



northern  
beaches  
council

# AGENDA

## NORTHERN BEACHES LOCAL PLANNING PANEL

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

**WEDNESDAY 19 OCTOBER 2022**

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

**Peter Robinson**  
**Executive Manager Development Assessment**

**Quorum**

A quorum is three Panel members

**Conflict of Interest**

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



## Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 19 October 2022

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Northern Beaches Local Planning Panel held 5 October 2022	
<b>3.0</b>	<b>CATEGORY 3 APPLICATIONS</b>	
<b>4.0</b>	<b>PUBLIC MEETING ITEMS.....</b>	<b>5</b>
4.1	DA2022/0682 - 291 - 293 Condamine Street, Manly Vale - Demolition works and construction of shop top housing.....	5
<b>5.0</b>	<b>NON PUBLIC MEETING ITEMS.....</b>	<b>135</b>
	A statutory Direction by the Minister of Planning and Public Spaces states the panel is only required to hold a public meeting where the development application has attracted 10 or more unique submissions by way of objection. There applications do not satisfy that criterion.	
5.1	DA2022/1070 - 10 Romford Road, Frenchs Forest - Alterations and additions to a dwelling house including a carport. ....	135

## **ACKNOWLEDGEMENT OF COUNTRY**

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

### **1.0 APOLOGIES & DECLARATIONS OF INTEREST**

Nil

### **2.0 MINUTES OF PREVIOUS MEETING**

#### **2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 5 OCTOBER 2022**

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#### **RECOMMENDATION**

That the Panel note that the minutes of the Northern Beaches Local Planning Panel held 5 October 2022 were adopted by the Chairperson and have been posted on Council's website.

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## 4.0 PUBLIC MEETING ITEMS

ITEM 4.1	DA2022/0682 - 291 - 293 CONDAMINE STREET, MANLY VALE - DEMOLITION WORKS AND CONSTRUCTION OF SHOP TOP HOUSING.
AUTHORISING MANAGER	Rod Piggott
TRIM FILE REF	2022/633887
ATTACHMENTS	<ol style="list-style-type: none"><li>1 <a href="#">Assessment Report</a></li><li>2 <a href="#">Site Plans &amp; Elevations</a></li><li>3 <a href="#">Clause 4.6</a></li><li>4 <a href="#">Design &amp; Sustainability Advisory Panel Report</a></li></ol>

### PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

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### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/0682 for Demolition works and construction of shop top housing on land at Lot 2 DP 11320, 293 Condamine Street, MANLY VALE, Lot 1 DP 11320, 291 Condamine Street, MANLY VALE subject to the conditions set out in the Assessment Report.



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2022/0682
<b>Responsible Officer:</b>	Alex Keller
<b>Land to be developed (Address):</b>	Lot 2 DP 11320, 293 Condamine Street MANLY VALE NSW 2093 Lot 1 DP 11320, 291 Condamine Street MANLY VALE NSW 2093
<b>Proposed Development:</b>	Demolition works and construction of shop top housing
<b>Zoning:</b>	Warringah LEP2011 - Land zoned B2 Local Centre
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	William Street Securities Pty Ltd
<b>Applicant:</b>	Eastview (Australia) Pty Ltd
<b>Application Lodged:</b>	05/05/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Mixed
<b>Notified:</b>	16/05/2022 to 30/05/2022
<b>Advertised:</b>	16/05/2022
<b>Submissions Received:</b>	5
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 30%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 5,149,771.00

### EXECUTIVE SUMMARY

This development application seeks consent for demolition of an existing mixed-use building to construct a new part 4 storey shop top housing development.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to the proposed variation, that exceeds 10%, to the height of buildings development standard.

Concerns raised in the objections predominantly relate to overshadowing, vehicle access along Somerville Place, views and privacy.



Critical assessment issues included matters raised in public submissions, height and storey non-compliance, vehicle laneway access, waste bin services, setbacks and the design response pursuant to the NSW *Apartment Design Guide*, *Warringah Development Control Plan* (DCP) built form controls and Warringah LEP 2013.

The 4.6 request for the non-compliance with height standard arises from the site already being partially excavated underneath the existing building creating a 30% variation for the lift overrun, giving a maximum height of 14.8m. Based on extrapolated natural ground levels the height would only be measured at a maximum of 12.6m or 14.5% variation at the highest point of the upper storey.

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

## PROPOSED DEVELOPMENT IN DETAIL

The development proposes demolition of the existing building and construction of shop-top housing with 9 individual dwelling units, 11 car spaces (accessible via car stackers) and a retail space on the ground level.

The proposed development will generally include the following works:

- Demolition of the existing commercial building;
  - **RL 17.01** New ground-floor retail facing Condamine Street (79 sqm), access and lobby for residential dwellings, and bin storage area;
  - **RL 21.96** Car access from Somerville Place for 11 cars (permitted through stackers), including 1 accessible parking space; and
- Shop to Housing for 9 residential units comprising:
- **RL 21.542 Level 1** of the development proposes 2 x 1-bedroom units facing Condamine Street. Vehicle access for the development will be off Somerville Place, which is street level for the laneway, but is at level 1 for the Condamine Street end.
  - **RL 21.742 Level 2** proposes 1 x 1-bedroom unit and 1 x 2-bedroom units from Somerville Place, and the same mix for the two units facing Condamine Street. The glass line of the two units facing Condamine Street are set-back a further 4m from the Condamine Street boundary.
  - **RL 27.942 Level 3** of the development proposes 2 x 1-bedroom units facing Somerville Place and a 3-bedroom unit facing Condamine Street, which is set back 8.095m from the Condamine Street boundary. Level 3 is also slightly in-set from the southern boundary, with a more recessive material.
  - **RL31.342** Roof level (includes lift overrun, motorised plant and skylight) to top of roof equipment screen RL32.542

Ancillary works:

Site preparation, excavation, drainage, driveway access, footpath works, minor building landscaping.

## ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act



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

## **SUMMARY OF ASSESSMENT ISSUES**

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
 Assessment - Concurrence – NSW Roads and Maritime Services - SEPP Infrastructure (cl 101 Development with frontage to classified road)  
 Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
 Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land  
 Warringah Development Control Plan - B2 Number of Storeys  
 Warringah Development Control Plan - B6 Merit Assessment of Side Boundary Setbacks  
 Warringah Development Control Plan - B7 Front Boundary Setbacks  
 Warringah Development Control Plan - C3 Parking Facilities  
 Warringah Development Control Plan - D2 Private Open Space  
 Warringah Development Control Plan - D6 Access to Sunlight  
 Warringah Development Control Plan - D7 Views  
 Warringah Development Control Plan - D8 Privacy  
 Warringah Development Control Plan - F1 Local and Neighbourhood Centres

## **SITE DESCRIPTION**

<b>Property Description:</b>	<p>Lot 2 DP 11320 , 293 Condamine Street MANLY VALE NSW 2093</p> <p>Lot 1 DP 11320 , 291 Condamine Street MANLY VALE NSW 2093</p>
<b>Detailed Site Description:</b>	<p>The subject site is located in Manly Vale in the 'B2 Local Centre' zone precinct on the western side of Condamine Street, Manly Vale midway between Kenneth Road and Sunshine Steet. The site is approximately 2 kilometres west of Manly Beach/Queenscliff Beach, and 1km north of the Balgowlah town centre.</p> <p>The site has a combined site area of 408 square metres (sqm) and is currently comprised of two individual lots. The site has three street frontages-Condamine Street (front), Somerville Place (rear) and a local pedestrian lane (side). The existing building on site comprises a part 1 to part 3 storey shop-top housing building, which reflects the steep fall of the land from Somerville Place (1 storey) to Condamine Street (3 storeys).</p>

Adjoining the northern (side boundary) is a mixed use building (No.295-297 Condamine Street) approved under DA2001//576 for a 3 storey mixed use development with 16 residential units, ground level commercial and 37 basement carparking spaces. (The building upper roof at the rear is RL30.6 to RL31.2)

Along the southern boundary is a public laneway the adjacent building to the south is a mixed use building (No.289 Condamine Street) approved under DA2002/1615 for a 3 storey mixed use development containing 1 commercial premises and 13 residential apartments. (The building upper roof parapet at the rear is RL30.4 to RL30.95 stepping down to a middle parapet element at RL29.11)

Map:



## SITE HISTORY

**Pre-lodgement Meeting No.PLM2021/0163** was held with Council on 20 July 2021. The concluding advise from Council staff was:

*"The proposal, as presented at the meeting, is not supported. A redesign is required to address the fundamental issues identified and discussed in these Notes. The rear of the site (Somerville Place) is subject to road widening by 1.0m to facilitate traffic flow along the laneway. This has been applied consistently to all mixed-use development along the eastern side of the laneway and the proposed development is to incorporate the same rear setback (at all levels). The 1.0m wide strip is to also be dedicated to Council.*

*Early consultation is to occur with the RMS to establish drainage and the conflict of the proposed driveway with the current location of an RMS stormwater inlet pit. Drainage into an RMS drainage asset will likely trigger Integrated Development."*





The proposal was subsequently amended for a further PLM held as part of preparing the DA.

**Pre-lodgement Meeting No.PLM2021/0218** was held with Council on 7 October 2021. The concluding advice from Council staff is summarized the following recommended changes:

- *A singular vehicular entrance point from Somerville Place only;*
- *Increased retail presence on Condamine Street;*
- *Reduction in the amount of parking spaces and reliance on car stacker units;*
- *Relocation of waste storage room to Condamine Street frontage;*
- *Reconfiguration of residential units to meet ADG standards for solar access and ventilation; and*
- *Significant modification and reduction of the upper 4<sup>th</sup> storey (as opposed to full deletion as recommended by DSAP) to provide greater front, rear and potentially side setbacks."*

The pre-DA was also reviewed by Council's **Design and Sustainability Advisory Panel** on 23 September 2021. Prior to lodging the DA the plans were amended to incorporate DSAP advice with the changes made and explanatory reasons why provided by the applicant, if each one of the DSAP recommendations was not made in entirety.

The DA (as lodged) was reviewed by Council's **Design and Sustainability Advisory Panel** again on 29 September 2022. The Panel's comments are provided under the heading "Internal Referrals - DSAP" within this report.

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

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

Section 4.55 'Matters for Consideration'	Comments
Section 4.55 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.55 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.55 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.55 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.55 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;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&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the</p>



Section 4.55 'Matters for Consideration'	Comments
	<p>development application. This clause is relevant to this application as the development is subject to the provisions of SEPP 65. The applicant has submitted a design verification.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. Additional information was required with respect to the bin room design / OSD and minor amendment was required to address this issue. The changes sought to be design requirements and are of a routine nature for engineering considerations. No amenity issues are raised pursuant to the amended plans and changes that could otherwise be achieved by conditions. Therefore the amended plans do not require renotification pursuant to the Community Participation Plan. (See Revision C Ground Floor Plan, dated 27.7.2022)</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: <i>The Demolition of Structures</i>. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;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> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the <i>Building Code of Australia (BCA)</i>. This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate (DVC) from the building designer prior to the issue of a Construction Certificate. This clause is relevant to this application as SEPP 65 applies and a condition included to ensure compliance.</p>
<p>Section 4.55 (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>	<p><u>Environmental Impact</u></p> <p>The environmental impacts of the development on the natural and built environment are addressed under the Warringah Development Control Plan section of this report.</p> <p>Generally, the subject site is not constrained by any natural features and is not subject to any threatened species, critical habitat, bushfire, heritage or shallow acid sulfate soils. The site is able to drain stormwater to Condamine Street and the applicant has adequately addressed the issue of OSD requirements. The proposal is supported by Council's Development Engineers subject to appropriate conditions of consent contained within the Recommendation of this report.</p>

Section 4.55 'Matters for Consideration'	Comments
	<p>The proposal is for the construction of a 4 storey shop top housing (containing 9 dwellings) located within an area zoned business B2 Local Centre, which permits the proposed form of residential accommodation. The area is fully developed with a variety of mixed use buildings and commercial buildings as well as the existence of long term business development located within close proximity to the subject site.</p> <p>The proposal is not considered to result in unreasonable impacts to the adjoining and nearby land, subject to conditions. The development will maintain consistency with the existing pattern of development, maintain the residential use of the site and maintain the reasonable sharing of views. Further, it will not create an unreasonable sense of building bulk that is inconsistent with comparable medium density development that is characteristic of the street (within the Local Neighbourhood Centre). The building will not result in an unreasonable level of overshadowing nor result in any unreasonable level of privacy loss given the widow / balcony design, setbacks and screening provided. The impacts of privacy and overshadowing are consistent with the pattern of surrounding commercial and residential development in Manly Vale.</p> <p>The subject site is located within close proximity to Manly Vale <i>B2 Local Centre</i> and suitable access to associated bus interchange's and bus stops along Condamine Street having public transport services to the broader Northern Beaches area, Manly and Sydney Central Business District (CBD).</p> <p>The development of this site for residential purposes is not considered likely to impact on existing or future opportunities within the zone for public recreation or the use of public open space.</p> <p>Therefore, impacts upon the public domain are considered acceptable. Further, standard conditions of consent are also recommended to ensure the adequate disposal / recycling of building and construction waste material.</p> <p><u>Social Impact</u> The development is considered satisfactory in terms of potential social impact in the locality considering the residential character of the proposal and that the development will provide greater diversity to the housing stock of the Northern Beaches LGA.</p> <p><u>Economic Impact</u> The proposed development will not have a detrimental economic impact on the locality considering the residential nature of the proposed land use.</p>
Section 4.55 (1) (c) – the suitability of the site for the development	The land use zone of the area as B2 Local Centre is reflective of the desired future character of the area. The site is principally constrained by the narrow consolidated lot width and 3 road reserve frontages which therefore has impacted the design response in addressing building bulk,



Section 4.55 'Matters for Consideration'	Comments
	<p>views / outlook, overshadowing, excavation, privacy, private open space, height, parking, access and setback alignments. Maintaining access along Somerville Place is consistent with other engineering requirements applied by Council for similar re-developments that have occurred near the site.</p> <p>In this regard, the development has been designed to a scale that is considered to be of a satisfactory transition to the adjoining shop top housing and commercial buildings.</p> <p>Given the frontage to Condamine Street the land is considered suitable for access to services and public transport. In addition, the existing site has access to adequate utility services (water, sewer telecommunication's and electricity etc.)</p> <p>Further, the development maintains a suitable and compatible land use for the site and is not considered to result in unreasonable or adverse impacts on the adjoining properties, subject to appropriate conditions.</p>
Section 4.55(1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report. Issues raised in the submissions received have been considered in this report and addressed by amended plans or appropriate conditions where relevant to ensure no unreasonable impact on the local amenity.
Section 4.55 (1) (e) – the public interest	Subject to conditions, 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 16/05/2022 to 30/05/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Ms Amber Estelle Greenhalgh	10 / 299 Condamine Street MANLY VALE NSW 2093
Mr Timothy John Fletcher	8 / 289 Condamine Street MANLY VALE NSW 2093
Mr Geoffrey Alan McMaster	17 Highview Avenue MANLY VALE NSW 2093
Miss Lisa Anne Sullivan	15 Highview Avenue MANLY VALE NSW 2093



Name:	Address:
Sandra Bonello	Address Unknown

The following issues were raised in the submissions:

1. LEP / DCP height compliance
2. Privacy
3. View Impact
4. Dilapidation risks
5. Solar Access
6. Traffic Safety
7. Property Devaluation
8. Construction Impacts
9. Parking impacts (during construction)
10. Insufficient carparking

The matters raised are addressed as follows:

**1. Concern that the proposal does not satisfy the statutory Local Environmental Plan 2011 controls or the Warringah DCP 2011 controls due to the non-compliance with the height, and storeys of the building.**

Comment:

The proposed building is over the 11.0m building height control and exceeds the 3 storey height limit also, being 4 storeys. The applicant has provided a "Clause 4.6" request to vary the building height development standard and this has been considered on merit within this report under the heading "Exceptions to Development Standards". In summary, the cause to vary the building height control is considered to be adequately founded and does not offend the objectives of the WLEP or the development standard, in the circumstances of the case. Therefore, the variation to the building height does not create any unreasonable impact on adjacent land in terms of views, overshadowing, building bulk or environmental amenity.

The detailed merit assessment of non-compliance with the built form controls under the WDCP is considered in detail under the heading "Built Form Controls" within this report. The development proposes a three-storey built form at the Somerville Place site frontage. The fourth storey is a consequence of the fall of the land from Somerville Place to Condamine Street requiring a 'stepped' built form but is not readily visible from Condamine Street. This issue is addressed in detail under the heading "Part B2 Number of Storeys" and "Clause 4.6" within this report.

In addition, the proposal has been considered with respect SEPP 65 and environmental impact on adjacent land. Overall the proposal has been designed to facilitate re-development of the land, in context with the adjacent flat buildings without creating unreasonable amenity impacts and has responded to pre-DA design reviews by Council's DSAP. Therefore, this issue does not warrant refusal of the application.

**2. Concern that the building will impact privacy on adjacent properties, including residences toward the south and west.**

Comment:

With regard to general privacy from each level the ground floor is mostly below existing / natural ground



due to excavation for the building back into the slope of the land. This creates no unreasonable privacy impact across the side boundaries at ground floor level. Central windows along the southern elevation are designed to serve lower use areas of the dwelling such as bedrooms (not kitchen/dining/living areas). Whilst the development does create some additional privacy impacts to the development to the south and west, the central portion of the development that exceeds the height control does not contribute to these impacts. The development has been designed to mitigate privacy impacts to the southern neighbour by applying privacy screens to the south-facing windows, which are all bedroom windows to further reduce impacts. The front and rear balconies are also fitted with side screen walls and selected windows along the side elevation are shown. On the western elevation a central courtyard is provided to assist solar access and operable privacy screens are provided for the west facing windows of the courtyard to restrict overlooking for the floor levels above the ground floor.

