

Statement of Environmental Effects

Change of use and alteration of an existing commercial building
to a dwelling house and secondary dwelling.

63 Alexander Street, Manly

Project 19-002

13/08/19

Revision B

Prepared by Dickson Rothschild

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Millers Point NSW



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1 Executive Summary

This Statement of Environmental Effects (SEE) has been prepared by Dickson Rothschild (D.R. Design (NSW) Pty Limited) in support of the subject development proposal. The SEE describes the site and locality, its existing condition, outlines the proposed development and assesses the suitability of the proposal having regard to the relevant environmental legislation and guidelines.

The subject site is known as 63 Alexander Street Manly and legally described as Lot 21 DP 508707. The existing building on the site is a part 1 and 2-storey commercial building, last used as an educational centre for up to 70 students and associated staff (see DA 244/2000). This use ceased on 2013. An educational centre is a permissible use in the site's zoning and a similar use of this scale (e.g. a coaching clinic) could be activated on the site with this consent.

The development application (DA) seeks approval for alterations and additions to the existing building and its conversion to a dwelling house and secondary dwelling.

The site is zoned R1 General Residential under Manly Local Environmental Plan 2013 (the LEP) and no additional floor space or building height is proposed. The site is not within a Conservation Area or a Heritage Item. The works are to adaptively reuse the building as a dwelling house and secondary dwelling, both uses are permissible in the zone.

The proposed and existing floor space ratio (FSR) for the proposal is 1.05:1 which is in excess of the current LEP control for the site of 0.6:1. A clause 4.6 request is provided in this SEE for this variation and the planning grounds for this request are that there is no actual floor space proposed, the residential uses proposed are in accordance with the site's zoning and surrounding context and the adaptive reuse of this building is a deintensification of use of the site compared to the approved use. Compliance with the floor space control would involve removing floor space from the site which would be an irrational planning outcome. The clause 4.6 request is to use existing approved floor space for a use more aligned with its zoning and context. The clause 4.6 request has a proper planning justification and merit.

The proposal also involves nominal non-compliances with the Manly Development Control Plan 2013 (the DCP) in respect to landscape area, open space and parking requirements. The open space provided meets minimum standards and the site is well located to open space and recreational facilities. In terms of parking, the approved use has a credit for approximately 10 on-site car spaces. The adaptive reuse of the building for residential purposes is a significant reduction in the traffic and parking need generated by the site. The non-compliances are a consequence of the existing building and not the proposed works.

The proposal has been assessed having regard to the relevant matters for consideration under Section 4.15 of the Environmental Planning & Assessment Act 1979 (the EP&A Act) and has planning merit.

The proposal will provide for a dwelling house and secondary dwelling in a residential area and satisfies the objectives of good urban planning. The proposal is worthy for approval.

2 The Proposal

2.1 The DA

The development application (DA) seeks approval to change the use of the existing building to a dwelling house and secondary dwelling and make internal changes and minor external works to the existing building's façade.

The scope of works is:

- Internal demolition works;
- Expansion of 4 existing windows on the ground floor and 1 new first floor window in the east side elevation; and
- Use the building as a dwelling house and secondary dwelling.

2.2 Form of DA

The DA comprises:

- A complete Northern Beaches Council DA form, owners' consent and fee;
- Architectural plans Nos DA-0-001, DA-0-131, DA-0-132, DA-0-133, DA-0-141, DA-0-142, DA-0-143, DA-0-144, DA-0-181, DA-0-182, DA-0-211, DA-0-212, DA-0-213, DA-0-301, DA-0-302, DA-0-0303 and DA-0-304 prepared by Dickson Rothschild Architects;
- Statement of Environmental Effects prepared by Dickson Rothschild Architects;
- BASIX Certificate prepared by Dickson Rothschild Architects;'
- Survey plan of existing building prepared by Sydney Surveyors dated 24/05/2019; and
- A Waste and Recycling Management Plan prepared by Dickson Rothschild Architects.

3 Application Background

The first record for the current building is for a DA in the 1970s (see DA0135/1974) for warehousing of clothing.¹

Prior to 2000 the building was used for commercial offices, warehouse printing supplies and signwriting as cited in subsequent council DA reporting on the site.

In 2000 the building was converted to an educational centre (see DA 244/2000). A Construction Certificate and an Occupation Certificate were issued. A copy of Notice of Determination for DA 244/2000 is provided at **Appendix 1**.

The education centre was a branch of the Stella Maris College that used the building for computer training. This use operated from 2002 to 2013.

¹ Outcome GIPA request Northern Beaches Council Carol Freshwater Information Access Officer email 12 June 2019.

4 Site and Locality

The subject site is 63 Alexander Street Manly legally known as Lot 21 DP 508707. The existing building on the site is a part 1 and 2-storey commercial building.

The site is on the corner of Balgowlah Road and Alexander Street, is generally rectangular with an approximately length of 36m, width of 11.27m and area of 410.6m².

The site is generally flat. There is an existing vehicular crossing to the site off Balgowlah Road.

A survey of the current building is provided at **Appendix 2** prepared by Sydney Surveyors dated 24/05/2019.



Photo 1 – 63 Alexander Street (Alexander Street frontage), site visit 15 February 2019



Photo 2 – 63 Alexander Street (Balgowlah road frontage), site visit 15 February 2019

Alexander Street is a residential street to the east of the site, comprising attached and semi-detached dwelling houses with a scale of 1 to 2-storeys - see immediate context to east below.



