue shall be consolidated.

Evidence that the lots have been consolidated through the Lands Registry Services shall be provided to the Principle Certifying Authority prior to the issue of any occupation certificate.

Reason: To ensure the orderly development of land.

56. **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.

57. **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.

58. **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.

59. **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

60. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

For all new residential works with two or more dwellings and mixed use developments, a maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

61. **Landscaping adjoining vehicular access**

The applicant must ensure that the planting chosen for any land immediately adjacent to the driveway and adjacent to any driveway intersections must not exceed a height of 1,140mm

Reason: To maintain unobstructed sight distance for motorists.

62. **Sight lines within carpark**

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.