The principal living areas (accessible to private open spaces) are oriented toward Condamine street or western setback to avoid direct close viewing of adjacent apartments, due to the pattern of surrounding shop to housing.

Therefore, this issue has been addressed by the building design response and landscaping screening to be provided. The proposed development will not create unreasonable impacts on adjacent land for the zone. This issue has been considered in the context of planning principle established in *Meriton v Sydney City Council [2004] NSWLEC 313* and does not warrant refusal of the application.

**3. Concern that the new building will result in a loss of views and outlook from adjacent land to the west.**

Comment:

This issue is addressed in detail under the heading *Part D7 Views* within this report. In summary, view sharing considerations have been made in accordance with the the Planning Principle established by the NSW Land and Environment Court in *Tenacity Consulting v Warringah Council (2004) NSWLEC 140*. View impacts vary from minor to severe depending on the level of the adjacent apartment and view angle. The most affected views are generally across Somerville Place with views from Highview Avenue, therefore more difficult to retain. This is discussed in detail under the view sharing assessment within this report.

In summary, this issue has been considered in the design that maintains the development potential of the site and provides reasonable view sharing toward the Manly area /easterly direction.

**4. Concern that the proposed development and associated excavation / site works will impact on the structural integrity of adjacent property assets with dilapidation risk.**

Comment:

The proposal includes some deep excavation on the site to ensure carparking is provided appropriate geotechnical investigations to confirm appropriate sub-surface conditions so that construction can be undertaken in a manner that protects existing development. The developer will be required to comply with all relevant building standards including the *National Construction Code / Building Code of Australia* and statutory compliance requirements.

The applicant has provided a detailed Civil engineering Report prepared by *Costin Roe Consulting* and a Geotechnical assessment No.34549PNrpt prepared by JK Geotechnics.



This issue is addressed by conditions to ensure a dilapidation survey is completed prior to the commencement of site works and the recommendations of the Geotechnical Report are followed.

**5. Concern that the overall height and will cause overshadowing and loss of solar access to adjacent apartments.**

Comment:

The site is within a B2 Local Centre area and adjacent established residential mixed buildings which commonly exhibit a 4th element. Overshadowing created by the roof height and building setbacks is detailed on the shadow diagram plans DA A-9301 to DA A-9504, dated 21.2.2022, drawn by 'RFA Architects'. The proposal has been assessed in accordance with the WDCP, SEPP 65 and the NSW Land & Environment Court Planning Principle established under *Benevolent Society v Waverley Council (2010) NSWLEC 1082* with respect to solar access considerations.

In summary, the main elements of the Planning Principle state that:

*"At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

*The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*

*A proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*

*For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity.*

*Overshadowing by fences, roof overhangs and changes in level should be taken into consideration.*

*The impact on what is likely to be built on adjoining sites should be considered as well as the existing development."*

The applicant has provided elevation and plan diagrams for adjacent building to demonstrate the change from the existing situation to future solar access with the proposed building between 9am and 3pm on the 21 June. For No.289 Condamine Street the change in overshadowing is most pronounced between 9am and 1pm with the low density residential development along Highview Avenue of the site allowing more afternoon sunlight from the west. Overall the building design is consistent with the approach made by the NSW LEC under the Planning Principle in dealing with solar access and with *Part D6 Access to Sunlight* of the WDCP.

In summary, this issue has been considered in detail and does not warrant refusal of the application.

**6. Concern that the proposal will cause an increase in traffic that will raise safety concerns for pedestrians and local vehicle traffic**

Comment:



The site is located on a busy arterial road and therefore the increase in traffic generation will not create an unreasonable impact considering the traffic report information submitted by the applicant. The provision of vehicle access meets Council policy for safe design requirements, subject to conditions. The has an aging building on the site with flat above the ground floor commercial area and the proposal to re-develop the the local road network with the narrow access along Somerville Place required on-site parking for the residential units. Council's traffic engineer is satisfied with the carparking arrangements proposed.

Therefore, this issue does not have determining weight and does not warrant refusal of the application.

**7. Concern that the proposal will cause a devaluation of adjacent property real estate.**

Comment:

No evidence has been submitted that redevelopment of the site, would cause a devaluation of the adjacent residential properties and this issue is not a relevant environmental assessment matter. Given that the proposal will not create any unreasonable impacts on solar access or privacy and demonstrates good design principles for shop top housing including building bulk, external appearance and amenity this issue is not assessable against variable economic market considerations for a development application.

Therefore, this issue does not warrant refusal of the proposal.

**8. Concern that the construction works will create noise, dust and health amenity impacts (such as demolition asbestos risk) on surrounding residents.**

Comment:

Construction works are subject to 'prescribed' and general conditions to ensure no unreasonable impacts of dust, noise and general amenity during site works. The proper management of site works is the responsibility of the site manager to ensure compliance with applicable standards and conditions of consent. Compliance with conditions of consent are also the responsibility of the appointed Certifying Authority and where matters of concern occur, such as construction noise, dust, runoff and the like, the appointed Certifying Authority is obliged to address those issues. Therefore environmental impacts that may cause health impacts are to be controlled by conditions of consent ensuring compliance with acceptable standards for demolition or construction work and minimise unreasonable construction / demolition impacts.

Therefore, this issue is addressed by conditions and does not warrant refusal of the proposal.

**9. Concern that the proposal will create issues of parking congestion during construction works along Somerville Place.**

Comment:

The WDCP, WLEP and SEPP 65 contains no requirements for the provision parking to accommodate vehicles for site construction workers. Access to the site will be maintained to enable demolition and construction including the delivery and storage of building materials. Once the basement is roofed this area can be used as additional temporary on-site construction parking / storage area to reduce pressure on the street frontage during work. Any temporary reservation of land within the road reserve for construction management will require a separate application and approval from Council under the *Roads Act*.

In summary, this issue is regarded as a temporary impact and subject to a construction traffic management plans does not warrant refusal of the application.





**10. Concern that the proposal does not have sufficient carparking.**

Comment:

The site has insufficient width to enable ramped parking basement levels similar to most larger basement car parks on sites wider than 15m. The construction of a second basement level would significantly increase excavation volume and ramp extensions, increasing the environmental impact on adjacent land. Therefore, under the circumstances of the case the use of car stackers for resident parking is warranted. The applicant has provided details of the car stacker arrangement to be used to ensure it is convenient, safe and reliable for long term use and the traffic and parking arrangements are supported by Council's Traffic Engineer (see detailed assessment comments under the heading "internal referrals - Traffic Engineer")

The proposal is satisfactory and this issue does not warrant refusal of the application.

**REFERRALS**

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	<p><b>Design + Sustainability Advisory Panel Meeting Report – Date 29 September 2022 (DA Review)</b></p> <p><b><u>PANEL COMMENT AND RECOMMENDATIONS</u></b></p> <p><b>General</b>  <i>Proposal: Following the receipt of the PLM advice, the applicant has submitted a development application which has generally responded well to DSAP recommendations, particularly in relation to the configuration of vehicular access, car parking, building height and front setbacks.</i>  <i>Generally, the overall composition, bulk and form of the revised development can be supported subject to the recommendations set out below.</i></p> <p><b>Strategic context</b>  <i>No further comment required.</i></p> <p><b>Urban context: surrounding area character.</b>  <i>Prior issues resolved. No further comment required.</i></p> <p><b>Public domain: relationship to public domain, safety/security.</b>  <i>The applicant is commended for improving the presentation to the street and the wrapping of the retail frontage around into the laneway. The quality of the landscape in the existing laneway connecting Somerville Place with Condamine Street is poor and will be further degraded during construction. There is minimal landscaping in the development and the opportunity exists to enhance the public domain with appropriate landscape treatment in the laneway.</i></p> <p><u>Recommendations</u></p>



Internal Referral Body	Comments
	<p>1. Make good the existing public link with new landscape treatment and footpath. Refer Landscape Treatments below</p> <p>2. Liaise with Council to develop a landscape design for the laneway to ensure adequate and good quality pedestrian level lighting is provided on completion</p> <p>3. Give careful consideration to the potential light spill to windows of units both sides of the laneway.</p> <p>(Planning Assessment Comment:</p> <ul style="list-style-type: none"> <li>Item 1 and 2 are subject to Engineering conditions (e.g works bonds) and additional <i>Roads Act 1993</i> approval required whereby Council's Engineers may include minor works for reinstatement or minor improvements along the footpath reserve / road reserve areas. This is managed by separate approval process. See Development Engineering referral response).</li> <li>Item 3 is addressed for the purpose of the south side windows including custom screens for BCA fire protection that will also limit light spill.)</li> </ul> <p><b>Car parking</b>  <i>The Panel commends the resolution of carparking access and supports the minor shortfall in parking provision given the location. The SEE states that each unit has bicycle parking but these are not shown on the plans and there is no mention of bicycles in the transport and parking report.</i></p> <p><u>Recommendations</u>  4. Show where bicycle parking is provided, it is not sufficient to say, "storage allocated for required bicycles for each unit" (SEE p 7) without indicating location. It would be preferable to provide bicycle parking near the lift on the entry level.</p> <p>(Planning Assessment Comment:</p> <ul style="list-style-type: none"> <li>Item 4 is addressed whereby the bicycle store room is shown on the ground floor plan beside the lift shaft with access to Condamine Street. Additional (partitionable) basement storeroom area is also available in the basement as shown.)</li> </ul> <p><b>Built form, façade and articulation</b>  <i>The proposal exceeds the 11m height control applicable to the site, up to a maximum of approximately 12.6m. The built form generally conforms with the controls that anticipate a 3-storey development in this area, when viewed from Condamine Street and the rear lane. The upper level has been setback 8m and impacts to adjoining properties</i></p>

Internal Referral Body	Comments
	<p>have been assessed in comparison to a fully compliant scheme and are considered minimal and reasonable.</p> <p>The Panel does not consider the height breaches significant, and supports the overall built volume.</p> <p>The upper level-built form does not have roof overhangs to the street facades (east and west elevation) and the built form and amenity would be improved by providing eave overhangs extended to the extent of the flanking blade walls.</p> <p>Balustrades to the west terrace on Level03 are glazed which will expose neighbours opposite to any clutter on balconies and reduce privacy of the occupants.</p> <p>Balustrades are not dimensioned but appear to be 1m high which generally results in poor internal amenity when seated at dining tables and lounges when balconies are narrow.</p> <p><u>Recommendations</u></p> <p>5. Provide eaves overhangs or shade elements to the Level 03 roof that extend to the extent of the containing blade walls on the side pedestrian link</p> <p>6. Provide improved amenity to west terrace balustrades by incorporating non visually permeable components to a minimum height of 760mm, but maximise the height of solid balustrade components to 900mm. This is to get an appropriate balance between internal privacy and views to the outside.</p> <p><u>(Planning assessment comment:</u></p> <ul style="list-style-type: none"> <li>Item 5 side pedestrian link on the south side is shaded for the majority of the day. Additional overhangs will extend building elements beyond the property boundary. The windows on the south side have been designed to meet BCA requirements (including fire and weather protection).</li> <li>Item 6 balustrade design changes are included as a condition to be incorporated at construction certificate stage.)</li> </ul> <p><b>Dwelling Planning and Amenity</b></p> <p>Impacts on the visual privacy of private open space in the existing single dwelling opposite in Somerville Place is of concern and needs to be addressed.</p> <p>Some entries to apartments remain convoluted. Though generally apartment planning is much approved, further improvements can be explored. Particular attention is brought to APT5. As a rule of thumb, whilst direct sight lines from entry to external space/daylight are preferred, where this cannot be achieved, plan an apartment so that at the first turn from entry hall views to external space/daylight are available.</p> <p>Storage areas for each apartment are not indicated on the plans of the apartments or in the basements. The storage area indicated has poor access and it is not clear how much of this area will be required for</p>

Internal Referral Body	Comments
	<p>plant.</p> <p><u>Recommendations</u></p> <p>7. Provide full width adjustable sliding screening to the west facing terrace areas on Levels 02 and 03</p> <p>8. Explore opportunities to simplify the entry sequence to APT5 to achieve views to external space/daylight at the first turn from the entry hallway</p> <p>9. Review internal layouts including whether laundry facilities could be simplified with the aim of increasing the living areas</p> <p>10. Check NCC requirements regarding door swings to bathrooms</p> <p>11. Provide storage in accordance with ADG 4G-1 and indicate on plans.</p> <p><u>(Planning Assessment Comment:</u></p> <ul style="list-style-type: none"> <li>• Item 7 screen design changes are included as a condition, to be incorporated at construction certificate stage.</li> <li>• Item 9 is not a critical design issue as the proposal meets ADG standards for bathroom / laundry. Minor changes may be included as part of the CC stage review to meet regulatory requirements, including the DVC.</li> <li>• Items 8 and 11 are addressed by conditions to be incorporated at construction certificate stage.)</li> </ul> <p><b>Landscape Treatments</b></p> <p><i>The Panel is aware of the minimal landscape opportunities of this site, however there are opportunities for vegetation in planters as shown on the plans. This is strongly encouraged and the Panel supports additional planting for screening, general amenity for residents, shading and improved privacy.</i></p> <p><u>Recommendations:</u></p> <p>12. Add further 1m width planters on levels 1, 2 &amp; 3. With particular reference to planters on the Southern flank of the terraces and the opportunity to provide viable green screening to the units directly to the South over the laneway</p> <p>13. Investigate and include if possible potential additional planters at least 4.5m above the "truck line" on eastern facing terraces facing Sommerville Place</p> <p>14. Additional planting in deep soil could be considered on the ground floor of the garage fronting Sommerville Place</p> <p>15. The Panel recommend that the Proponent work with Council in creating additional tree and low shrub planting on the laneway linking Sommerville Place and Condamine Street. Understanding this is a Council asset the new landscape works could add amenity to this low-quality pedestrian link. See note above re additional amenity pedestrian lighting.</p> <p>16. Give careful consideration to species selection and irrigation to</p>

Internal Referral Body	Comments
	<p><i>ensure low maintenance and viability of planting.</i></p> <p><u>(Planning Assessment Comment:</u></p> <ul style="list-style-type: none"> <li>Item 12 is addressed by condition as recommended.</li> <li>Item 13 to 15: See referral by Council Engineers - Roads Act 1993 approval requirements will address any works recommended by separate approval with works to the road reserve/s, including reinstatement works to the adjacent public footpath areas. Council has consistently sought to maximise the available carriageway width along Somerville Place and therefore overhangs or ground level planting is not suggested by Development Engineering, Road Assets, or Traffic Engineering - See comments provided by Engineering sections of Council.</li> <li>Item 16 is suitable for inclusion at Construction Certificate stage in final cosmetic fixtures and fit-out of the building.)</li> </ul> <p><b>Sustainability and resilience</b></p> <p><i>The Panel made a number of recommendations in previous advice. Some of these appear to have been adopted and the applicant is strongly encouraged to go further.</i></p> <p><i>SEPP BASIX explicitly precludes the setting of either higher or lower targets by other Environmental Planning Instruments or Development Control Plans.</i></p> <p><i>However, we are living in a climate emergency – all new dwellings should be designed to be as naturally comfortable as possible without heating and cooling (passive design) and should not rely on energy from fossil fuels. Arguably, the impacts of climate change and the changes to energy supply and security are out-pacing policy and regulation.</i></p> <p><i>There are several aspects of design and servicing that could be easily and cost effectively considered for inclusion in all developments:</i></p> <ul style="list-style-type: none"> <li><i>Decarbonisation of energy supply</i></li> <li><i>All services should be electric – gas for cooking, hot water and heating should be avoided</i></li> <li><i>Heat pump systems for apartments or other ways of providing electric hot water should be considered</i></li> <li><i>The storage of hot water can be considered a de-facto battery if heated by PVs during the day</i></li> <li><i>Until technologies for the use of hydrogen are developed and introduced, note the risk of gas reticulation becoming a ‘stranded asset’ and the possibility of additional costs to remove gas and rewire the building</i></li> <li><i>Guidance is also provided by the Australian Green Building Council <a href="https://gbca-web.s3.amazonaws.com/media/documents/a-practical-guide-to-electrification.pdf">https://gbca-web.s3.amazonaws.com/media/documents/a-practical-guide-to-electrification.pdf</a></i></li> <li><i>Onsite power generation and storage</i></li> </ul>

Internal Referral Body	Comments
	<p>• <i>Unshaded roof space is a valuable resource</i></p> <p>• <i>Using PV to provide shade to roof top common areas will generally be supported by the Panel if there are no additional adverse impacts</i></p> <p>• <i>PVs over green roofs perform better due to the local lower ambient air temperature</i></p> <p>• <i>On site battery storage has benefits for the grid and may be a highly desirable back-up during the transition to a de-carbonised grid.</i></p> <p>• <i>EV charging</i></p> <p>• <i>Provide EV charging points for each unit</i></p> <p>• <i>Allow for bi-directional (2-way) charging of EV battery for powering the building.</i></p> <p><u>Recommendations</u></p> <p>17. <i>Provide PV on the roof</i></p> <p>18. <i>Provide heat pump hot water and induction cooktops – remove gas</i></p> <p>19. <i>Consider ceiling fans to improve low-energy comfort options for the apartments, they will also improve the NatHERS scores</i></p> <p>20. <i>Provide a rainwater tank to recycle rainwater</i></p> <p>21. <i>Provide EV charging points for each unit</i></p> <p>22. <i>Allow for bi-directional (2-way) charging of EV battery for powering the building.</i></p> <p><u>(Planning Assessment Comment:</u></p> <ul style="list-style-type: none"> <li>• Item 17 is already included as shown on the roof plan.</li> <li>• Items 18 to 22 are part of fittings and fixtures for the building with details to be provided at Construction Certificate stage.</li> <li>• Additionally the proposal complies with BASIX and NatHERS for current building industry performance standards.)</li> </ul> <p><b>PANEL CONCLUSION</b></p> <p><i>The Panel supports the proposal subject to the recommendations above being incorporated and strongly encourages the applicant to investigate and incorporate additional sustainability features noting the growing awareness of buyers and marketability of efficient units.</i></p> <p><u>Planning Assessment Concluding Comment:</u></p> <p>The DSAP were satisfied with the second review including DA amendments made to the proposal and recommended some further minor improvements / inclusions. DSAP support the proposed development and conditions have been included to achieve the recommendations made where practicable to address at Construction Certificate stage. It is noted that additional matters regarding works or encroachments along the road reserve are subject to Road Act approval and therefore routinely managed by Council's Development / Traffic / Road Assets Engineers as per standard conditions (e.g bonds, road works and the like).</p>
Building Assessment - Fire	<b>Supported with Conditions.</b>