Photo 3 – Alexander Street (59 and 61 semi-detached dwellings to east), site visit 15 February 2019

The semi-detached dwelling house to the immediate east of the site (61 Alexander Street) has recently completed a first-floor additions (see DA 49/2017) and the west elevation (opposing) of this building is provided below.

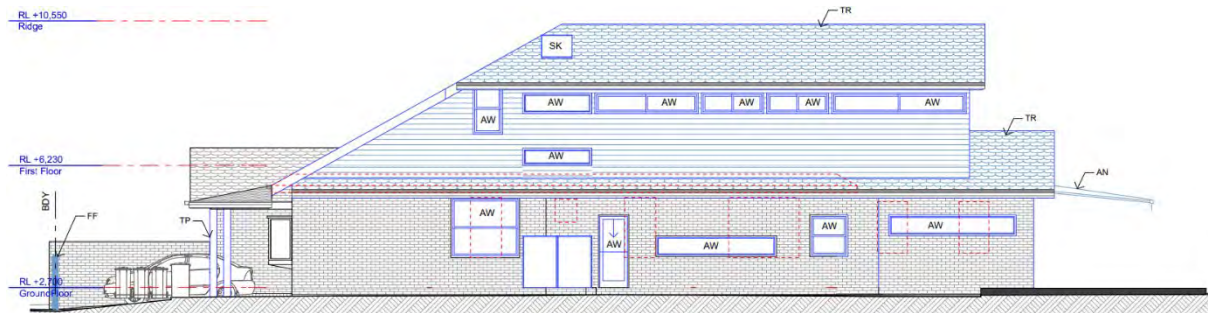


Figure 1 – West Elevation 61 Alexander Street, Northern Beaches online DA tool.

Balgowlah Road is to the east of the site and is a main road providing easy access to North Manly and Brookvale to the north and the A8 motorway to the east.



Photo 4 – Alexander Street opposite site, Nearmaps

Directly behind the site, to the south is the rear yard of the dwelling house fronting Balgowlah Road and Pacific Parade (58 Pacific Parade) – see elevation to Balgowlah road below. Pacific Parade lies to the south of the abutting rear dwelling.

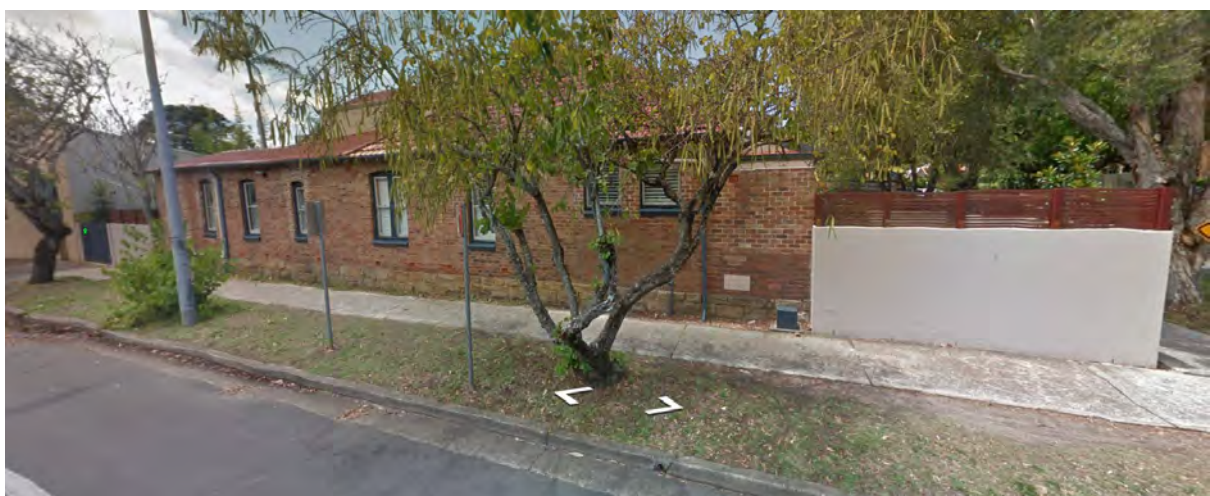


Photo 5 – Balgowlah Road elevation directly behind the site (58 Pacific Street), Nearmaps

To the west, across Balgowlah Road is the Manly Andrew Boy Charlton Swimming Centre on the south corner of Kenneth Road and opposite Manly Golf Club - see site/lot map below.



Figure 2 – Site/Lot Map,

The site is approximately 650m to the west of the coast and Manly Beach, 1.2km to the north west of the Manly bus ferry interchange and surrounding commercial precinct and approximately. The site is 11km south west of the Sydney GPO.

The site is in the Local Government Area (LGA) of the Northern Beaches Council.

5 Regulatory Matters

5.1 Environmental Planning and Assessment Act 1979

The proposed development is made under Part 4 of the Act and is not Designated or Integrated Development.

The development is Local Development and its empowering Environmental Planning Instrument (EPI) is Manly Local Environmental Plan 2013 (the LEP).

The consent authority for the proposal is the Northern Beaches Council.

The proposal is not Integrated or Designated Development.

5.2 Environmental Planning and Assessment Regulations

Further to the above, the application is made in accordance with the provisions of the Regulations and the general provisions at Clause 50 concerning DA submissions.

6 Planning Controls

6.1 Environmental Planning and Assessment Act 1979

The Section 4.15(1) (a) matters of consideration ('the Planning Controls') are dealt with below and merit considerations (Section 4.15 (1) (b) to (e), (2), (3) and 3A) (as required) in Section 7 of this SEE. Together Section Sections 6 and 7 of the SEE comprise the statement of the environmental effect of the proposal.

In this instance the relevant Section 4.15 considerations of the EP&A Act are:

"4.15 Evaluation

(1) Matters for consideration—general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provisions of:*
 - (i) any environmental planning instrument, and*
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) any development control plan, and*
 - (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
 - (v) (Repealed)**that apply to the land to which the development application relates,*
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) the suitability of the site for the development,*
- (d) any submissions made in accordance with this Act or the regulations,*

(e) the public interest.

(2) ***Compliance with non-discretionary development standards—development other than complying development***

If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:

- (a) *is not entitled to take those standards into further consideration in determining the development application, and*
- (b) *must not refuse the application on the ground that the development does not comply with those standards, and*
- (c) *must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards,*

and the discretion of the consent authority under this section and section 4.16 is limited accordingly.

(3) *If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:*

- (a) *subsection (2) does not apply and the discretion of the consent authority under this section and section 4.16 is not limited as referred to in that subsection, and*
- (b) *a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.*

Note.

The application of non-discretionary development standards to complying development is dealt with in section 4.28 (3) and (4).

(3A) Development control plans

If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

- (a) *if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and*
- (b) *if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible*

in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and

- (c) *may consider those provisions only in connection with the assessment of that development application.*

In this subsection, **standards** include performance criteria."

In relation to **Section 4.15(1)(a)(i)** and **(a)(iii)** of the EP&A Act, these matters are addressed in Section 6 of this SEE. Other Section 4.15 matters are dealt with in Section 7.

In relation to **Section 4.15(1)(a)(ii)**, there are no draft environmental planning instruments relevant to the proposed development.

In relation to **Section 4.15(1)(a)(iia)**, no planning agreement is proposed.

In relation to **Section 4.15(1)(a)(iv)**, having regard to Clauses 92 to 94A of the Environmental Planning and Assessment Regulation 2000, there are no additional matters relevant to the determination of this application.

6.1.1 State and Metropolitan Planning Policy

The Greater Sydney Region Plan named 'A Metropolis of Three Cities' adopted in March 2018 sets a 40-year vision to manage growth and change for Greater Sydney in the context of social, economic and environmental matters. The Plan identifies three cities and Manly is part of the Eastern Harbour City.

The proposal furthers the aims of the Greater Sydney Region Plan as it will allow for viable and additional housing on the site in a sustainable location and in a location identified (zoned) for that purpose. Providing additional and diverse housing (the secondary dwelling) on an existing site, in a sustainable location that is currently predominantly residential fits the overarching aim of 'A Metropolis of Three Cities' of development that contributes to a; growing, productive, and liveable city.

6.1.2 State Environmental Planning Policy No. 55 - Remediation of Land

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) provides that a consent authority must not consent to the carrying out of development on land unless it has considered whether the land is contaminated. The consent authority must consider whether the land is contaminated before determining a DA.

The last approved use of the site was as an educational use that has the same sensitivity as residential under SEPP 55. SEPP 55 was a consideration when DA 244/2000 was approved and its provisions state that contamination and remediation must be considered at DA stage under clause 7 for the following land, as follows (our **emphasis** added):

"7 Contamination and remediation to be considered in determining development application

- (1) *A consent authority must not consent to the carrying out of any development on land unless:*
 - (a) *it has considered whether the land is contaminated, and*
 - (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
 - (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*
- (2) *Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.*
- (3) *The applicant for development consent must carry out the investigation required by subclause (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.*
- (4) *The land concerned is:*
 - (a) *land that is within an investigation area,*
 - (b) *land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*
 - (c) *to the extent to which it is proposed to carry out development on it for **residential, educational, recreational or child care purposes, or for the purposes of a hospital—**land:*
 - (i) *in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and*
 - (ii) *on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge)."*

The application is a change of use from an educational use to residential. If the site was deemed suitable for an educational use in 2000 it is suitable for residential.

Prior to use as an educational use, the site was used for commercial purposes for warehousing, office purposes and sign writing.

The proposal does not include any excavation which warrants further contamination investigations. The site was considered suitable for an educational use in 2000 and since then the site has not been used for a purpose that would cause contamination. The site is suitable for residential use.

With a building of this age it is not uncommon to encounter asbestos or lead paints. If hazardous materials are encountered this can be dealt via work statements and appropriate building practices.

This assessment is considered to satisfy Section 7(2) of SEPP 55 and further detailed investigation is not warranted. Accordingly, the site is considered suitable for residential use.

6.1.3 Coastal Management SEPP

State Environmental Planning Policy (Coastal Management) 2018 (The Coastal SEPP) applies to the site.

The site is near the coast and located in the Coastal Environment Area under areas under the Coastal SEPP – see mapping below of zone boundaries below.