Internal Referral Body	Comments
and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Contaminated Lands)	<p><b>Supported with Conditions.</b></p> <p><u>General Comments</u> Application is for demolition works and construction of shop top housing.</p> <p>The applicant has provided a Preliminary (Stage 1) Site Investigation by JK Environments dated 21 January 2022 (Reference: E34549BDrpt). As part of the Preliminary Investigation two core hole tests were conducted however, the sampling was restricted due to the use of hand equipment and its limited ability to penetrate the fill.</p> <p>The report concludes and recommends the following:</p> <p><i>The JKE PSI included a review of site history information and sampling from two boreholes. The PSI identified AEC associated with the historical importation of fill to the site, historical agricultural use, presence of hazardous building material at the site, use of pesticides and off-site land uses including an Ampol service station and historical motor garages.</i></p> <p><i>JKE are of the opinion that the historical land uses and primary AEC identified would not preclude the proposed development. JKE recommend a DSI should be undertaken to characterise the site contamination conditions and establish whether the site is suitable for the proposed development, or whether remediation is required. This would include further waste classification testing to classify material to be excavated for the proposed development.</i></p> <p>A detailed Phase 2 typically should be conducted prior to consent or additional information provided that increases certainty that the site can be remediated if required. Given the current site constraints with hardstand and buildings present a full detailed Phase 2 may not be practical until hardstand and buildings are removed. The main concerns appear to be the potential for onsite fill material containing asbestos and migration from off-site land uses including the nearby Ampol service station and historical motor garages. However, from the information provided it appears that there will be minimal excavation other than cutting into the western hillside section and there are no basement levels. As such, any remediation if required is likely to be</p>

Internal Referral Body	Comments
	<p>minimal.</p> <p>Furthermore, adjoining residential developments have occurred at 295-297 Condamine Street &amp; 289 Condamine Street MANLY VALE. There does not appear to have been any concerns raised at these locations regarding contamination from surrounding land uses migrating onsite.</p> <p>Additionally, JK Environments have also concluded that they are of the opinion that the historical land uses and would not preclude the proposed development. As such, a detailed site investigation will be required prior to CC to determine if the site is suitable in its current state or if remediation is required.</p> <p><u>Recommendation</u> Supported - subject to conditions</p>
Environmental Health (Industrial)	<p><b>Supported with Conditions.</b></p> <p><u>General Comments</u> Application is for demolition works and construction of shop top housing.</p> <p>The applicant has provided an acoustic report by WSP Australia Pty dated 10 December 2021 (PS127494-ACO-REP-01 Rev0).</p> <p>Environmental Health have no objections subject to conditions regarding further acoustic assessment of mechanical plant for the building at the detailed design phase of the development and following the installation of the plant.</p> <p>A potential concern with shop top housing is that retail tenancies often end up being food premises. During the building design stage there tends to be little thought given to any future mechanical ventilation that might need to be installed, subsequently creating potential future noise and odour issues. Despite food premises usually being assessed via individual DAs, the planning for mechanical ventilation generally needs to be addressed at the building approval stage.</p> <p>As such, Environmental Health recommend that the buildings design allows for adequate provisions for mechanical ventilation to be installed for any future food premises that may require mechanical ventilation.</p> <p><u>Recommendation</u> Supported - subject to conditions</p>
Landscape Officer	<p><b>Supported with Conditions.</b></p> <p>The proposal is for demolition works and the construction of a shop top housing development.</p> <p>Council's Landscape Referral section have assessed the application</p>



Internal Referral Body	Comments
	<p>against State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development, Apartment Design Guide, Warringah Local Environment Plan under Land Zoned B2 Local Centre, and against the landscape controls of Warringah DCP.</p> <p>No Landscape Plan is provided with the application however on slab planting shall be subject to the conditions of consent. A public domain plan is required subject to the imposed conditions.</p>
NECC (Development Engineering)	<p><b>Supported with Conditions.</b></p> <p>The submitted stormwater management plan proposes on-site stormwater detention (OSD) in accordance with Council's Water Management for Development Policy which is acceptable. The proposed connection to the existing stormwater pit in Condamine St is acceptable subject to conditions.</p> <p>The proposal will require the reconstruction of the footpath paving along the frontage to Condamine St which has been conditioned by Council's Landscape Officer. The proposed driveway crossing off the rear lane is acceptable subject to conditions. It is noted that the building is set back 1 metre from the rear lane which is consistent with the adjoining property. Council's Traffic Engineer is to determine if a road dedication is required for the proposal.</p> <p>The internal parking design, turntable and car lifts are to be assessed by Council's Traffic Engineer.</p> <p>The submitted Geotechnical report includes recommendations that must be included in the consent. Planning are to include a condition to ensure these recommendations are adopted prior to release of the construction certificate.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p>
NECC (Water Management)	<p><b>Supported with Conditions.</b></p> <p>The proposal was assessed under the current creek and water management legislation framework, the relevant parts of the LEP, DCP and Water Management for Development Policy. The supplied reports and plans were considered. The supplied documentation has been assessed satisfactory.</p> <p><i>Water Quality</i> The proposed treatment chain is integrating an online rainwater tank, pit inserts and stormwater filtration cartridges. The system will capture the pollutant loading (sediment and nutrient) and is as such considered as compliant water quality scheme subject to conditions.</p> <p><i>Dewatering</i> Tailwater (surface water, rainwater, minor seepage): Please contact <a href="mailto:catchment@northernbeaches.nsw.gov.au">catchment@northernbeaches.nsw.gov.au</a> for advice on Council's</p>



Internal Referral Body	Comments
	<p>water quality requirements for a single instance of dewatering tailwater that collects in an excavation during works. A Council dewatering permit application must be made for expected multiple instances or continuous dewatering of tailwater.</p> <p><i>Sediment management</i> Due to the sensitivity of the downstream environment it is imperative that an erosion and sediment management strategy is developed and implemented to ensure protection of this area during construction.</p>
Road Reserve	<p><b>Supported with Conditions.</b></p> <p>There is limited impact on existing road asset infrastructure.</p> <p>Development Engineering to ensure width of Somerville Place is adequately resolved as per other adjoining properties and complete any footpath paving in Condamine Street frontage as part of a Roads Act Application and approval.</p>
Traffic Engineer	<p><b>Supported with Conditions.</b></p> <p>The Development Application is for a shop top housing development comprised of a retail shop with a gross floor area of 79m<sup>2</sup> and 9 residential apartments (6 x 1 bed, 2x 2 bed and 1 x 3 bed).</p> <p><u>Parking</u></p> <p>The Warringah DCP requires parking at the following rates</p> <ul style="list-style-type: none"> <li>- 1 space per 16.4m<sup>2</sup> for the retail component = 4.8 spaces</li> <li>- 1 space for each 1 bedroom dwelling = 6 spaces</li> <li>- 1.2 spaces for each 2 bedroom dwelling = 2.4 spaces</li> <li>- 1.5 spaces for each 3 bedroom dwelling = 1.5 spaces</li> <li>- 1 visitor space for each 5 dwellings or part thereof = 2 spaces</li> </ul> <p>The total parking requirement is therefore 14.7 spaces (rounded up to 15 spaces)</p> <p>It is however noted that the development is sited within 200m of the Manly Vale B-Line bus stop and other bus services along Condamine Street and is also within walking distance of shops and services in the Manly Vale/Balgowlah commercial area. For this reason a lower parking rate consistent with those for the Dee Why Town Centre would be acceptable to encourage higher use of public transport and lower traffic generation. The applicable rates would be:</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>- 1 space per 23.8m<sup>2</sup> for the retail component = 3.3 spaces</li> <li>- 0.6 spaces per 1 bedroom dwelling = 3.6 spaces</li> <li>- 0.9 spaces per 2 bedroom dwelling = 1.8 spaces</li> <li>- 1.4 spaces per 3 bedroom dwelling = 1.4 spaces</li> <li>- 1 visitor space per 5 units or part thereof = 2 spaces</li> </ul> <p>i.e the parking requirement would be 12 spaces</p> <p>The development application makes provision for 11 offstreet parking spaces including 1 disabled space. As parking is all within car stackers (with the exception of the disabled space) they would be unsuitable for use as visitor or retail customer parking. Visitors and customers are more likely to park within time restricted parking on Condamine Street. Given the constrained nature of the site which restricts the ability to provide additional offstreet parking and noting that the existing commercial development only provides parking for 4 vehicles, the proposed development is an improvement on the existing situation and the 11 parking spaces are deemed adequate to meet the parking needs of the proposed development.</p> <p>The car stackers are a pit style car stacker however as the clearance height in the carpark is only 2.51m there is insufficient clearance to allow each space to be accessed independently. Accordingly each stacked space pair will need to be allocated to the same residential unit.</p> <p>The disabled parking space requires a 2.4m "shared zone" adjacent for unloading. The plans show that the shared area is only 1.95m in width however the width of the disabled parking space. The overall width is however sufficient for an adaptable space (3.8m) and it is noted that the disabled space has a 300mm gap to the adjacent space which makes it more accessible. The space is considered adequate.</p> <p><u>Traffic Generation</u></p> <p>The traffic generation from the proposed development has been estimated using rates from the RMS Traffic Generating Development Guidelines. Using these rates it has been estimated that the development will generate 5.7 peak hour vehicle trips.</p> <p>The existing commercial development on the site has a potential to generate higher volumes of traffic and accordingly the traffic generation impacts of the proposed development are acceptable.</p>

Internal Referral Body	Comments
	<p><u>Access</u></p> <p>It is noted that the development proposes access only from Somerville Place rather than from Condamine Street . This is supported as access to/from a major road such as Condamine Street is to be avoided for safety reasons.</p> <p>A vehicle turntable has been provided within the offstreet parking area to provide an improved level of access to and from all parking spaces. The presence of the turntable will enable all vehicles to enter and exit the site in a forwards direction</p> <p>To allow for an improved level of pedestrian and vehicular access along Somerville Place the development has been set back 1m from the western property boundary. This is supported. At the prelodgement meeting it was suggested that the developer may need to dedicate a 1m strip of land however the 1m set back is considered acceptable in this location.</p> <p><u>Loading</u></p> <p>No offstreet loading bay is provided however given the small size of the retail component of the development the absence of a loading bay capable of accommodating a truck is considered acceptable with the majority of deliveries by courier vans and other smaller vehicles considered likely. These deliveries would be accommodated within existing 2P parking restrictions on the developments Condamine Street frontage</p> <p><u>Pedestrian sight lines</u></p> <p>Vehicle access points must provide adequate sight lines to pedestrians using Somerville Place and a pedestrian sight line triangle consistent with the requirements of AS2890.1 section 3.2.4(b) is required. This does not appear to be available and noting the presence of the pedestrian laneway along the southern boundary site there should be adequate sight lines available on the southern side of the driveway. Plans confirming that a compliant pedestrian sight line triangle is available will be required as a condition of consent</p> <p><u>Planning Comment:</u></p> <p>Allocating car stacker spaces collectively in pairs to only one residential unit is only possible if that (larger) unit requires 2 car spaces. Most units will have only 1 car space, therefore there must be</p>



Internal Referral Body	Comments
	some "sharing" of the car stacker for some units.
Waste Officer	<p><b>Supported with Conditions.</b></p> <p><u>Waste Management Assessment - Amended Plans (29/7/22)</u> Recommendation - Acceptable, subject to conditions</p> <p><u>Original Waste Management Assessment</u> Recommendation - Unacceptable.</p> <p>Specifically:</p> <p>1) The bin rooms located on top of OSD tanks. There appears to be three entries into the OSD tanks from inside the two binrooms. These entries are shown as grates on engineering diagrams. Access to the internals of the OSD tanks for servicing/cleaning must not be from inside the bin rooms. The floor of the binrooms must be graded and drained to the sewer. There are to be no openings in the floor of the bin rooms that would allow liquids from the bins (spills, leaks or washwater) to enter the stormwater system.</p> <p>2) Access to bin rooms for residents and commercial unit tenants. Each binroom is to have it's own access door from the entry foyer (proposal is for a common door). The door between the residential and commercial binrooms is to remain locked other than on collection day. This would be best achieved by the use of a timer lock</p> <p>3) Access to residential binroom for service staff. The two doors that provide access for service staff are to remain unlocked from 5.00am to 6.00pm on the scheduled day of collection. This would be best achieved by the use of a timer lock.</p>
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>The proposal was referred to <i>Ausgrid</i> who provided a response on 9.6.2022 stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice, including those relating to underground cables. These recommendations will be included as a condition of consent.</p>

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

Clause 28 of SEPP 65 requires:

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

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

### **DESIGN REVIEW PANEL**

Northern Beaches Council does not have an appointed Design Review Panel (Development assessments has though considered the Urban Design referral response).



## DESIGN QUALITY PRINCIPLES

### Principle 1: Context and Neighbourhood Character

*"Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions. Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change."*

#### Comment:

The subject site is located in a local business centre that is characterised by shop top housing and commercial businesses along Condamine Street. The site is one of the last suitable sites to be redeveloped in the line of development between Somerville Place and Condamine Street.

The scale and architecture of the development consistent with adjacent buildings and maintains a consistent height and setbacks to the street. The building maintains ground level retail and has responded to the envelope requirements by stepping back the upper storeys to minimise the 4th storey element in the centre section of the building.

For the reasons above, the development is considered to fit contextually with surrounding medium density development and the neighbourhood character.

### Principle 2: Built Form and Scale

*"Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings. Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook."*

#### Comment:

The building design substantially dictated by the similar configuration of adjacent shop top housing, including limitations on access to Condamine Street, laneway width along Somerville Place, land slope, street frontages and the overall width of the site. The shape of the building above ground level is influenced by the built form controls and need to respond to the height controls. The 4 storey element meets the 11m height control and having a 4 storey building is not out of context with the form and scale of the adjacent 4 shop top housing.

Notwithstanding any numerical non-compliances, the development is of a scale that is suitable for the area and provides appropriate setbacks to the front and rear to allow for balcony spaces.

The development is considered to achieve a scale, bulk and height that is appropriate for surrounding and existing developments, and is designed in a manner that is not unreasonable in terms of building form and scale to adjacent development along the neighborhood centre and residential land to the west.

### Principle 3: Density

*"Good design achieves a high level of amenity for residents and each apartment, resulting in a density*



*appropriate to the site and its context.*

*Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment."*

Comment:

The development provides 9 apartments which is consistent with similar scale development near the site. The proposal included internal car parking and good access to transport links to Manly and Dee Why / Brookvale.

Therefore, the density of the development is considered to be appropriate to the existing and projected population of the area and is adequate in regards to the sustainability of keeping residents in longevity by virtue of proximity to services.

**Principle 4: Sustainability**

*"Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation."*

Comment:

The development application is accompanied by a BASIX Certificate which indicates the development achieves an adequate design for water and energy conservation including thermal comfort. The development provides an adequate cross-ventilation and shading devices to large east and west facing windows to mitigate the impacts of direct sunlight upon large surface areas of glazing. The proposal has been reviewed by Council's *Design and Sustainability Advisory Panel* and has incorporated recommendations from the Panel.

The development will utilize a waste management plan to recycle and dispose of waste in accordance with Council's Waste management policies and will not detract from the sustainability of the environment or surrounding area.

**Principle 5: Landscape**

*"Good design recognises that together, landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood. Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, coordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management."*

Comment:

The provision of landscaping elements is limited to balcony spaces (planter boxes) as the commercial nature of the land has no requirement for landscaped open space. The landscape planter box element are suitable to enhance the appearance of the building and provide amenity element to the residential balcony areas.

**Principle 6: Amenity**





*"Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility."*

Comment:

The development provides an appropriate provision of amenity for residents and neighbours by the design of window spaces along the side elevations (including use of high sill windows and "notch" wall elements). The setbacks progressively increase as building height increases. The internal layout and provision of balcony and living area spaces, and the balcony landscaped planter boxes which contribute to the amenity of privacy, enjoyment and visual impact.

The development comprises of appropriately proportioned rooms, natural ventilation, access to sunlight, outlook, privacy, storage, efficient layouts and a good degree of mobility including internal lift access.

**Principle 7: Safety**

*"Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety."*

*A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose".*

Comment:

The development will incorporate adequate standard safety features for the comfort and security of residents. The development will provide acceptable opportunity design for security of the streetscape and entry areas. The basement access has a security access for vehicles and there is a ground floor foyer for pedestrian entry to the retail and residential units, including disabled persons access.

The access points into the development are well-defined but not visually offensive or dominating and can be easily accessed.

**Principle 8: Housing Diversity and Social Interaction**

*"Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets."*

*Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents."*

Comment:

The development comprises of 9 apartments suitable for single persons or couples or shared tenancy. The site is located within the Manly Vale neighbourhood centre area which has convenient access to nearby supermarkets, retail and commercial businesses as well as local open space areas.