Figure 3 – Coastal SEPP map extract, NSW Department of Planning and Environment

Neither the site, nor its immediate locality are not identified as containing any wetlands, sensitive areas or the like. Some portions of Manly lagoon to the north are identified as coastal wetlands.

In this instance, the general provisions of the Coastal SEPP apply to the development, that being clause 13 (Coastal Environment Area).

As discussed, the site is not in a sensitive area (i.e. a coastal wetlands and littoral rainforests area or the coastal vulnerability area). The Coastal SEPP considerations are:

"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.*

(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.*

(3) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.”

The proposal is a change of use of an existing building. The proposed development has no impact on stormwater run-off and will have no adverse impacts as identified by the above considerations.

The proposal is acceptable under the Coastal SEPP.

6.1.4 State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (the Vegetation SEPP) applies to the site and there are no significant trees on the site and no significant vegetation is to be removed.

6.1.5 State Environmental Planning Policy (BASIX) 2004

The proposal is BASIX affected development. A BASIX Certificate for the proposal is provided at Appendix 4.

The proposal will provide for the environmental up-grade of the existing building to contemporary energy and water efficiency standards.

6.1.6 State Environmental Planning Policy (Affordable Rental Housing) 2009

A secondary dwelling is permissible in the R1 zone under the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 (the Affordable Housing SEPP) and the LEP.

The secondary dwelling is sought under the Affordable Housing SEPP.

The relevant provisions under the Affordable Housing SEPP are provided below.

"22 Development may be carried out with consent

(1) Development to which this Division applies may be carried out with consent.

(2) A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.

(3) A consent authority must not consent to development to which this Division applies unless:

(a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and

(b) the total floor area of the secondary dwelling is no more than 60 square metres or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.

(4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds:

(a) site area

if:

(i) the secondary dwelling is located within, or is attached to, the principal dwelling, or

(ii) the site area is at least 450 square metres,

(b) parking if no additional parking is to be provided on the site.

- (5) *A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (4)."*

The proposal complies with the 60m² area requirement and, if the clause 4.6 to the site's floor space non-compliance is accepted. The proposal is acceptable under the SEPP's clause 3(a) floor area control when the submitted clause 4.6 request is supported. The building and its floor space are existing, and the application involves a nominal reduction in site floor space and deintensification of usage of the site compared to the approved educational centre use.

Secondary dwellings are also permissible in the R1 zone under clauses 5.4 (9) and 6.22 of the LEP.

The clause 5.4 (9) provision of the LEP is:

- "(9) Secondary dwellings If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:*

- (a) 60 square metres,*
- (b) 30% of the total floor area of the principal dwelling."*

The proposal would be partly non-compliant with this provision as the secondary dwelling comprised approximately 15% of the total floor area of the principal dwelling. That is why a secondary dwelling is not sought under this provision.

Clause 6.22 allows for a secondary dwelling of up to 75m² with no limitation on the proportion of the floor space of the principal dwelling that the secondary dwelling comprises.

However, Clause 6.22 of the LEP only applies to:

"6.22 (5) In this clause:

development for the purposes of a secondary dwelling includes the following:

- (a) the erection of, or alterations or additions to, a secondary dwelling,*
- (b) alterations or additions to a principal dwelling for the purposes of a secondary dwelling.*

Note. See also Division 2 of Part 2 of State Environmental Planning Policy (Affordable Rental Housing) 2009."

The proposal is alterations of an existing building and its change of use to a secondary dwelling and cannot be neatly defined under the scope of the above clause. That is why a secondary dwelling is not sought under this provision.

A secondary dwelling is permissible in the zone and well suited to the layout of the existing building, in particular the secondary dwelling can be accommodated into the existing front section of the ground floor, allowing separate entries for the secondary and principal dwellings – see floor plan extract overleaf.

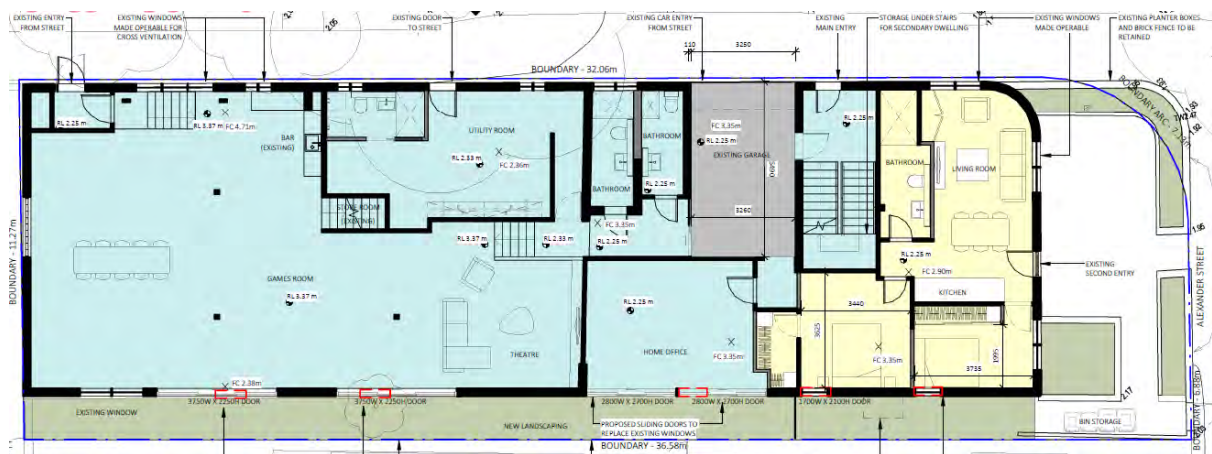


Figure 4 – Proposed ground floor floorplan, Dickson Rothschild Architects

The principal dwelling has a floor area of 391m². Some of these areas are intended to be used for a home office and ancillary storage. The existing building has ample floor space to accommodate a principal and secondary dwelling.

The Affordable Housing SEPP also has parking provisions at clause 22 (4) (b) that state no parking is required for a secondary dwelling. The proposal complies with the requirements of the Affordable Housing SEPP in this regard, and as lodged under the SEPP the proposal cannot be refused on parking grounds.

The proposed secondary dwelling is compliant with the secondary dwelling provisions of the SEPP and furthers its housing objectives.

6.1.7 State Environmental Planning Policy (BASIX) 2004

The proposal is BASIX compliant and BASIX certificate is provided with the DA submission.

6.2 Manly Local Environmental Plan 2013

6.2.1 LEP 2011 Compliance Table

A summary of the proposal's compliance with the relevant LEP controls is provided below.

Table 1 - LEP 2013 Compliance Check			
Control	Standard	Proposed	Compliance
cl. 2.2 Zoning	R1 General Residential	A dwelling house and secondary dwelling are permissible uses in the zone. See discussion	Yes

Table 1 - LEP 2013 Compliance Check			
Control	Standard	Proposed	Compliance
cl. 4.3 Height	8.5m	The existing building has a maximum building height of 8.15m to its roof pitch and no additional building height is proposed.	N/A
cl. 4.4 Floor Space Site area Approx. 410.6 m ²	<ul style="list-style-type: none"> FSR 0.6:1 246.36m² 	<ul style="list-style-type: none"> Total: 429m² FSR 1.05:1 See Clause Request 4.6 below	No
cl 4.6 Exceptions to development standards – Height and Floor Space	To ensure variations are granted on planning and public interest grounds	The existing building is well over the current FSR control and no additional floor space is proposed.	Yes
cl. 5.10 Heritage conservation	The site is not a heritage item or within a conservation area.	The proposed works involves minor alterations to some windows to the east side elevation and has minimal impact on the look of the existing building. See discussion	Yes
cl. 6.1 Acid Sulphate Soils	Subject site Class 3	No excavations proposed.	Yes
cl. 6.2 Earthworks	To ensure that earthworks and associated groundwater dewatering 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,	No excavation is proposed, and existing services are to be used.	Yes
cl. 6.3 Flooding	Minimise flood impacts. The site is identified as flood prone.	No building works outside the existing building footprint are proposed and the site is surrounded by similar residential uses. See discussion	

Table 1 - LEP 2013 Compliance Check			
Control	Standard	Proposed	Compliance
cl. 6.4 Stormwater	To minimise the impacts of urban stormwater.	No additional roof area proposed, and existing stormwater facilities are to be used.	Yes
cl. 6.12 Essential Services		The existing building is well served by services and existing services are to be augmented.	Yes

6.2.2 Zoning and Objectives

The site is zoned R1 General Residential pursuant to the LEP – see zoning map extract below.



Figure 5 – Zoning map, LEP extract.

The objectives and land use tables of the R1 zone are provided below (our *emphasis* added).

"Zone R1 General Residential

1 Objectives of zone

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

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

2 Permitted without consent

Home-based child care; Home occupations

3 Permitted with consent

*Attached dwellings; Bed and breakfast accommodation; Boarding houses; Boat launching ramps; Boat sheds; Centre-based child care facilities; Community facilities; Dual occupancies; **Dwelling houses**; Emergency services facilities; Environmental protection works; Flood mitigation works; Group homes; Health consulting rooms; Home businesses; Home industries; Hostels; Information and education facilities; Jetties; Multi dwelling housing; Neighbourhood shops; Places of public worship; Recreation areas; Recreation facilities (indoor); Residential flat buildings; Respite day care centres; Roads; **Secondary dwellings**; Semi-detached dwellings; Seniors housing; Shop top housing; Signage; Water recreation structures; Water recycling facilities; Water supply systems*

4 Prohibited

Advertising structures; Water treatment facilities; Any other development not specified in item 2 or 3

The LEP defines as dwelling house as:

***“dwelling house”** means a building containing only one dwelling.”*

The LEP defines Secondary dwellings as:

***“secondary dwelling”** means a self-contained dwelling that:*

- (a) is established in conjunction with another dwelling (the principal dwelling), and*
- (b) is on the same lot of land as the principal dwelling, and*
- (c) is located within, or is attached to, or is separate from, the principal dwelling.*

A dwelling house and secondary dwelling are permissible uses in the zone. The adaptive reuse of the existing building for residential purposes satisfies the relevant zone objectives highlighted above.

6.2.3 Flooding

The site is identified in Council's flood map as susceptible to flooding – see figure below.



Figure 6 – Northern Beaches Council flood map, LEP extract.