The development as a whole, and each apartment, provides features (such as a basement parking, lift access, balconies, storage and open plan living areas, that would warrant the value of the apartments





and provides opportunities for social interactions between residents of the subject and surrounding developments.

#### Principle 9: Aesthetics

*"Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures. The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape."*

#### Comment:

This assessment report details the built form of the development against the control requirements and objectives, as can be found later in the report. The development is considered to be of suitable design and of proportions that enable the building to provide essential elements carparking, private open space and internal floor space. The aesthetics of the external appearance of the building are contemporary and elements of the design contribute to the streetscape, without unreasonable impacts on privacy, view loss, overshadowing, building bulk and the like.

The varying use of materials, colours and textures combined with the design and articulation provide a visual appearance that is visually interesting within the streetscape along Condamine Street and Somerville Place.

The overall aesthetic of the shop top building is considered to be appropriate for the urban context and in-fill site within the Manly Vale neighbourhood centre.

#### APARTMENT DESIGN GUIDE

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

Development Control	Criteria / Guideline	Comments
<b>Part 3 Siting the Development</b>		
<b>Site Analysis</b>	Does the development relate well to its context and is it sited appropriately?	<p><b>Consistent</b></p> <p>The development of a residential apartment building is appropriate within the context of Manly Vale and surrounding B2 Local Centre zone.</p> <p>The scale and proportion of the development is similar in height and setback to the streetscape which is largely characterised pattern of redevelopment in the vicinity of the site along Somerville Place for sites fronting Condamine</p>

		<p>Street.</p> <p>Despite the non-compliant setbacks of the development (and in consideration of the 3 road reserve frontages) the proposal is assessed as being satisfactory and without unreasonable amenity impacts upon surrounding land.</p> <p>For the reasons above, the development is considered to relate appropriately to its context and the established medium density development in the local surroundings.</p>
<b>Orientation</b>	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	<p><b>Subject to design measures</b></p> <p>The architecture of the site and the building setbacks are appropriate for the streetscape, and the front and side setback areas maintain suitable privacy and solar access to adjacent land.</p> <p>The development will overshadow neighbouring properties to west and south.</p> <p>Drawings DA A-9301 to DA A-9504 shows the shadow regime on June 21 including comparison shadow outline.</p> <p>It should be noted that the additional overshadowing impacts to the building to the south is considered in context to the height lines, setbacks, east-west alignment and other shop top housing in the vicinity due to the density of</p>

		<p>commercial land uses and east-west subdivision pattern</p> <p>In regards to the above, the stepped design, height and narrow shape of the proposed building has made a considered approach which could be expected upon the land and is without unreasonable detrimental impact upon surrounding land.</p> <p>(Solar access is also considered in detail under the heading "Submissions" and "<i>Part D6 Access to Sunlight</i>" within this report)</p>
<b>Public Domain Interface</b>	<p>Does the development transition well between the private and public domain without compromising safety and security?</p> <p>Is the amenity of the public domain retained and enhanced?</p>	<p><b>Consistent</b></p> <p>The development provides an appropriate transition between the public (Condamine Street and Somerville Place) including the unnamed road reserve along the southern boundary. The public interface of the ground retail area and level 1 (at the rear) is acceptable.</p> <p>It is considered that the proposal does not create an unreasonable impact on the amenity of the public domain by virtue of visual interest and facade elements facing the streetscape, subject to conditions.</p>
<b>Communal and Public Open Space</b>	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> <li>Communal open space has a minimum area</li> </ol>	<p><b>Subject to design measures</b></p> <p>The development does not have a designated</p>

	<p>equal to 25% of the site</p> <p>2. Developments achieve a minimum of 50% direct sunlight to the principle usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)</p>	<p>'communal open space' area.</p> <p>Given the building is for nine (9) Units only and the apartments from the first floor to the third floor have access to balconies the demand for communal open space is less warranted than with a larger unit complex.</p>												
<b>Deep Soil Zones</b>	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m<sup>2</sup></td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m<sup>2</sup> – 1,500m<sup>2</sup></td><td>3m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup></td><td>6m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup> with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m <sup>2</sup>	-	7%	650m <sup>2</sup> – 1,500m <sup>2</sup>	3m	Greater than 1,500m <sup>2</sup>	6m	Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m	<p><b>Subject to design variations</b></p> <p>No minimum dimension. 2.9%</p> <p>Deep soil planter box landscaping only. Recommended that all planter boxes be increased to 1.0m width to allow for larger and more variety of plants to the residential units. (see Conditions)</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m <sup>2</sup>	-	7%												
650m <sup>2</sup> – 1,500m <sup>2</sup>	3m													
Greater than 1,500m <sup>2</sup>	6m													
Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m													
<b>Visual Privacy</b>	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td><b>Up to 12m (4 storeys)</b></td><td><b>6m</b></td><td><b>3m</b></td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table> <p><b>Note:</b> Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	<b>Up to 12m (4 storeys)</b>	<b>6m</b>	<b>3m</b>	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p><b>Subject to design measures</b></p> <p>The development is assessed as providing a reasonable level of visual and acoustic privacy to adjoining properties as minimal large window openings face south. Western-facing balconies have floor-to-ceiling privacy screens on the western balustrades. These are conditioned to be adjustable and sliding to regulate privacy and excess solar glare.</p> <p>Thus, despite not meeting</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
<b>Up to 12m (4 storeys)</b>	<b>6m</b>	<b>3m</b>												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												

	<p><i>habitable space when measuring privacy separation distances between neighbouring properties.</i></p>	<p>the numerical requirements, the spatial separation proposed is considered acceptable given pattern of adjoining development along the commercial zone of Condamine Street. In summary the architecture of the proposal has been designed to minimise impacts where the minimal distance separation guide is not achievable.</p> <p>In summary, the building design includes some innovative design elements in order to overcome site constraints for an in-fill development including narrow site width, slope and adjacent shop top housing, as well as laneway access.</p>
<b>Pedestrian Access and entries</b>	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p><b>Consistent</b></p> <p>Pedestrian access into the building is easily identifiable from Condamine Street. The lift overrun (which part of the highest elements of the building) is integrated within the mid section of the building and not prominent to the street.</p>
<b>Vehicle Access</b>	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p><b>Consistent</b></p> <p>The driveway entry to the street has been assessed as satisfactory by Council's Development Engineer. Setback has been provided to Somerville Place to allow for turning vehicles / lane width.</p>

<b>Bicycle and Car Parking</b>	<p>For development in the following locations:</p> <ul style="list-style-type: none"> <li>On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</li> </ul> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p><b>Consistent</b></p> <p>The proposed provision of car parking has been assessed as satisfactory in accordance with Appendix H of the WDCP 2011.</p> <p>All car parking is provided off street in the basement car park and thereby has minimal visual and environmental impacts on the immediate surrounding area. Traffic Engineering and DSAP recommendations support the reduced parking arrangements due to the commercial precinct and public transport access.</p>
<b>Part 4 Designing the Building</b>		
<b>Amenity</b>		
<b>Solar and Daylight Access</b>	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> <li>Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.</li> <li>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter</li> </ul>	<p><b>Subject to design measures</b></p> <p>The development achieves a satisfactory provision of solar and daylight access to &gt;75% of the apartments given the east to west orientation of the building, setbacks and dense surrounding urban development along Condamine Street.</p> <p>In summary, the building has east or west facing balconies for each apartment to enable 2 hours of direct sunlight. Large glazed balcony doors and windows assist natural light amenity internally without unreasonable impact on privacy and other</p>

		apartments to the north or south. Therefore, the apartments will receive adequate natural light internally between 9am and 3pm on the 21 June.												
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"><li>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</li><li>Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</li></ul>	<p><b>Consistent</b></p> <p>The development have been designed to achieve natural cross ventilation or adequate ventilation by operable skylights, large window openings, stackable sliding external balcony doors and the like.</p> <p>Therefore the application is assessed as having adequate naturally ventilated units and satisfying the requirements of this control.</p>												
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>If located in mixed used areas</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	<p><b>Consistent</b></p> <p>The development achieves satisfactory floor-to-ceiling levels as per the ADG and BCA, but with extra thick slabs for L2 and L3. Only 0.3m slabs be used to create a roof apex at FFL30.942. Storage is provided with the apartments, and the the basement area has a single large store room shown (divisible by internal partitions). Storage in the apartments and the additional basement area is satisfactory to enable items to be transferred to and from a car.</p> <p>The building also include a bike storage facility.</p>
Minimum ceiling height														
Habitable rooms	2.7m													
Non-habitable	2.4m													
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
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If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
Apartment Size	Apartments are required to have the following	<b>Consistent</b>												



and Layout	minimum internal areas:			The development has a satisfactory apartment size and layout per unit as per the ADG guide.
Private Open Space and Balconies	All apartments are required to have primary balconies as follows:			<b>Consistent</b>  Each apartment within the development has a balcony that is directly accessible from a living area.  Apartment 1 has 1 bedroom and balcony of 11 sqm

	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m <sup>2</sup> and a minimum depth of 3m.	Apartment 2 has 1 bedroom and balcony of 10sqm Apartment 3 has 1 bedroom and balcony of 13 sqm Apartment 4 has 2 bedrooms and balcony of 10 sqm Apartment 5 has 2 bedrooms and balcony of 10 sqm Apartment 6 has 1 bedroom and balcony of 10sqm Apartment 7 has 3 bedrooms and balcony of 40 sqm Apartment 8 has 1 bedroom and balcony of 10 sqm Apartment 9 has 1 bedroom and balcony of 13 sqm  All apartments contain balconies having minimum dimensions of 2.0m or more.										
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.  For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Consistent  First Floor - 2 units Second Floor - 4 units Third Floor - 3 units										
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m<sup>2</sup></td></tr><tr><td>1 bedroom apartments</td><td>6m<sup>2</sup></td></tr><tr><td>2 bedroom apartments</td><td>8m<sup>2</sup></td></tr><tr><td>3+ bedroom apartments</td><td>10m<sup>2</sup></td></tr></table> At least 50% of the required storage is to be located within the apartment.	Dwelling Type	Storage size volume	Studio apartments	4m <sup>2</sup>	1 bedroom apartments	6m <sup>2</sup>	2 bedroom apartments	8m <sup>2</sup>	3+ bedroom apartments	10m <sup>2</sup>	Consistent  Each apartment has a satisfactory provision of dedicated storage cupboards located in each apartment. (Additionally the units has walk-in-robres, laundry and kitchen / living and bedroom storage). A large basement room is also available for the building that is partitionable for domestic storage.
Dwelling Type	Storage size volume											
Studio apartments	4m <sup>2</sup>											
1 bedroom apartments	6m <sup>2</sup>											
2 bedroom apartments	8m <sup>2</sup>											
3+ bedroom apartments	10m <sup>2</sup>											
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services,	Subject to design measures										

	mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	<p>The design and layout of the building has been composed to minimise acoustic impacts that may arise from Condamine street and adjoining apartments.</p> <p>Given that the development is not large it is not anticipated that the circulation spaces would regularly produce noise that could be offensive to adjoining bedrooms.</p> <p>It is considered that the design of the building, anticipated usage and current construction standards (insulation and the like) would mitigate any unreasonable or detrimental acoustic impact.</p> <p>A condition is included to ensure no unreasonable noise impact from air conditioning or lift motors.</p>
<b>Noise and Pollution</b>	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	<p><b>Consistent</b></p> <p>The architecture and layout of the building has been designed to minimise ensure road noise transmission can be closed off by glazed doors. The development is considered acceptable in this respect, subject to condition for BCA compliance.</p>
<b>Configuration</b>		
<b>Apartment Mix</b>	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	<p><b>Subject to design measures</b></p> <p>The application proposes a mix of one, two and three bedroom units to accommodate for a</p>

		potential buyers / tenants suitable for larger units that can accommodate working couples or single persons.
<b>Facades</b>	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	<p><b>Consistent</b></p> <p>The development incorporates contemporary architecture and design features to enhance compliance with the built form controls and to create a contemporary visual impact on all facades with landscaping to enhance the building setting.</p> <p>It is considered that the development respects the character of Manly Vale local area where western side of the road and interface along Somerville Place includes balcony elements, suitable balcony structures, screens and the like.</p>
<b>Roof Design</b>	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Test whether the roof space can be maximised for residential accommodation and open space.	<p><b>Subject to design measures</b></p> <p>The roof cannot be used as trafficable area or open space. A condition is recommended to assist in ensuring no unreasonable impact on views (e.g additional satellite dishes and the like).</p>
<b>Landscape Design</b>	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	<p><b>Subject to design measures</b></p> <p>The plans and schedule indicate that the provision of balcony level landscape planters proposed is an appropriate response to the scale of development proposed and the adjoining developments.</p>

Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes:				Subject to design measures  See comments previously for planter boxes to be minimum 1.0m wide each to allow for increased amenity, plants and spatial separation of POS on the balconies.	
	Plant type	Definition	Soil Volume	Soil Depth		Soil Area
	Large Trees	12-18m high, up to 16m crown spread at maturity	150m <sup>3</sup>	1,200mm		10m x 10m or equivalent
	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m <sup>3</sup>	1,000mm		6m x 6m or equivalent
	Small trees	6-8m high, up to 4m crown spread at maturity	9m <sup>3</sup>	800mm		3.5m x 3.5m or equivalent
	Shrubs			500-600mm		
	Ground Cover			300-450mm		
	Turf			200mm		
Universal Design	Developments are to achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features.				Consistent  Greater than 20% of the apartments incorporate the Livable Housing Guidelines silver level universal design features.	
Adaptive Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.				Not Applicable  No existing elements of the site or buildings are utilised in this development proposal.	
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain?  Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.				Satisfactory  The development is for a shop top housing and meets the layout requirements.	
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and				Consistent.  (No signage proposed at	

	contribute to the identity of the development.  Signage must respond to the existing streetscape character and context.	this stage)
<b>Performance</b>		
<b>Energy Efficiency</b>	Have the requirements in the BASIX certificate been shown in the submitted plans?	<b>Consistent</b>  BASIX Certificate commitments are included with architectural plan package.
<b>Water Management and Conservation</b>	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	<b>Consistent</b>  The application has been reviewed by Council's Development Engineers who raises no objections to the proposal, subject to conditions to address stormwater runoff in compliance with Council Policy.
<b>Waste Management</b>	Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and recycling.	<b>Consistent</b>  A waste management plan has been provided to accompany the development application, and appropriate conditions ensuring compliance with such have been included in the recommendations of this report.
<b>Building Maintenance</b>	Incorporates a design and material selection that ensures the longevity and sustainability of the building.	<b>Consistent</b>  The building materials selected for the subject development are of a high quality and will achieve a longevity that is both sustainable and expected for a development of this nature.

#### STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

- (1) If an application for the modification of a development consent or a development application for the



carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

- (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
- (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
- (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

**Note.** The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

Comment: The development application is not being refused on any grounds contained within Cl. 30 (1) (a), (b) or (c).

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

- (a) the design quality principles, and
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

(3) To remove doubt:

- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
- (b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.

**Note.** The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment: The assessment of this development application against the criteria and requirements of SEPP 65 has adequately demonstrated consideration has been given to Cl. 30 (2) (a) and (b) as per the above assessment.

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

A BASIX certificate has been submitted with the application (see Certificate No.1280487M).

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

Commitment	Required Target	Proposed
Water	40	44
Thermal Comfort	Pass	Pass
Energy	35	39





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

## SEPP (Transport and Infrastructure) 2021

### Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

### Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

### Roads and Maritime Service (RMS)

Section 2.118 - Development with frontage to classified road states:

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

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

### Comment:

The proposal was referred to Transport for NSW (TfNSW) who provided a response on 31.5.2022 stating that the proposal is acceptable subject to conditions. These recommendations will be included as a condition of consent.

**Section 2.119** - Impact of road noise or vibration on non-road development states:



(2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.

(3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—

- (a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,
- (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.

Comment:

The proposal was referred to Transport for NSW (TfNSW) who provided a response on 31.5.2022 stating that the proposal is acceptable subject to conditions. These recommendations will be included as a condition of consent.

Other Service Authorities

No other Service Authority infrastructure referral issues are raised pursuant to the SEPP. Requirements for Sydney Water infrastructure are managed by separate administrative processes directly by Sydney Water.

**SEPP (Resilience and Hazards) 2021**

**Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. A preliminary site investigation has been undertaken by JK Environmental Consultants to address the requirements of the SEPP. Council records indicate that the subject site has been used for commercial and residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the shop top housing land use.

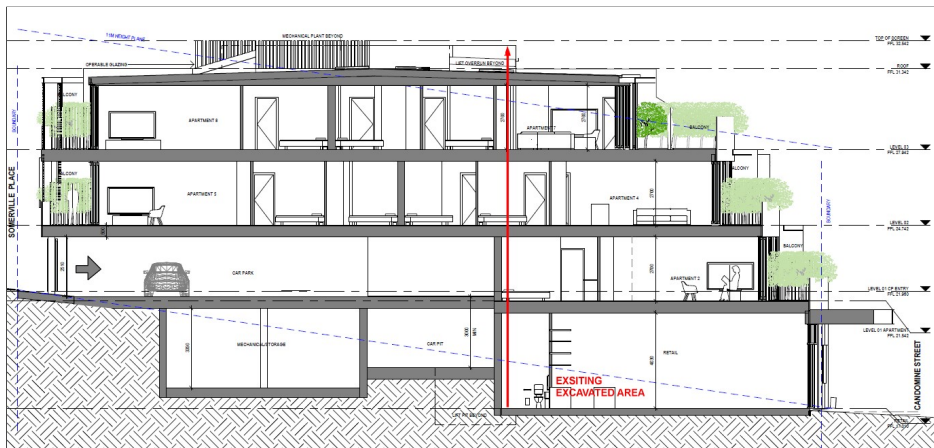
**Warringah Local Environmental Plan 2011**

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11.0m	9.4m to 14.8m	up to 30%	No*

\*Refer to detailed merit assessment (Clause 4.6 variation) within this report.