The current flood study for the locality states a potential 0.1 to 0.3m flood depth applies to the north west corner of the site for the 1% AEP flood.²

The relevant provisions of the LEP in terms of flooding are:

"6.3 Flood planning

- (1) *The objectives of this clause are as follows:*
 - (a) *to minimise the flood risk to life and property associated with the use of land,*
 - (b) *to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,*
 - (c) *to avoid significant adverse impacts on flood behaviour and the environment.*
- (2) *This clause applies to land at or below the flood planning level.*
- (3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:*
 - (a) *is compatible with the flood hazard of the land, and*
 - (b) *is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*

² Manly Lagoon Flood Plain Management Plan (1997) NSW Department of Land and Water Conservation.

- (c) *incorporates appropriate measures to manage risk to life from flood, and*
 - (d) *is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
 - (e) *is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*
- (4) *A word or expression used in this clause has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0) published by the NSW Government in April 2005, unless it is otherwise defined in this clause.*
- (5) *In this clause:*

flood planning level means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard."

The site appears to be on land on the flood plain. However, the proposal provides for no works to the existing building that increase likely run-off to the flood plain or increase flood risk. Indeed, it could be the deintensification of use of the site from a 70 student plus staff educational establishment to a dwelling and secondary dwelling reduces flood risk on the site.

The principal dwelling is also located on the first floor above the flood level and the fit-out works are an opportunity to locate vulnerable new services such as main electric boards above the flood level.

Much of the adjoining locality is similarly and worse affected. These areas are urbanised and there is no planning merit in not allowing a more appropriate use within an existing building on flood affected land.

The proposal is acceptable in terms of the flood planning principles of the LEP at clause 6.3 (3).

Pursuant to the LEP, the site is not a Heritage Item nor is it located within a Heritage Conservation Area – see extract from the LEP heritage map below.



The Alexander Street trees (from Collingwood Street to Balgowlah Road) are a Local Landscape Item (see I77). The proposal provides for no works that affect the street or its landscape and it will have no impact on this adjoining Item.

The proposal is acceptable on heritage grounds.

6.3 Clause 4.6 Request - Floor Space Ratio Control

The FSR Standard and the Variation Sought

Pursuant to Clause 4.4 of the LEP there is a 0.6:1 FSR control for the site.

The existing and proposed floor space of the building is illustrated in the below table.

Table 2 - Floor Space (Existing and Proposed)				
		FSR	Non- Compliance	%
Site Area	410.6m ²			
Proposed/ Existing GFA	429m ²	1.05	183m ²	74%
FSR Control	0.6:1	<i>Notes: see Dickson Rothschild plans and Sydney Surveyor's Survey</i>		
Control GFA	246m ²			

This document is the Applicant's written request under Clause 4.6 (4) of the LEP for this control to be varied in this instance.

The Clause 4.6 Tests

The relevant matters to consider under Clause 4.6 of the LEP are addressed below.

Clause 4.6 3 (a): that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

The objectives of the floor space ratio at Clause 4.4 of the LEP are:

"4.4 Floor space ratio

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

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

The site has a nominal FSR control of 0.6:1– see LEP map extract below.



Figure 8 – FSR Map, the LEP

The proposal provides for 182.64m² or 74% non-compliance with the site's floor space control via conversion of the existing commercial building to a residential dwelling house and secondary dwelling. There is no additional floor space proposed. The proposal is tested against the objectives of the floor space control below.

In terms of objective (a), the proposal has no impact on the bulk or scale of the existing building.

In terms of objective (b), the proposal provides for a deintensification of use of the building from its current approved use as an educational centre for 70 students and associated staff (see DA 244/2000) to a single dwelling house and secondary dwelling. The proposed use is more in line with the density and land use expectations of the zoning than the current approved use.

In terms of objective (c), the proposal provides for no significant change in the character of the building and its surrounds. A dwelling house and secondary dwelling use are more in keeping with the adjoining character of this locality than an educational centre.

In terms of objective (d), again the proposal provides for no change to the bulk and scale of the existing building.

Objective (e) is not relevant.

The proposal is consistent with the objectives of the floor space control and the variation sought has a proper planning justification, that is:

- no actual GFA is proposed; and
- a more appropriate land use is facilitated by the request.

Clause 4.6 (4) (a) (ii): the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,

The proposed development is in the public interest as it successfully implements the objectives of its zoning, the floor space control and provides for a deintensification of use of a site located in a residential area. The secondary dwelling provides for more housing choice in the locality.

If this application was refused based on floor space compliance, the applicant would be forced to seek a tenant under the current educational centre approval. That use would have greater impacts in terms of potential overflow parking, noise and general congestion.

The proposal provides for a low intensity use of an existing commercial building that is isolated in a residential area.

The proposal is in the public interest.

Clause 4.6 (4) (b): the concurrence of the Director-General has been obtained.

It is assumed the concurrence of the Director-General is delegated to the relevant consent authority in this instance City of Sydney Council. Nevertheless, the relevant matters to be considered by the Director are briefly considered below.

Clause 4.6 (5): In deciding whether to grant concurrence, the Director-General must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

There is no public benefit in maintaining this standard. In this instance maintaining the standard would deny a more appropriate use on the site (residential) compared to the existing educational centre use.

There are no other matters relevant to the Director's concurrence in this instance.

The 'Five Part Test'

In addition to the above requirements, Councils may elect to not only use the principles of Clause 4.6 but also the 'five-part test' established by the Land and Environment Court.