Existing excavated retail space toward Condamine Street consistent with the approach taken in *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*. General height plane & natural ground slope also shown as a dotted blue line across the section drawing.

#### Compliance Assessment

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

#### Detailed Assessment

##### 4.3 Height of buildings

**building height** (or *height of building*) means:

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

This approach is consistent with measuring 'ground level (existing)' from the existing excavated retail space toward Condamine Street, consistent with the approach taken in *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*, and is applied and used in this case, as represented in the diagram below.

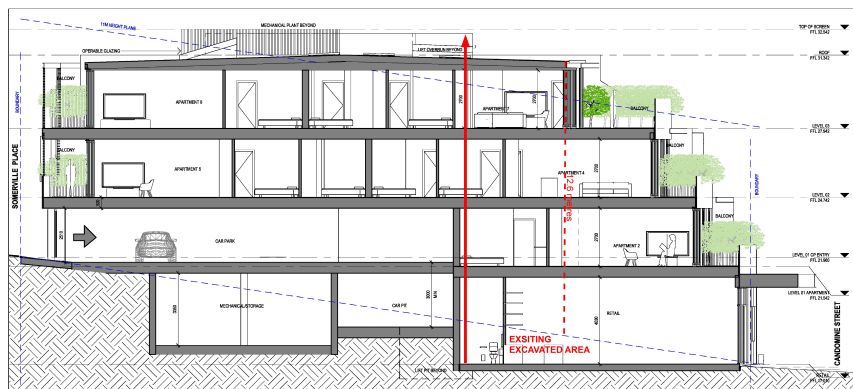


Image: Height section with the rear of the site is not currently excavated, however the front area of the existing shop area is.

In consideration of overall bulk and the visible outer elements of the building it is noted that the top of the mechanical plant screen presents a taller RL of 32.542. However, as there is no existing ground level RL at this location and the surrounding public domain is higher compared to the lower existing retail space, the variation to the height control in practical appearance from the outside the building is much less at this point (12.542m height or 14% variation) due to what would be the natural slope (extrapolated). As there is no excavated level at the point of the building of the mechanical plant screen, 'existing ground level' for this portion of the building has been measured from surrounding public domain levels, consistent with *Bettar v Council of the City of Sydney [2014] NSWLEC 1070*. The height of the metal deck roof span (above "apartment 7") is 12.6m (14.5% variation) above natural ground level based on an extrapolated ground line.

#### 4.6 Exceptions to development standards

##### Description of non-compliance:

Development standard:	Height of buildings
Requirement:	11m
Proposed:	14.8m (Lift overrun)
Percentage variation to requirement:	30%

##### Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

##### Clause 4.6 Exceptions to development standards:

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

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.



*(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

Clause 4.3 – Height of Buildings development standard is not expressly excluded from the operation of this clause.

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

- (a) the consent authority is satisfied that:*
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

**Clause 4.6 (4)(a)(i) (Justification) assessment:**

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

*(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:

- *"The built form that exceeds the height control will have limited visual impact from the eastern side of Condamine Street.*
- *All surrounding developments on the same side of Condamine Street have a fourth (or fifth) level that is set back from Condamine Street. There is no established setback for these upper floors.*
- *Its setback is over 8m from the boundary to ensure it has an equivalent minimal visual impact as these other developments from a height and scale perspective.*
- *This is the last remaining development site along this block between Condamine St and Somerville Place, and that all surrounding developments have a fourth storey (or higher) facing Condamine Street. As such, the proposed development, and height variation are not seeking a development precedent for the precinct.*
- *The portion of the development that exceeds the height control does not disrupt any views to surrounding properties.*
- *The development does create in some additional privacy and solar impacts to the development to the south, the portion of the development that exceeds the height control does not contribute to these impacts. The southern neighbour's proximity to the site and its orientation has resulted in some additional impacts that cannot be avoided, even by a strictly compliant building. The existing building already creates similar overshadowing of the windows and outdoor spaces in*





*the adjacent building to the south."*

Comment:

- It is concurred that the lift and roof plant does not create overshadowing impact to adjacent land and these elements are placed against the northern partition wall to assist views across the main roof span.
- It is considered the motorized plant should be positioned within 1.5m of the fire partition wall so they fit closer to the boundary wall with No.295 Condamine Street and has a narrower view line impact for houses that overlook the site from Highview Avenue.
- From the exterior of the building the non-compliant wall height and upper storey section appears as represented below if viewed from the public domain from the south. The extent of non-compliance is approximate to half a storey height toward the front (and the roof top installations) and is not considered unreasonable considering the 4.0m ground level difference between Condamine Street and Somerville Place. The rear half of the building is compliant with a 3 storey appearance and below 11.0m.
- The design of the building has been adjusted in response to pre-lodgement advice and the upper storey shifted to provide a 3.0m setback at the rear which has influenced the non-compliant section toward the eastern frontage.

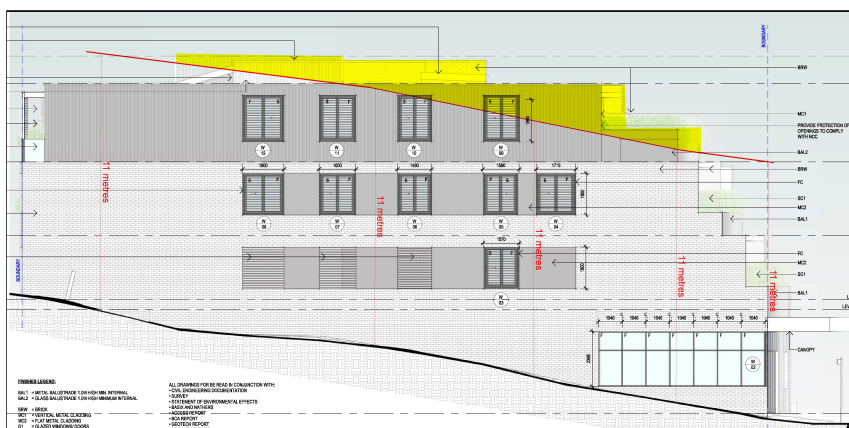


Image: Exterior appearance of height non-compliance from outside the building viewed from the south.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

**Clause 4.6 (4)(a)(ii) (Public Interest) assessment:**

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:





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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the B2 Local Centre zone. An assessment against these objectives is provided below.

**Objectives of development standard**

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the WLEP 2011 are:

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

*a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

Comment:

The development provides a shop top housing re-development that is consistent and compatible with the established relationship of surrounding mixed use buildings, and redevelopment along the western side of Condamine Street within the B2 Local Centre zone. The height variation is generally ‘downslope’ on the leeward side of the natural fall of the land and steps down the site, in a similar manner to other mixed use development to the north and south of the site.

*b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*

Comment:

The building elements that breach the building height plane do not create an unreasonable impact on views over the site or unreasonable loss of privacy to adjacent land. Conditions are included to ensure roof plant is positioned closer to the northern partition wall and to ensure site / floor levels remain as proposed for construction. The roof area and open style balconies provide an articulated appearance to the east and west of the site and privacy screens are used to ensure no unreasonable overlooking. The general height and bulk responds to the slope of the site and is consistent with the variable setback position and shape of adjacent shop top housing.

*c) to minimise adverse impact of development on the scenic quality of Warringah’s coastal and bush environments,*

Comment:

The proposal does not create an unreasonable impact on the coastal or local bushland environment.

*d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,*

Comment:

The use of balcony elements, variation in external materials, planter boxes and graduated setbacks for the upper storey assists to ensure the visual impact of the building non-compliance does not create an unreasonable visual impact when viewed from Condamine Street, Highview Avenue or adjacent public land.



## Zone objectives

The underlying objectives of the B2 Local Centre zone are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

Comment:

The non-compliance with building height does not raise any inconsistency with this objective.

- *To encourage employment opportunities in accessible locations.*

Comment:

The non-compliance with building height does not raise any inconsistency with this objective.

- *To maximise public transport patronage and encourage walking and cycling.*

Comment:

The non-compliance with building height does not raise any inconsistency with this objective.

- *To provide an environment for pedestrians that is safe, comfortable and interesting.*

Comment:

The height variation does not raise any inconsistency with this objective as the proposal has limited its access to Somerville Place for vehicles and includes service rooms at the front with a retail shop fronting Condamine Street as per Council requirements.

- *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.*

Comment:

The proposed variation will achieve an acceptable outcome for and from the development by way of a limited non-compliant element given the compliant height at the rear and general precedent of building heights and housing density for similar shop top development adjacent the site. The Local Centre of Manly Vale is characterised by similar scale development with regard to the part 3 part 4 storey configuration, desired character, height, retail to residential proportions. The proposal is not "jarring" by its height appearance to existing development nearby. Further, the area of non-compliance relates to the proposed roof form, lift overrun and minor roof plant installations which is consistent with the predominant roof forms of similar developments in the area. Externally, in relation to surrounding natural ground level at the site boundaries the building appears as 9.4m to the roof edge facing Somerville Place and 13.3m high along the southern pedestrian lane (8m back from Condamine Street frontage). The third storey (L3) complies with the 11m height at Condamine Street but is setback 4.0m, not 5.0m.

The Development Standard results in the design option for a low pitch roof form which is similar to nearby shop top development given the dominance of mixed use development along the western side of Condamine Street in Manly Vale CBD. In addition to this, the non-compliance is influenced by the slope across the site which accentuates the height after excavation to accommodate the basement and new ground floor level arrangements.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity*



*of any adjoining or nearby residential land uses.*

Comment:

The development is largely compliant with the numerical requirement of this development standard and has been designed having regard to the views obtained from adjoining properties, maintaining a reasonable level of privacy and solar access to adjoining developments. The non-compliant element does not impinge on vehicle access, overlooking to the south or west and does not cause unreasonable overshadowing impacts to neighbouring balconies or the public domain.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B2 Local Centre zone zone.

The applicants written request has adequately addressed the matters required to be demonstrated by consideration of the relevant LEP objectives for the zone and height of buildings control. In summary, the assessment of this application has found that the development does not result in any unreasonable overshadowing or privacy impacts and achieves a reasonable sharing of views given the density of surrounding development.

In doing so, the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development and that there are sufficient environmental planning grounds to justify contravening the development standard.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

**6.4 Development on sloping land**

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

*(a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and*

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective and therefore, Council is satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life. The site is not subject to landslides however construction and excavation management will be required for civil engineering and



dilapidation risk for adjacent property assets. This is conventionally managed by conditions with details prepared prior to site works as well as during the construction phase.

*(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and*

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not cause significant detrimental impacts because of stormwater discharge from the development site.

*(c) the development will not impact on or affect the existing subsurface flow conditions.*

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not result in adverse impacts or effects on the existing subsurface flow conditions.

#### Warringah Development Control Plan

##### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B2 Number of storeys	3 storeys	4 storeys	33%	No*
B5 Side Boundary Setbacks	Merit assessment (North)	Basement 0.0m	N/A	Yes Merit assessment
		Ground floor to fourth floor 0.0m	N/A	Yes Merit assessment
B7 Front Boundary Setbacks (Condamine Street)	Ground Floor and First Floor to maintain street frontage.	Ground level (Retail) 0.0m	N/A	Yes
		Basement 13.0m new rear parking / lift	N/A	Yes
	Second floor up to 5m	Level 1 2.0m wall line (0.0m to balcony)	N/A	No*
		Level 2 4.0m wall line (3.2m to balcony)	20%	No*
		Level 3	100%	No*

		8.095m wall line (3.9m to balcony)		
B7 Front Boundary Setbacks - Secondary frontage (Somerville Place)	Ground Floor and First Floor to maintain street frontage.  Second floor up to 5m	Basement 1.0m to 6.0m new parking / lift  'Level 1' is ground level at the rear for Somerville Place 1.0m wall line  Residential levels above 3.0m wall line (1.0m to balcony)	N/A  Variation to L1  Variation to L2-L3	Yes  No*  No*
B7 Front Boundary Setbacks - Secondary frontage (Unnamed Road reserve - laneway)	Ground Floor and first floor to maintain street frontage  Second floor up to 5m	Basement 0.0m  Ground Level and Residential levels above (4 storeys) 0.0m	N/A  Variation to L2-L3	Yes  No*

\*Refer to detailed merit assessment under the heading Built Form Controls within this report.  
DCP requirement for Manly Vale "Condamine Street will be enhanced by ensuring the design of buildings and use of land maintains activity at street level and creates a cohesive and attractive streetscape. Vehicle access will be provided from streets other than Condamine Street."

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B2 Number of Storeys	No	Yes
B6 Merit Assessment of Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
D23 Signs	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
F1 Local and Neighbourhood Centres	Yes	Yes

#### Detailed Assessment

#### **B2 Number of Storeys**

##### Description of non-compliance

The built form controls for the site apply a 3 storey limit (11.0m) and the proposal is 4 storeys.

##### Merit consideration:

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

- *To ensure development does not visually dominate its surrounds.*

##### Comment:

The proposed building is consistent with adjacent shop top housing in central roof height (being 12.54m / 14% variation) and is consistent with adjacent storey height of buildings surrounding the site that are all 3 storey, with some part 4 storeys, due to the slope of the land between Somerville Place and Condamine Street. The proposal steps up the slope (from Condamine Street) in the central area of the site which creates a 4 storey element. At the back (western frontage to Somerville Place) the proposal has a 3 storey appearance and along the street frontage the appearance of the fourth storey is set well back, past 8m to reduce exposure to Condamine Street.(as demonstrated in the image below)

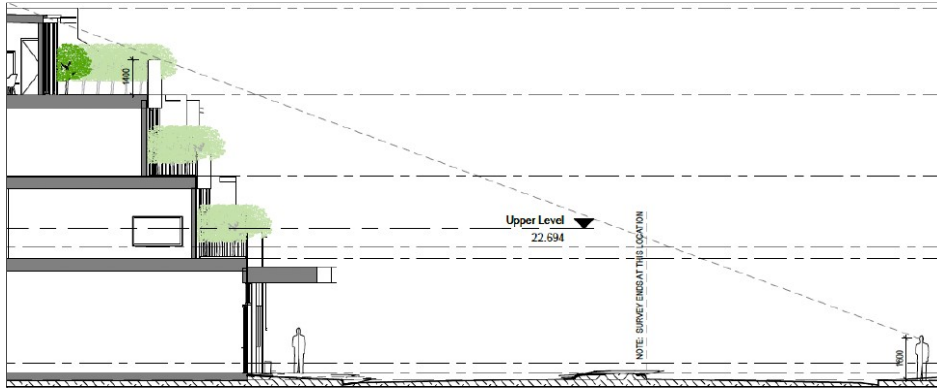


Image: Stepped back upper elements from Condamine Street.

- To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.

Comment:

The proposal is setback on a consistent alignment with adjacent buildings and does not create any unreasonable 'forward' impact on Condamine Street. The proposal has been designed with access to the parking area from Somerville Place (as per the DCP requirement) which allows opportunity to integrate the ground level and level 1. In this regard, the fourth storey level is consistent with the street presentation of adjacent apartment buildings and is limited to the central part of the building viewed from adjoining properties, streets and the public domain.

- To provide equitable sharing of views to and from public and private properties.

Comment:

The proposal is generally conforms the the slope of the land and responsive to the 4 metre ground level change between Condamine Street and Somerville Place. Only minor elements of the lift overrun, roof plant enclosure and the forward edge of the upper storey protrude into the height plane as the building steps up the site. The fourth storey element does not contribute to any unreasonable loss of views from adjacent public land or private property.

- To ensure a reasonable level of amenity is provided and maintained to adjoining and nearby properties.

Comment:

The fourth storey level is centralised to provide spatial separation to adjacent land including solar amenity and street setbacks using open balcony spaces to break up building bulk. Overshadowing impacts from the upper storey (and overall height) for the DA was considered by Council's DSAP and the submitted design is supported, subject to conditions. The building is also designed to maintained reasonable privacy amenity between internal apartments and ensure no unreasonable loss of views.

- To provide sufficient scope for innovative roof pitch and variation in roof design.

Comment:

The building has been designed with a very low pitch roof in order to minimise view loss from apartments that overlook the site from the western side of Somerville Place. The roof will be finished with a neutral varied surface finish to ensure no unreasonable glare for properties that overlook the roof area.





- *To complement the height of buildings control in the LEP with a number of storeys control.*

Comment:

The Warrigah LEP 2011 height of building control is 11 metres and the use of four storeys for residential development already has an established precedent in the locality. In this case the fourth storey element does not create any significant breach of the WLEP development standard and is not inconsistent the objectives of the control.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

### **B6 Merit Assessment of Side Boundary Setbacks**

Description of inconsistency

The proposal has a 0.0m setback along the northern boundary. (The south, east and western boundaries are fronted by road reserve (main road and public laneways) and are therefore "front" and "secondary frontages").

Merit consideration:

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

- *To provide ample opportunities for deep soil landscape areas.*

Comment:

The established pattern along Condamine Street is for mixed use development to have a nil setback for properties between No.285 and No.319 Condamine Street. Light wells are provided along parts of some side setbacks where those properties are larger shop top housing or commercial uses. Overall landscaping is not a feature of any sites along the western side of Condamine Street between Kenneth Road and King Street. The nil setback to No.295 Condamine Street is consistent with the pattern of development to the north and south.

- *To ensure that development does not become visually dominant.*

Comment:

The use of a 0.0m side setback required a fire partition wall to No.295 Condamine Street and is consistent with the existing building footprint that covers the entire site area. The DCP seeks to maintain continuity of the local centre (with improved pedestrian zones along the street.) The use of a side setback would not provide any material improvement to the streetscape in terms of continuity with the established pattern of development. The conventional approach for shop top housing in the vicinity of the site is to use a nil side setback.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment:

The height and scale of the building is substantially the same as surrounding mixed use development in the vicinity. In this case, the design has used the northern side wall to position roof plant and the lift overrun along the northern setback which assists to reduce its visual



impact on residential land to the west that overlooks the site and conceals it from public views along Condamine Street. The building scale and bulk is consistent with the pattern of development along the western side of Condamine Street in the vicinity of the site.

- *To provide adequate separation between buildings to ensure a reasonable level of amenity and solar access is maintained.*

Comment:

The use of nil setback along the northern boundary does not create an unreasonable impact on amenity or solar access. The proposed units will comply with solar access requirements as per the Apartment Design Guide. The use of a side setback in the circumstances would be inconsistent with the DCP that seeks a nil setback to the street and was also not required in the previous redevelopment of No.295 Condamine Street.



Image: Streetview of the site as it currently appears, adjacent lane (south) and nil side setback on the northern boundary.

- *To provide reasonable sharing of views to and from public and private properties.*

Comment:

The proposal does not have an unreasonable impact on views given the low profile room, slope of the land, similarity of overall height to adjacent development and overall building profile in response to the site characteristics.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## B7 Front Boundary Setbacks

### Description of non-compliance

#### Condamine Street (Primary Frontage)

The proposal includes a variation at Level 1 for 2m setback (rather than building to the front boundary alignment) and a setback of 4.0m (rather than 5.0m) for Level 2. The proposal also includes a Level 3 element creating a 4th storey in the mid section of the building with a setback of 8.09m to Condamine



Street.

Somerville Place (Secondary Frontage)

A setback of 1.0m is provided at ground level with a setback of 3.0m for Level 2 and Level 3 at the rear. The building presents as 3 storeys at the western elevation and 9.3m high at the western end of the building.

Pedestrian Lane (Secondary Frontage)

A setback of 0.0m is provided for all storey levels along the southern elevation. This elevation fronts an unnamed road reserve that is used as a public pedestrian thoroughfare to Somerville Place. A nil setback is consistent with the existing building currently on the site and the building at No.289 Condamine Street.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

The proposal steps back similar to adjacent building with the visible variations of the graduated setback for L1 to L3 above the ground level alignment. The balconies provide a sense of openness with the building bulk stepping back to the top level.



Image: Photomontage impression of the proposed building and front setback arrangement (including to side laneway)

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

Comment:

The photomontage above illustrates the design response proposed to maintain continuity to the adjacent buildings, however the top storey and balcony elements show the visual impact of these elements particularly in regard to matching each floor level, awning elements, and landscaping features at the balcony setbacks.

The continuity of setbacks and height levels for adjacent buildings is represented below in the adjacent section diagrams. Principally these sections demonstrate the setback alignment, overall building height of adjacent development, storey levels including basement components.

Generally the mid-section (middle third) of the proposed building breaches the 11m and 3 storey height related controls. However the proposal only seeks to excavate to a depth of one (1) storey for mechanical car stackers and storage space.

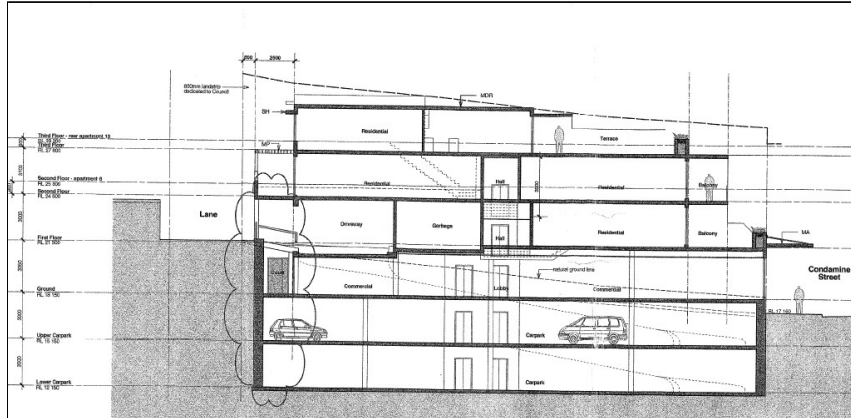


Image: Setback and storey level arrangement approved at No.295-297 Condamine Street (adjoining north boundary)

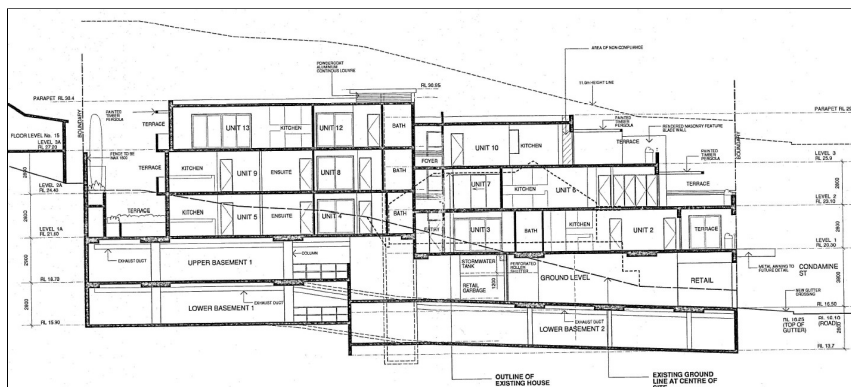


Image: Setback and storey arrangement approved at No.289 Condamine Street (south of subject site). This site is longer and wider than the subject land, with 2 ramped basement levels shown.

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

Comment:

The photomontage image above provides a visual comparison as proposed in context with adjacent buildings in the streetscape. The stepping and external colours also show the impact of the building on the streetscape. In this regard it is recommended that a mid tone balustrade colour (rather than the dark tone) and some glass sections be included at the mid level balustrade. Additionally, the inclusion of landscaping planting along the upper balcony (L3) will assist to continue the landscape element that forms a feature of the upper storey level and will create a similar screening effect featured along the top level of No.295 to No.297 Condamine Street. This consideration is addressed by a recommended condition.

- To achieve reasonable view sharing.



Comment:

The proposal maintains reasonable view sharing and is consistent with the view impacts accepted for adjacent mixed use development with regard to views along the streetscape (diagonal view lines from adjacent apartments) and views across the site from houses along Highview Avenue.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

### C3 Parking Facilities

Description of non-compliance

The proposal includes the use of a car-stacker arrangement for the basement parking facilities. No retail customer or visitor parking is proposed.

Merit consideration

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

- *To provide adequate off street carparking.*

Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Shop top housing	1 bedroom dwelling (1 c/s) 2 bedrooms dwelling (1.2 c/s) 3 bedroom dwelling (1.5 c/s) + 1 visitor car space (c/s) per 5 dwellings. Retail shop 79sqm (1 c/s per 16.4sqm of leasable area) Loading bay	6 2.4 1.5 1 4.8   1	10 resident spaces in 2 x car stacker* machines plus 1 disabled access space   0   0	See below
<b>Total</b>		<b>14.7 (15) + loading</b>	<b>11</b>	<b>-4 and no loading</b>

\* The carstacker machine is in 2 separate "slots" with vertical lift mechanisms. Therefore





requiring a share arrangement of at least one of the machines. The applicant has provided detailed information on the car stacker mechanism to support this arrangement and description of operation, convenience use, safety, reliability and maintenance requirements. Given the development is for only 9 units and the limitations of the site in providing conventional basement carparking the use of a car stacker mechanism is supportable under the DCP and circumstances of the case.

Council's Traffic Engineer has assessed the proposal including the Traffic and Parking Report for the DA and provided the following consideration that given the site is within 300m of the Manly Vale B-line bus service and other regular bus services and walking distance to Balgowlah it is considered a lower parking rate consistent with Dee Why Town Centre is acceptable. This would equate to:

- 1 space per 23.8m<sup>2</sup> for the retail component = 3.3 spaces.
- 0.6 spaces per 1 bedroom dwelling = 3.6 spaces.
- 0.9 spaces per 2 bedroom dwelling = 1.8 spaces.
- 1.4 spaces per 3 bedroom dwelling = 1.4 spaces.
- 1 visitor space per 5 units or part thereof = 2 spaces.
- i.e the parking requirement would be **12 spaces**

In summary, Council's Traffic Engineer is satisfied with the carparking arrangements provided. (See detailed analysis provided under the heading "Internal Referrals - Traffic Engineering")

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

Comment:

The proposal is designed with a basement carpark with access on the eastern side of the building facing the rear laneway of Somerville Place. The access drive is in the same location as the existing driveway, however site excavation is required to achieve lift stackers into the basement structure. The garage vehicle entry is integrated into the ground floor of the building and setback, in alignment with the front boundary setback required on adjacent land also in Somerville Place. The basement parking access will not have an unreasonable visual impact on the street frontage.

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

Comment:

The use of car stackers enables much less excavation of the site than would otherwise be required to achieve a second level of basement parking area, for resident vehicles. The access to the garage will have a security door and the original entry from Condamine Street has been deleted to use only Somerville Place. This is consistent with *Part F Local and Neighbourhood Centres* of the WDCP.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## D2 Private Open Space



Private open space is assessed pursuant to SEPP 65 and the Apartment Design Guide which take precedent over the WDCP controls.

## D6 Access to Sunlight

### Merit Consideration against the Objectives

*Council may consider a variation to this control in the particular circumstances of a proposal, where an applicant can demonstrate, to the satisfaction of Council that:*

- i) the slope or topography of the site or adjoining property makes compliance impractical; and*
- ii) other design options have been investigated which would comply but would unreasonably constrain the development of an otherwise compliant building.*

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



Image: Adjacent lower balconies and lower terraces to the south affected by new shadow regime by redevelopment of the site.

- *To ensure that reasonable access to sunlight is maintained*

### Comment:

The planning principle established in the *Benevolent Society v Waverley Council (2010) NSWLEC 1082* has been considered in the assessment of sunlight. In this regard, the dense pattern of surrounding



development and height of the configuration of mixed use buildings has a significant influence on solar access due to the wall-to-wall zero setback along the western side of Condamine Street. In this regard, the site is also a narrow site and the east-west alignment limits opportunity to provide wide setbacks to all boundaries given the commercial pattern of development surrounding the site. Key considerations include that:

- *At higher densities sunlight is harder to protect which is the case in for such a narrow site as the proposal is situated on.*
  - *Sunlight lost should be taken into account in the solar access diagrams, as well as the amount of sunlight retained, this extends to how soon sunlight is lost or gained before and after the autumn and spring solstice respectively.*
  - *The quality design may be demonstrated by including sensitive design elements that achieves good amenity outcomes. These include floor plate and roof elements, use of recessed sections and setbacks which the proposal has done.*
  - *Strict mathematical formulae are not always an appropriate measure of solar amenity against glazed surfaces or small private open space areas that may also be subject to shadowing from ancillary building elements.*
  - *The impact of existing development should be taken into context in areas undergoing change, which in this case the site is an 'infill' Lot adjacent land that was developed with little regard to the amenity of the subject land and its equivalent impact on solar access.*
  - *In the context of the pattern of existing development and the considerations raised under the planning principle the proposal does not create an unreasonable loss of sunlight.*
- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The proposal has been able to respond to the narrowness of the site and slope of the site ensure no unreasonable solar impacts to adjacent apartments at No.289 Condamine Street. Detailed solar access and elevation overshadow diagrams have been provided to demonstrate consistency with this objective, subject to conditions which includes reducing the over-extended parapet on the southern roof edge.



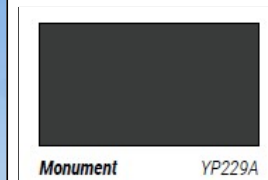


Image: Recommended to reduce the parapet edge to the upper southern roof edge (and "monument black" metal wall colour not recommended.)

- *To maximise the penetration of mid winter sunlight to windows, living rooms, and high use indoor and outdoor areas.*

Comment:

The proposal will create additional overshadowing to adjacent land during the mid-winter period. No overshadowing impact on adjacent land would render the site sterile from redevelopment for the same use, notwithstanding the redevelopment benefit already realised / capitalised by adjacent mixed use development. Solar access is not unreasonable in the context of the pattern of surrounding development and the design response of the building subject to conditions to reduce minor elements of the southern parapet and the 0.5m thick slabs to 0.3m at L2 and L3 to create a roof apex at FFL30.942 which will lessen the overshadowing.

- *To promote passive solar design and the use of solar energy.*

Comment:

The proposal does not unreasonably affect any solar design elements for adjacent land or solar panels used for solar energy. The principal outdoor open space areas face east or west which is consistent with the pattern of development along the western side of Condamine Street in the proximity to the proposal, subject to conditions..

- *To minimise the need for artificial lighting.*

Comment:

The proposal will not have an unreasonable impact on the use of artificial lighting in the context of the surrounding development pattern.

Having regard to the above assessment, it is concluded that the proposed development is consistent



with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## D7 Views

### Merit consideration of the Objectives

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

- *To allow for the reasonable sharing of views.*

#### Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

### 1. Nature of the views affected

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

#### Comment to Principle 1:

A site visit of the subject property, and adjacent properties demonstrates the views enjoyed across centre of site are broad urban views including distant small section of the coastal interface (water) parts Manly urban area, and the coastal headland. The focal area is an easterly direction toward the Manly Lagoon area. The district views of the urban hinterland also form part of the periphery outlook.

Specifically view considerations have been made with regard to No.17 Highview Avenue (as outlined in 'submissions').





Image: View across site from No. 17 Highview Avenue - mid storey - living area deck (central position).



View from Highview Avenue and across No. 19 Highview Avenue. Distant limited water glimpse.

## 2. What part of the affected property are the views obtained

*"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".*

### Comment to Principle 2:

The views enjoyed area across the rear boundary (noting that this is a secondary street frontage, but at the back of the house). The view is dominated by an urban outlook with distant elements of the Manly coastal area and Manly Vale. The ability to maintain views from a sitting and standing position are impacted due to the 11m height control permitting 3 storey building frontage along Somerville Place in the Local Centre zone. The view through the centre of the site will be blocked by the development at the third floor, the 4th floor element is actually the same level, but with a 4.0m site level difference this non-compliance is on the leeward side of the building away from Highview Avenue. A narrow view corridor will be maintained along pedestrian lane but this has limited value.

## 3. Extent of impact

*"The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor,*



*moderate, severe or devastating”.*

Comment to Principle 3:

The view from Highview Avenue is across a rear boundary and views from above first floor level already have some various incursions or interferences such as the existing building profiles, trees, telegraph lines and the like. Therefore, the view impact is considered to be minor, given the compliant western elevation of the building and the 4th storey elements is the same floor plate as the 'rear' 3rd storey and on the leeward side of the slope. Views from the new upper storey additions to No.17 Highview are retained.



Image: View directly across site from No.17 Highview Avenue (access to the new additions sealed off due to construction work) but the new floor level is at RL30.41 (blue tarp area) and the main roof span of the proposal will be RL31.34. The clerestory roof element should be deleted from the proposal to be a flat skylight and the mechanical plant area limited to 1.5m wide to minimise view impact.

#### **4. Reasonableness of the proposal that is causing the impact**

*“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”*

Comment to Principle 4:

The adjacent properties along Condamaine Street have consistent setbacks and heights with visual





differences mainly with regard to the roof and balcony treatment and position of rooftop plant equipment and the like. A complying development would have a similar height appearance along Somerville Place but the most likely change would may allow for roof plant to be located on the 3rd storey roof plate rather than on the roof. However, the proposal has sought to locate the roof plant against the northern partition wall to retain views across the main roof span area and align them close to the lift shaft intrusion. The lightwells / skylights shown are low profile and will not create unreasonable view loss, subject to conditions. Additionally the 0.5m thick slabs adds an extra 0.4m to the upper level that unnecessarily impacts views from No.17 Highview Avenue. It is recommend only 300mm slab be used to create a roof apex at FFL30.942. The clerestory roof element should be deleted to be a flat skylight and the mechanical plant area limited to 1.5m wide to minimise view impact. Therefore, the proposal is considered to be satisfactory with regard to this element of the planning principle.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The proposal has been amended (from the pre-lodgement application) to a more innovative roof profile to minimise roof top element that intrude into the principal view line and retain elements of the district view and address Planning Principle in respect of view sharing.

- *To ensure existing canopy trees have priority over views.*

Comment:

There are no trees on the subject development site and no trees are proposed to planted.

Having regard to the above assessment, it is concluded that the proposed development consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## D8 Privacy

### Merit consideration

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

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

The building has been designed to ensure the principal balcony spaces (above ground level) are oriented toward the street or the rear setback consistent with the pattern of development within similar development along this part of Condamine Street. Privacy screens are also included for the side walls, and adjustable (operable) screens are recommended to be used for the Somerville Place elevation.

The use of internal 'block-out' or 'opaque' blinds will also assist to ensure internal privacy western elevation windows, while also enabling maximum natural light to be available during the day. For acoustic privacy, the balcony areas have solid partitions and are oriented toward the street (either



Condamine Street or Somerville Place). Adequate separation distance will remain for houses along Highview Avenue.

Therefore, the proposal is consistent with this objective, subject to conditions for additional fitted screens.



Image: West elevation with limited screening to windows and balcony toward No.17 Highview Avenue.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The proposal has ensured that window positioning, window sill heights and private open space areas are designed to assist in maintaining privacy to adjacent land to the south. Living areas are generally confined to the east or western elevations with their own balconies. It is recommended that the side landscape planters at the edge of the balcony areas that separate adjacent balconies be marginally widened to 1.5m to allow for improved plant screening space.

In this regard, the proposal has used innovative design considerations to ensure no unreasonable privacy impacts to adjacent land.