Court cases dealing with applications to vary development standards resulted in the Land and Environment Court setting out a five-part test for consent authorities to consider when assessing an application to vary a standard to determine whether the objection to the development standards is well founded. The 'five-part test' is outlined as follows:

- "1. the objectives of the standard are achieved notwithstanding noncompliance with the standard;*
- 2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 3. the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

4. *the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone."*

In relation to point (1):

The proposal meets the relevant objectives of the floor space ratio development standard, as detailed previously.

In relation to point (2):

We would argue that this part of the test contradicts the first point in the test. We have outlined that the objectives of the standard are still met despite the non-compliance with the standard. It would be unusual to find a situation where the underlying objective is not relevant to a development.

In relation to point (3):

If strict compliance was required with the floor space ratio, then the site would have to be maintained for its commercial use as the significant reduction in site GFA required to meet the standard would not constitute a viable option.

In relation to point (4):

We do not have access to Council's records to know how Clause 4.6 has been determined since it was introduced. However previous uses have been allowed on the site which represent a more intense use of the land compared to what is proposed.

In relation to point (5):

The Applicant does not rely on this point.

Four2Five Pty Ltd v Ashfield Council decision

This clause 4.6 request is prepared cognisant and in accordance with recent Court decisions on the proper consideration of such requests as outlined in the Four2Five Pty Ltd v Ashfield Council decision and its recent judicial review (see [2015] NSWLEC 90). In this case the Court considered that the justification under clause 4.6(3) (b) requires '*particular reference to the circumstances of the proposed development*'. In practice, this means a request needs a site-specific justification.

In this instance, the site-specific justification for this breach of the floor space standard is the form and character of the existing building. No new floor space is sought, and this variation does not undermine the control or set a precedent as the circumstances of this variation are unique to the existing building.

Conclusion

The objectives of Clause 4.6 of the LEP are:

- “(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.”*

The proposal is consistent with the objectives of Clause 4.6, the height control, its zoning and the specific policy requirements for this site.

There is an absence of environmental harm associated with the non-compliance with the development standard.

Having regard to the above, it can be concluded that compliance with the floor space ratio standard is unreasonable and unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify the non-compliance and that the proposal is in the public interest because it is consistent with the objectives both of the FSR standard and those of the R1 zone. Therefore, the non-compliance is inherently reasonable.

6.4 Manly DCP 2013

A summary of the proposal's compliance with the relevant DCP controls is provided below.

Table 3 - DCP 2006 Compliance		
Control	Proposed	Compliance
Part 3 – General Principles		
3.1 Streetscape Avoid negative impacts, maintain character and new parking to provision appropriate to townscape.	Minor alteration to the existing building	Yes
3.2 Heritage Conservation Maintain environmental heritage, ensure development within vicinity of heritage items is appropriate, ensuring visual compatibility	Site is not within a Conservation Area or in the vicinity of listed Items, other than the Alexander Street Landscape Item, that the proposal has no impact on.	Yes
3.3 Landscape Encourage tree planting and to retain landscape features.	The proposed development does not impact upon existing landscape features.	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise) Contents of this section 3.4.1 Sunlight Access and Overshadowing	Existing building maintains the status quo in terms of shadow and new windows are generally restricted to the ground floor.	Yes

Table 3 - DCP 2006 Compliance		
Control	Proposed	Compliance
3.4.2 Privacy and Security 3.4.3 Maintenance of Views 3.4.4 Other Nuisance (Odour, Fumes etc.)		
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	BASIX certificate provided.	Yes
3.7 Stormwater Management See Council's 'Stormwater Control Policy'	Existing stormwater infrastructure maintained, and no additional roof area or hard surfaces proposed.	Yes
3.8 Waste Management	Provided.	Yes
3.9 Mechanical Plant Equipment	No new plant.	Yes
3.10 Safety and Security Following the principle of 'Safety by design'	The proposal utilises an existing crossing. Separate pedestrian access provided. Vehicle entry is separated from the carriageway by concrete paths and grassed landscape area giving excellent vision splay.	Yes
Part 4 - see 4.1 provides Residential Development Controls.		
4.1.1 Dwelling Density, Dwelling Size and Subdivision The site is in Density Area D3 and a minimum 250 m ² of site area required per dwelling and 3 bedroom dwellings to have minimum 90m ² .	1 dwelling house is proposed with 1 secondary dwelling. The proposal achieves a GFA of 429m ² which satisfies this condition.	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No change in building height proposed.	Yes
4.1.3 Floor Space Ratio (FSR)	No addition floor space proposed – see clause 4.6 request discussion.	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	The setbacks of the existing building are maintained, and no building is proposed that warrants consideration of building setbacks is proposed.	Yes

however, the proposal is deficient in terms of Total Open Space as a percentage of site area at clause 4.1.5.1(a).

The objectives of the clause 4.1.5 Open Space and Landscaping provisions in the DCP are:

Relevant DCP objectives to be met in relation to these paragraphs include the following:

“Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.”

In relation to Objective 1), the existing landscaping is to be retained.

In relation to Objective 2), the proposed development does not impact upon the landscape corridor along Alexander Street and does not change soft landscaped areas and open space, therefore achieving this objective.

In relation to Objective 3), this objective does not apply as the proposed development is within the existing building envelope and therefore there is no change to sunlight, privacy or views of the site, the streetscape and the surrounding area.