- *To provide personal and property security for occupants and visitors.*

Comment:

The site will have security access, including gated access to the rear carpark and front entry. Internal security is provided from the foyer area to all apartments.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.



## F1 Local and Neighbourhood Centres

### Merit consideration:

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

- *To encourage good design and innovative architecture.*

#### Comment:

The proposal has been revised following a pre-lodgement consultation with Council's *Design and Sustainability Advisory Panel* and an internal pre-lodgement meeting with technical staff. The applicant has included design responses to incorporate the advice provided to achieve this objective.

- *To provide a safe and comfortable environment for pedestrians*

#### Comment:

The proposal will maintain a retail frontage and pedestrian zone for Condamine Street. No vehicle crossings are proposed to Condamine Street and a setback is provided for Somerville Place to assist safe vehicle access and pedestrian movement.

- *To provide a range of small-scale shops and business uses at street level with offices or low-rise shop-top housing to create places with a village-like atmosphere.*

#### Comment:

A visible retail frontage is to be maintained to Condamine Street that is consistent with other similar width shop top housing re-development nearby. The upper storeys are setback to reduce the impact of building bulk forward on the street and resemble a 3 storey appearance. The middle section of 4 storeys is limited due to the slope of the site. At the rear, screening, balconies and a 3 storey appearance is maintained that is consistent with other adjacent development along Somerville Place.

- *To enhance the established scale and pattern of development and the continuity of existing streetscapes.*

#### Comment:

The building has been designed to maintain consistent visual levels with principle elements of external balconies, awnings, street levels and the upper storey setbacks. External materials are recommended to be less contrasting colours to adjacent facades for the frontage to Condamine Street to maintain visual continuity.

- *To enhance the public domain.*

#### Comment:

The proposed changes to not create an adverse impact on the public domain, subject to conditions.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this



particular circumstance.

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

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

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

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

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2022**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$51,498 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$5,149,771.

### **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

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

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

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

Council is satisfied that:

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





demonstrated that:

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

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

The proposal seek demolition, excavation work and construction of a shop top building (to re-develop the existing aging mixed use development on the site). Building setbacks, height and amenity issues raised in submissions have been addressed by the applicant and minor changes to the plans to the increase the setbacks, roof profile treatment and changes to selected elements to assist with privacy (visual and acoustic), streetscape, view sharing, and general amenity. Other construction related issues (traffic, dilapidation, site access and the like) are addressed by conditions.

Concerns raised by Council's DSAP and Internal referrals have been addressed by the applicant (or recommended conditions where appropriate) in accordance with the DSAP and PLM advice provided. Overall the building height variation, density, carparking, storey element variation, setbacks and built form are considered appropriate for the *B2 Local Centre* of Manly Vale along this section of Condamine Street.

In conclusion, the principal issues in the assessment have been addressed by the amendments to the plans received in order to reduce the impact of building scheme and the proposal is therefore supported pursuant to the *NSW Apartment Design Guide*, *Warringah LEP* and *Warringah DCP*. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the WLEP 2011 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2022/0682 for Demolition works and construction of shop top housing on land at Lot 2 DP 11320, 293 Condamine Street, MANLY VALE, Lot 1 DP 11320, 291 Condamine Street, MANLY VALE, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

- a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
A-1001 B Existing and Demo Site Plan	21.2.2022	RFA Architects
A-2102 C Proposed Ground Floor Plan	27.7.2022	SARM Architects
A-2103 B Proposed Level 01 Plan	21.2.2022	RFA Architects
A-2104 B Proposed Level 2 Plan	21.2.2022	RFA Architects
A-2105 B Proposed Level 3 Plan	21.2.2022	RFA Architects
A-2201 B Proposed Roof Plan	21.2.2022	RFA Architects
A-3001 B Proposed Section 1	21.2.2022	RFA Architects
A-4001 B East Elevation	21.2.2022	RFA Architects
A-4002 B South Elevation	21.2.2022	RFA Architects
A-4003 B West Elevation	21.2.2022	RFA Architects
A-7000 B Material Schedule	21.2.2022	RFA Architects

<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA02 B Erosion and Sediment Control Plan and Details	23.2.2022	Costin Roe Consulting
DA03 B Stormwater Drainage Plan	23.2.2022	Costin Roe Consulting
DA04 B Stormwater Drainage Plan Level 2	23.2.2022	Costin Roe Consulting
DA05 B Stormwater Drainage Details Sheet 1	23.2.2022	Costin Roe Consulting
DA06 B Stormwater Drainage Details Sheet 2	23.2.2022	Costin Roe Consulting

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Basix Certificate 1280487M	18.2.2022	Efficient Living
Geotechnical Investigation Report 34549PNrpt	1.2.2022	JK Geotechnics
Noise Impact Assessment	10.12.2021	WSP
Window Door Systems 15.12.2021	15.12.2021	RFA Architects
Smart Louvre Installation 700-003-MK 1	14.3.2017	Greene Fire
Building Code of Australia Assessment 21-217704 ContamineSt R01	25.11.2021	Philip Chun
Civil Engineering Report 14568.00-02a.rpt	23.2.2022	Costin Roe Consulting
Preliminary (Stage 1) Site Investigation E34549BDrpt	21.2.2022	JK Consulting
Construction Traffic Management Plan 21316	25.2.2022	Varga Traffic Planning
Hazardous Building Materials	21.12.2021	JK Environments



Survey E34549BLrpt-HAZ		
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b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan B 3746	18.2.2022	Elephants Foot Consulting
Construction and Demolition Waste Management Plan Rev B	18.2.2022	Elephants Foot Consulting

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

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

2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	9.6.2022
Transport for NSW	TfNSW Referral Response	31.5.2022

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. **No Approval for any Signage**

No approval is granted under this Development Consent for signs (as defined under Warringah Local Environment Plan 2011 and State Environmental Planning Policy (Transport and Infrastructure) 2021. A separate Development Application for any signs (other than exempt and signs permitted under Complying Development) must be submitted for the approval prior to the erection or display of any such signs.

Reason: Control of signage.

4. **No Approval for any Signage above the parapet / roof line**

No approval is granted under this Development Consent for the erection of any advertising or business identification signage located above the roof/parapet line. All signage above the roof/parapet shall be deleted.



Reason: Compliance with Warringah Local Environment Plan.

## 5. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifier for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.



- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

6. **General Requirements**

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.



- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

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

## FEES / CHARGES / CONTRIBUTIONS

### 7. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$51,497.71 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$5,149,771.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or



on Council's website at Northern Beaches Council - Development Contributions.

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

8. **Security Bond**

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

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

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

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

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

9. **Construction, Excavation and Associated Works Security Bond (Crossing / Kerb)**

The applicant is to lodge a Bond of \$30,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent.

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

Reason: Protection of Council's infrastructure.

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

10. **Landscape Plan**

A Landscape Plan shall be issued to the Certifying Authority prior to the issue of a Construction Certificate to include the following details:

- i) plant species selections for all on slab planters including quantities and pot sizes.

Certification shall be provided to the Certifying Authority that these amendments have been documented.

Reason: Landscape amenity.

11. **Public Domain Plan**

A Public Domain Plan shall be concurrently submitted as part of the Civil Works under the Roads Act provisions of Section 138 to Council for development works within the road reserve, with sufficient detail design information including the following:





- i) alignment levels showing existing and proposed levels for altered kerbs and gutters,
- ii) existing and proposed pavement levels, with proposed gradients no more than a 2.5% fall from building openings to top of kerb, and to match existing levels along adjoining properties,
- iii) details of any utility alignment and level changes,
- iv) details of the proposed pavement finish from building to kerb which is to match and tie into surrounding unit paving,
- v) proposed street tree planting (x1) on Condamine Street to tie into existing street tree planting, and in accordance with Northern Beaches Standard Drawing 1300 - Tree Pit Details, Plan and Section, including strata cell system, 1200 x 1200 tree pit opening finished with mulch and groundcover planting,
- vi) the street tree shall be *Xanthostemon chrysanthus*, installed at a pre-ordered 200 litre container size,
- vii) the groundcover planting shall be *Liriope 'evergreen giant'* planted at 9 per square metres and at 140mm container pots.

Any work carried out upon public land shall have all the necessary prior approvals and permits from Council in place prior to commencement to conduct such works.

Reason: Compliance with Council standards for works on public land.

12. **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 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/native 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.

13. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points



- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: Protection of the receiving environment.

14. **Construction Traffic Management Plan**

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

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

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the 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
- Specify that, due to the proximity of the site adjacent to St.Keirans Catholic School, heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic are to be minimised during school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays)
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around

**Council street trees**

- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

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

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

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

**15. Removal of Redundant Driveways**

All redundant driveways shall be removed and reinstated to Council standard kerb and gutter and road pavement. 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 remove redundant driveways that are no longer needed in accordance with Council policy.

**16. Vehicle Mechanical Turntable**

The applicant is to provide information on the proposed vehicular turntable, operation details, and instructions to tenants and visitors on using the device, maintenance plan, and contingency plan during a malfunction.

Details are to be provided to Council for approval and this requirement is to be reflected on the Construction Certificate plans. Details demonstrating compliance are to be reflected on the Construction Certificate plans and any supporting documentation for the endorsement of the Certifying Authority prior to the release of the Construction Certificate.

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



17. **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 where it intersects with Somerville Place. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To maintain pedestrian safety.

18. **Amendments to Balcony Elements / Cladding**

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

- i) The rectangular landscape planter boxes on each balcony (shown along the sides of each balcony area) is to be widened to 1.0 metre (m) for all 9 residential Units.
- ii) A 1.0m wide x 0.6m deep soil planter box is to be provided along the (east) edge of the balcony balustrade for Unit 7 (FL27.942) to include additional minor landscape elements similar to adjacent buildings to the north. The main balustrade is to be of glazed material and setback from Condamine Street to maintain a maximum trafficable width of 3.0m from the front (eastern) wall of Unit 7 to minimise the visual impact of the balustrade height when viewed from Condamine Street.
- iii) The front balustrades facing Condamine Street for L2 and L3 are to include glazed material for their width to provide a more open style translucent appearance to the street.
- iv) The west facing balconies are to include horizontally (stackable) sliding privacy screens fitted to enable solar access and privacy screening for Units 5, 6, 8 and 9. Additional custom fitted screen panels shall be included to enable the full width of the west facing balconies to be screened from direct overlooking from No.17, No.19 and No.21 Highview Avenue.
- v) The "MC1" Stryum colour Monument Black wall panel and balcony (BAL1 and BAL2) colour is not approved. This colour is to be changed to a lighter mid-tone natural colour, sympathetic to the adjacent buildings and streetscape.
- ix) The west facing fixed (F) balcony windows to Units 5, 6, 8, and 9 shall include translucent glass to limit internal direct overlooking to those units from No.17 Highview Avenue.
- xiv) The west facing terrace balustrades are to be amended to incorporate non visually permeable components to a minimum height of 760 millimetres (mm), and maximum height of solid balustrade components to 900mm.

Details demonstrating compliance are to be submitted to the satisfaction of the Principal Certifier prior to the issue of the Construction Certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land and address streetscape considerations.

19. **Amendment to Roof Height and Roof Elements**

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

- i) Photovoltaic Cells on the roof are to be kept to less than 5% pitch in order to minimise



view impact.

- ii) The roof top equipment plant area and screening is to be limited to 1.5 metres wide, measured from the northern boundary separation firewall, in order to minimise view impacts to properties (to the west) that overlook the site. Perimeter screening on the roof equipment's plant area is limited to 1.0m above roof level.
- iii) The clerestory roof element should be deleted to be a flat skylight to minimise view impact.
- iv) The overextension of the parapet wall above the southern upper roof edge shall be deleted to minimise view and shadowing impacts.
- v) A 0.3m thick slab be used and not 0.5m thick slab for (level) L2 and L3 in order to create a lower overall roof by 0.4m and roof apex at FFL30.942
- vi) The roof plan for the construction certificate (CC) is to appropriately annotated to show that no satellite dishes, antenna or chimney vents are to be installed on the rooftop within 8.0m of the southern edge of the roof.

Details demonstrating compliance are to be submitted to the satisfaction of the Principal Certifier prior to the issue of the Construction Certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land, including view and overshadowing impacts.

20. **Acoustic Treatment**

The common walls between the bedrooms of one unit and the living rooms or bathrooms of an adjoining unit are to be constructed to a minimum of 10Rw (sound reduction index) units above the minimum requirement specified in the Building Code of Australia for separating wall construction applicable to this building. Details are to be provided to the Certifying Authority prior to the issue of a Construction Certificate.

Reason: To provide for internal acoustic amenity.

21. **Building Code of Australia Requirements and Fire Safety Measures**

The *Building Code of Australia* works and fire safety measures as detailed and recommended in the Building Code of Australia Audit Report prepared by Philip Chun BC NSW P/L, dated 25/11/2021, Report Ref No. 21\_217704\_Condamine St\_R01 are to be incorporated into the Construction Certificate documentation. 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.

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

The Applicant is to provide drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy and generally in accordance with the concept drainage plans prepared by Costin Roe Consulting Pty Ltd, drawing number C01456800-DA01B, DA03B, DA04B, DA05B, DA06A, dated 23/02/2022. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the



General Area of Practice for Civil Engineering.

The drainage plans must address the following:

1. An overflow pipe is to be provided within the OSD tank connected to the outlet pipe.
2. The overflow pipe must be set above the top water level and below the overflow slot from the rainwater tank chamber.

Detailed drainage plans, including engineering certification, and concurrence from Transport for NSW for the connection to the existing pit in Condamine St in accordance with their letter dated 31 May 2022 Reference: SYD22/00533, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

23. **Submission Roads Act Application for Public Domain 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 Civil Engineering plans for the design of the footpath fronting Condamine St and driveway crossing and kerb in Somerville Place which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plans shall be prepared by a qualified Civil Engineer. The design must include the following information:

1. Alignment levels showing existing and proposed levels for altered kerbs and gutters
2. Existing and proposed pavement levels, with proposed gradients no more than a 2.5% fall from building openings to top of kerb, and to match existing levels along adjoining properties
3. Details of any utility alignment and level changes
4. Details of the proposed pavement finish from building to kerb which is to match and tie into surrounding unit paving
5. Proposed street tree planting (x1) on Condamine Street to tie into existing street tree planting, and in accordance with Northern Beaches Standard Drawing 1300 - Tree Pit Details, Plan and Section, including strata cell system, 1200 x 1200 tree pit opening finished with mulch and groundcover planting
6. The street tree shall be *Xanthostemon chrysanthus*, installed at a pre-ordered 200 litre container size
7. The groundcover planting shall be *Liriope 'evergreen giant'* planted at 9 per square metres and at 140mm container pots.
8. The driveway crossing is to be 5 metres wide and designed in accordance with Council drawing A4/3330/1 N
9. The layback is to be in accordance with Council drawing A4/2276/B
10. 150mm Kerb and gutter is to be provided for the remaining frontage to Somerville Place in accordance with Council drawing A4/2276/A

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 Public Domain Works are constructed in accordance with relevant standards and Council's specification.

24. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer.

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

Reason: To provide public and private safety.

25. **Shoring of Council's Road Reserve (Temporary road anchors)**

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

Written approval from Council under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Council's road reserve. The Owner's approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

26. **Remedial Action Plan to be prepared if Required**

A site-specific Remedial Action Plan (RAP) is to be prepared if the results of the Detailed Site Investigation identify that contaminated material is required to be remediated/removed from site. The RAP must be prepared in accordance with the relevant guidelines and legislation including Managing Land Contamination Planning Guidelines, State Environmental Planning Policy (Resilience and Hazards) 2021 and NSW EPA Guidelines including Guidelines for Consultants reporting on contaminated Land.

The RAP is to be prepared by, or reviewed and approved, by a certified consultant as defined under NSW EPA Contaminated Land Consultant Certification Policy and submitted to the satisfaction of the Principal Certifying Authority.

Reason: Reason: Environmental Protections and State Environmental Planning Policy (Resilience and Hazards) 2021 compliance.

27. **Detailed Site Investigation**

Prior to the issue of any Construction Certificate a Detailed Site Investigation is to be undertaken as per recommendations within the Preliminary (Stage 1) Site Investigation by JK Environments dated 21 January 2022 (Reference: E34549BDrpt). The report is to be prepared by, or reviewed and approved, by a certified consultant as defined under NSW EPA Contaminated Land Consultant Certification Policy.

The investigation is to be in accordance with relevant industry guidelines including State





Environmental Planning Policy (Resilience and Hazards) 2021 compliance and NSW EPA guidelines.

Reason: Protection of the environment, State Environmental Planning Policy (Resilience and Hazards) 2021 compliance.

28. **Mechanical Ventilation Provisions for Retail Tenancies**

Prior to the issuing of any Construction Certificate, certification is to be provided from a suitably qualified professional that the building's design and construction will provide adequate provisions to the retail tenancy for mechanical ventilation to be installed for any future uses that require mechanical ventilation e.g. food premises. The certification is to consider that the buildings provisions for mechanical ventilation are satisfactory to:

- Prevent potential amenity issues including noise and odour for occupants of the building and surrounding premises; and
- Allow compliance with relevant legislation and standards including Building Code of Australia, AS1668.1 "The use of ventilation and air conditioning in buildings Fire and smoke control in buildings" and AS1668.2 "The use of ventilation and airconditioning in buildings Mechanical ventilation in buildings".

Certification is to be submitted to the satisfaction of the Principal Certifying Authority.

Reason: To protect the amenity of building occupants and neighbouring properties.

29. **Noise - Design of Mechanical Plant**

Prior to the issue of a Construction Certificate, the design and location of the mechanical ventilation is to be provided to the Principal Certifying Authority. An acoustic assessment is to be undertaken by a suitably qualified professional such as an acoustic engineer to determine acoustic treatments to control noise emissions from all mechanical plant noise in accordance with recommendations in Acoustic Report prepared by WSP Australia Pty dated 10 December 2021 (PS127494-ACO-REP-01 Rev0).