In relation to Objective 4), there is no change to water infiltration on the site.

In relation to Objective 5), this objective does not apply as no changes to either public or private open space is proposed.

In relation to Objective 6), this objective does not apply as the proposal has no impact on the existing landscape corridor along Alexander Street.

6.4.2 Car parking

The site is approved as an educational centre and currently has one on-site parking space. This use would require parking, as per the DCP requirements that references the RMS rates for an educational

establishment which would be considered as a 'commercial premises' at a rate of 1 space per 40m².³ This rate would provide for a parking requirement of at least 10 car spaces for the site.

Regardless of this rate the approved use, which is still a permissible use in the zone, provides for up to 70 students on the site at any time and no limit on teaching or support staff.

The site has a parking credit for 9 car spaces under current RMS guidelines and likely more if a comprehensive merit assessment was made of the traffic generating abilities of the site.

Under the DCP controls a dwelling house and a secondary dwelling require 2 spaces each and the DCP allows for a maximum of 4 spaces.

Under the Affordable Housing SEPP, no parking is required for a secondary dwelling. The proposal provides for a shortfall of 1 space to the dwelling house only.

The provision of 1 space for the principal and secondary dwelling represents a substantial improvement in parking provision on the site and deintensification of the parking and traffic generation.

³ Parking shall be provided in accordance with the Roads and Maritime Services (RMS) Design Reference Documents, that being RTA (2002) Guide to Traffic Generating Development, see table 5.3.

7 ASSESSMENT OF ENVIRONMENTAL EFFECTS

7.1 Statutory Planning Considerations

In determining the DA, the consent authority is required to consider the matters listed in Section 4.15 of the EP&A Act. Section 4.15 (1)(a) of the EP&A Act matters are addressed in Section 6 (the Planning Controls) of this SEE. There are considered no further remaining environmental impacts to be addressed.

7.2 Section 4.15(1)(b) – the likely impacts of that Development

The adaptive reuse of the site for residential in general provides for a deintensification of site usage in respect to matters such as traffic and noise.

The new windows to the east elevation will allow for some additional overlooking impacts to the adjoining site however, these windows will be treated with blinds/curtains and are existing (other than the new first floor window to bedroom 3). Some overlooking between residential dwellings is a reasonable and expected impact in small lot residential areas such as this locality.

A deck area is provided to the east side. This deck space is primarily to be used as a drying area and is not suitable for entertaining. A 1.8m privacy screen is provided to this deck area. There will be no overlooking of the adjoining rear yard and overlooking from the new side windows is also addressed by this privacy screen.

On balance the likely impacts of the development are reduced, compared to the approved educational centre, or reasonable and expected impacts that occur in residential areas.

7.3 Section 4.15(1)(c) – The Suitability of the Site

Section 4.15(1)(c) requires the consent authority to consider:

“(c) the suitability of the site for the development”

The site is zoned R1 and in a residential area and suitable for use as a dwelling house with a secondary dwelling.

7.4 Section 4.15(1)(d) – Submissions

Section 4.15(1)(d) requires the consent authority to consider:

“(d) any submissions made in accordance with this Act or the regulations”

Any relevant submissions will need to be considered by Council in the assessment and determination of the DA.

7.5 Section 4.15(1)(e) – Public Interest

Section 4.15(1)(e) requires the consent authority to consider:

“(e) the public interest.”

The public interest is best served by the orderly and economic use of land for permissible purposes in a form which is cognisant of and does not impact on unreasonably on development on surrounding land. The proposal is consistent with this approach and provides for the addition of residential dwellings in a residential area. The proposal is in the public interest.

7.6 Section 4.15(3A) – Development Control Plans

Section 4.15(3A) requires the consent authority to consider:

“(3A) Development control plans If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

- (a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and*
- (b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and*
- (c) may consider those provisions only in connection with the assessment of that development application.*

In this subsection, standards include performance criteria.”

This consideration requires that ‘flexibility’ be applied to the application and reasonable weight be given to alternatives approaches to compliance.

The open space provided meets minimum standards and the site is well located to public open space and recreational facilities. In terms of car parking, a space to service the site is provided. The proposal provides for a significant reduction in the traffic and parking generation of the site compared to the approved use of the site as an educational centre.

The non-compliances with the open space and car parking DCP provisions are a consequence of the existing building which in this context is better used for a residential use as opposed to its approved commercial purpose. Site attributes reasonably justify a more flexible approach to the application of DCP open space and parking provisions because they allow a better planning outcome on the site. The flexible application of DCP provisions as required under Section 4.15 (3A) (b) of the Act is warranted in this instance.

8 CONCLUSION

The proposal is for the adaptive reuse of an isolated commercial building surrounded by residences on R1 zoned land. A residential use has planning merit and the proposed change of use better aligns the site's use with its context and the objectives of its zone. The proposal is permissible and meets the objectives of its zone.

The non-compliances with the LEP FSR control, and DCP open space and care parking provisions are all consequences of the existing building. It would be irrational to demolish part of this building merely to comply with a numerical control. The adaptive reuse of this existing commercial building for residential use has environmental merit.

Having regard to the above and considering the relevant heads of consideration listed under Section 4.15 of the Environmental Planning and Assessment Act, 1979, the proposal is considered to be reasonable, appropriate and worthy of support by Northern Beaches Council.