Any design recommendations made by the consultant must be implemented into the plans prior to issuing the Construction Certificate in order to achieve compliance with noted conditions of this consent.

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

Reason: To protect surrounding premises from any noise generated by the operation of the development.

30. **Acoustic Report Recommendations**

Prior to the issuing of any Construction Certificate, documentation is to be submitted to the satisfaction of the Principal Certifying Authority that recommendations within the acoustic report by WSP Australia Pty dated 10 December 2021 (PS127494-ACO-REP-01 Rev0) have been implemented/incorporated into the design of the premises.

Reason: To protect acoustic amenity of building occupants and surrounding premises.

31. **Design Verification Certificate**

The Design Verification Certificate is to be provided from the building designer prior to the issue



of a Construction Certificate. The certificate statement is to include revisions made to the construction certificate plans as per the approved conditions of this consent.

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

Reason: To ensure the development is consistent with the *Apartment Design Guide* and *State Environmental Planning Policy No.65*.

32. **Compliance with Standards**

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

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

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

33. **Sustainability Design Inclusions**

The following amendments (or annotations for inclusion) are to be made to the approved plans:

- i) Electric Vehicle (EV) charging points are to be provided in the basement car park for each residential Unit.
- ii) The basement storeroom (between the car stacker mechanisms) is to be partitioned to enable each residential Unit to have domestic storage space within the basement that complies with the *Apartment Design Guideline*.

Reason: Sustainable design.

34. **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

35. **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 Transport for NSW must give their consent and provide a Road Occupancy Licence before a Work Zone can be approved on Condamine Street.

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



36. **Road Occupancy Licence**

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

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

37. **Demolition Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to commencing any demolition work.

Due to heavy traffic congestion throughout the area, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Specify that, due to the proximity of the site adjacent to St.Keirans School, heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic are to be minimised during school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays).
- Include a Traffic Control Plan prepared by an RMS accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of 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 DTMP 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. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

The DTMP 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 Demolition Traffic



Management Plan is submitted.

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

38. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below (as deemed appropriate for adjacent apartments, basements and commercial floors), both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property / Properties:

- No.295-297 Condmine Street Manly Vale
- No.289 Condamine Street Manly Vale
- No.17 Highview Avenue Manly Vale
- any other property assets close to or likely to be affected / potentially damaged by works or associated activity.

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

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

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

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

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

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

39. **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.

40. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan



prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

41. **Substitution of Stormwater Treatment Measures**

The substitution of an "equivalent" device for the stormwater treatment measure approved under the Development Consent must be submitted to the Principal Certifying Authority for approval prior to installation.

Reason: To ensure stormwater is appropriately managed and in accordance with the Water Management for Development Policy.

42. **Implementation of Demolition Traffic Management Plan**

All works and demolition activities are to be undertaken in accordance with the approved Demolition Traffic Management Plan (DTMP). All controls in the DTMP 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 DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.

43. **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.

44. **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.

45. **Geotechnical Requirements**

All recommendations, as appropriate within the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works to the satisfaction of the Certifying



Authority.

Reason: To ensure geotechnical risk is mitigated appropriately.

46. **Survey Certificate**

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

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

Details demonstrating compliance are to be submitted to the Principal Certifier.

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

47. **Civil Works Supervision**

The Applicant shall ensure all civil works approved in the Section 138 Roads Act approval are supervised by an appropriately qualified and practicing Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

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

48. **Footpath Construction**

The applicant shall construct the footpath along the Condamine Street frontage of the site in accordance with the following:

- (a) All footpath works are to be constructed in accordance with Section 138 Roads Act approval
- (b) Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Section 138 Roads Act approval for footpath.

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.

49. **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 pouring of kerb and gutter, layback and footpath

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.

50. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the S138 Roads Act 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.

51. **Kerb and Gutter Construction**

The Applicant is to construct kerb and gutter and associated works along the entire frontage of Somerville Place in accordance with Northern Beaches Council Drawing No. A4 2276/A. Prior to the pouring of concrete, the works are to be inspected by Council and an approval issued.

The approval is to be submitted to the Principal Certifying Authority.

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

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

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

Reason: To protect human health and the environment.

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

Prior to the exportation of waste (fill and/or soil) from the site, the waste materials must be tested and classified in accordance with the provisions of the Protection of the Environment Operations Act 1997 and the NSW EPA Waste Classification Guidelines, Part 1: Classification of Waste (November 2014). Testing is required prior to off-site disposal. In accordance with DECC Waste Classification Guidelines (2014) materials identified for off-site disposal must be removed by a suitably qualified contractor to an appropriately licensed waste facility.

'Chain of Custody' documentation including receipts shall be kept for the exportation of waste (fill and/or soil material) from the site. Details demonstrating compliance are to be submitted to the Principal Certifying Authority within seven (7) days of transport and made available to Council upon request.

Reason: Appropriate disposal of waste and protection of the environment.

54. **Contamination Management**

Any Recommendations within the Contaminated Land Reports including the Detailed Site Investigation Report and the Remedial Action Plan (if required) must be followed during works.

Reason: Protection of the environment, State Environmental Planning Policy (Resilience and Hazards) 2021 compliance.





55. **Compliance with Recommendations within Hazardous Building Materials Survey**  
Any recommendations within the Hazardous Building Materials Survey by *JK Environments* dated 21 December 2021 (Reference: E34549BLrpt-HAZ) are to be implemented during works.

Reason: To protect human health.

56. **Onsite Encapsulation of Contaminated Material**  
No onsite encapsulation of contaminated material is to occur without approval under a separate DA or modification submitted to Council.

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

57. **Waste/Recycling Requirements (Waste Plan Submitted)**  
During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan titled dated [INSERT].

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

58. **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

59. **Certification for the Installation of Stormwater Treatment Measures**  
A certificate from a Civil Engineer, who has membership to Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures have been installed in accordance with the plans prepared by *Costin Roe* rev b 23.02.22 and approved CC stormwater plans. The certificate must confirm that stormwater treatment measures are completed, online, in good condition and are not impacted by sediment.

The certificate shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

60. **Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures**  
A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater treatment measures in accordance with the standard requirements of Council, the manufacturer and as required by the Stormwater Treatment Measures Operation and Maintenance Plan.

A restriction as to user shall be created on the title over the stormwater treatment measures, restricting any alteration to the measures.



The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements (available from Council) at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To identify encumbrances on land, ensure ongoing maintenance, and ensure modification to the stormwater treatment measures is not carried out without Council's approval.

61. **Stormwater Treatment Measures Operation and Maintenance Plan**

An Operation and Maintenance Plan is to be prepared to ensure the proposed stormwater treatment measures remain effective.

The Plan must be attached to the Positive Covenant (and the community or strata management statement if applicable) and contain the following:

1. Detail on the stormwater treatment measures:
  - a) Work as executed drawings
  - b) Intent of the stormwater treatment measures including modelled pollutant removal rates
  - c) Site detail showing catchment for each device
  - d) Vegetation species list associated with each type of vegetated stormwater treatment measure
  - e) Impervious area restrictions to maintain the water balance for the site
  - f) Funding arrangements for the maintenance of all stormwater treatment measures
  - g) Identification of maintenance and management responsibilities
  - h) Maintenance and emergency contact information
2. Maintenance schedule and procedure - establishment period of one year following commissioning of the stormwater treatment measure:
  - a) Activity description, and duration and frequency of visitsAdditionally for vegetated devices:
  - b) Monitoring and assessment to achieve an 80 percent survival rate for plantings
  - c) Management of weeds, pests and erosion, with weed and sediment cover limited to a maximum of 5 percent of the total area of the stormwater treatment measure
3. Maintenance schedule and procedure - ongoing
  - a) Activity description, and duration and frequency of visits
  - b) Routine maintenance requirements
  - c) Work Health and Safety requirements
  - d) Waste management and disposal
  - e) Traffic control (if required)
  - f) Renewal, decommissioning and replacement timelines and activities of all stormwater treatment measures (please note that a DA may be required if an alternative stormwater treatment measure is proposed)
  - g) Requirements for inspection and maintenance records, noting that these records are required to be maintained and made available to Council upon request.

Details demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.



62. **Works as Executed Drawings - Stormwater Treatment Measures**

Works as Executed Drawings for the stormwater treatment measures must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

63. **Strata Management Statement**

The Strata Management Statement must specifically list the stormwater treatment measures that will be maintained under strata title. The statement must also include the Stormwater Treatment Measure Operation and Maintenance Plan.

Details demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: To ensure maintenance of all stormwater management assets and protection of the receiving environment.

64. **Mechanical Stacked Parking Spaces (residential)**

Parking space pairs in mechanical car stackers are to be assigned to the same residential unit. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To minimize conflicts regarding parking areas.

65. **Shared Zone Bollard**

A bollard is to be provided at the shared zone between disabled spaces in accordance to Australian Standards AS2890.6:2009.

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

Reason: To ensure compliance with Australian Standards.

66. **Mechanical Servicing of car stackers and vehicle turntable**

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

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

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

67. **Post-Construction Dilapidation Report**



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

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

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

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

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

68. **Business Use (Ground Floor)**

A development application is not required for "first use" of the retail space, subject to compliance with *SEPP (Exempt and Complying) Development*.

The applicant / occupier must check with a qualified Building Certifying Authority (EP&Act 1979) or Northern Beaches Council with regard to whether Consent may be required for other commercial / retail / shop uses that require environmental health inspection prior to change of use or occupation and fitout.

Reason: Statutory.

69. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

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

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgment with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted.

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

70. **Certification of Public Domain Works**

The Applicant shall submit a certificate from a suitably qualified practicing Civil Engineer with corporate membership of Engineers Australia or equivalent and has appropriate experience and competence in the related field, that the Public Domain Works have been constructed in accordance with the Section 138 Roads Act approval required within this development consent.



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

Reason: To ensure Public Domain Works have been built in accordance with the Section 138 Roads Act approval.

**71. Validation for Remediation**

At the completion of any required remediation works (if the results of the Detailed Site Investigation identify that contaminated material is required to be remediated/removed from site) a validation report is to be prepared by, or reviewed and approved, by a certified consultant as defined under NSW EPA Contaminated Land Consultant Certification Policy and submitted to the satisfaction of the Principal Certifying Authority.

The Validation Report must be in accordance with the requirements of the following:

- State Environmental Planning Policy No 55—Remediation of Land;
- Contaminated Land Management Act 1997;
- Relevant NSW EPA guidelines including the NSW EPA Guidelines for Consultants reporting on contaminated Land: Contaminated land guidelines 2020

The report shall document the following:

1. The extent of validation sampling, and the results of the validation testing; and
2. That the remediation and validation of the site has been undertaken in accordance with the Remedial Action Plan.

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

Reason: Protection of the environment, State Environmental Planning Policy (Resilience and Hazards) 2021 compliance.

**72. Acoustic Report Certification**

Prior to any occupation certificate being issued, a further acoustic assessment is to be undertaken by a qualified and experienced person(s) to confirm compliance with recommendations within the Acoustic Report by WSP Australia Pty dated 10 December 2021 (PS127494-ACO-REP-01 Rev0).

Any recommendations made by the consultant must be implemented prior to issuing the Occupation Certificate in order to achieve compliance with noted conditions of this consent.

The updated acoustic assessment is to be submitted to the satisfaction of the Principal Certifying Authority.

Reason: To protect acoustic amenity of building occupants and surrounding premises.

**73. 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.

74. **House / Building Number**

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

75. **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.

76. **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.

77. **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.

78. **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.

79. **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**

80. **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 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.

81. **Maintenance of Stormwater Treatment Measures - Major**

Stormwater treatment measures must be maintained at all times in accordance with the Stormwater Treatment Measure Operation and Maintenance Plan, manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Where replacement cartridges or other necessary components for the system become unavailable, an alternative system is required to be retrofitted into the development to achieve an equivalent pollutant reduction outcome. Evidence supporting the replacement must be retained on site and made available to Council as required.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.





82. **Vehicle Parking**

Parking spaces in mechanical stacker pairs are to be assigned to the same residential unit for the larger units that will have 2 spaces, otherwise each car stacker should be allocated to the same residential level as the Units on that Level, as far as practicable.

Reason: To minimize conflicts regarding parking areas.

83. **Sight lines within carparks**

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

Reason: To maintain unobstructed sight distance for motorists.

84. **Proposed Outdoor Dining Condition**

No outdoor dining is approved in this consent for the shop / retail component. Any proposed outdoor dining must be consistent with State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

Any outdoor dining that is consistent with the SEPP shall be the subject of a separate Outdoor Dining Application to Council's Property team.

Reason: To ensure that outdoor dining is assessed and approved under the appropriate regulatory framework and legislation.

85. **Access to Residential Waste Bins for Emptying.**

The two doors used by servicing staff to access the residential waste bins from Condamine Street must remain open from 5.00am to 6.00pm on the scheduled day of collection. These two doors must be able to be latched in the open position.

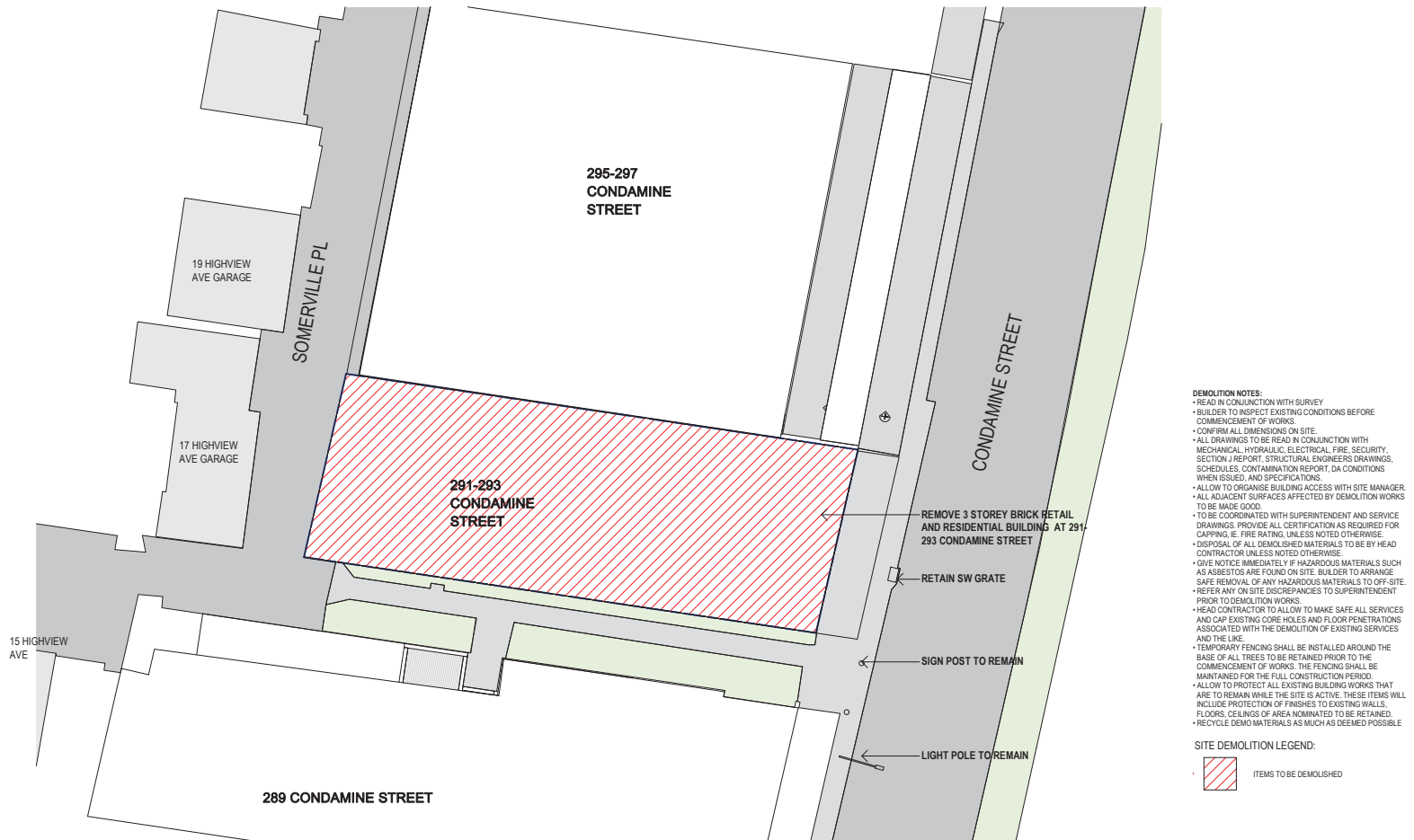
The door between the residential binroom and commercial binroom is to remain locked at all other times.

Reason: To ensure unimpeded access to residential waste bins for servicing staff.

86. **Commercial Waste and Recycling Storage**

Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins as shown on the approved plans.

Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed.



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**EAST ELEVATION**  
1 : 100

**FINISHES LEGEND:**

BAL1 = METAL BALUSTRADE 1.0M HIGH MIN. INTERNAL  
BAL2 = GLASS BALUSTRADE 1.0M HIGH MINIMUM INTERNAL

BRW = BRICK  
MC1 = VERTICAL METAL CLADDING  
MC2 = FLAT METAL CLADDING  
G1 = GLAZED WINDOWS/ DOORS  
FC = FIRE SCREEN TO WINDOWS AND PRIVACY LOUVRES  
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GD = GARAGE DOOR  
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MR = METAL ROOFING  
MM = MEMBRANE ROOFING AND INTERNAL GUTTER  
DP = DOWNPIPE

(W 01) = WINDOW NUMBER

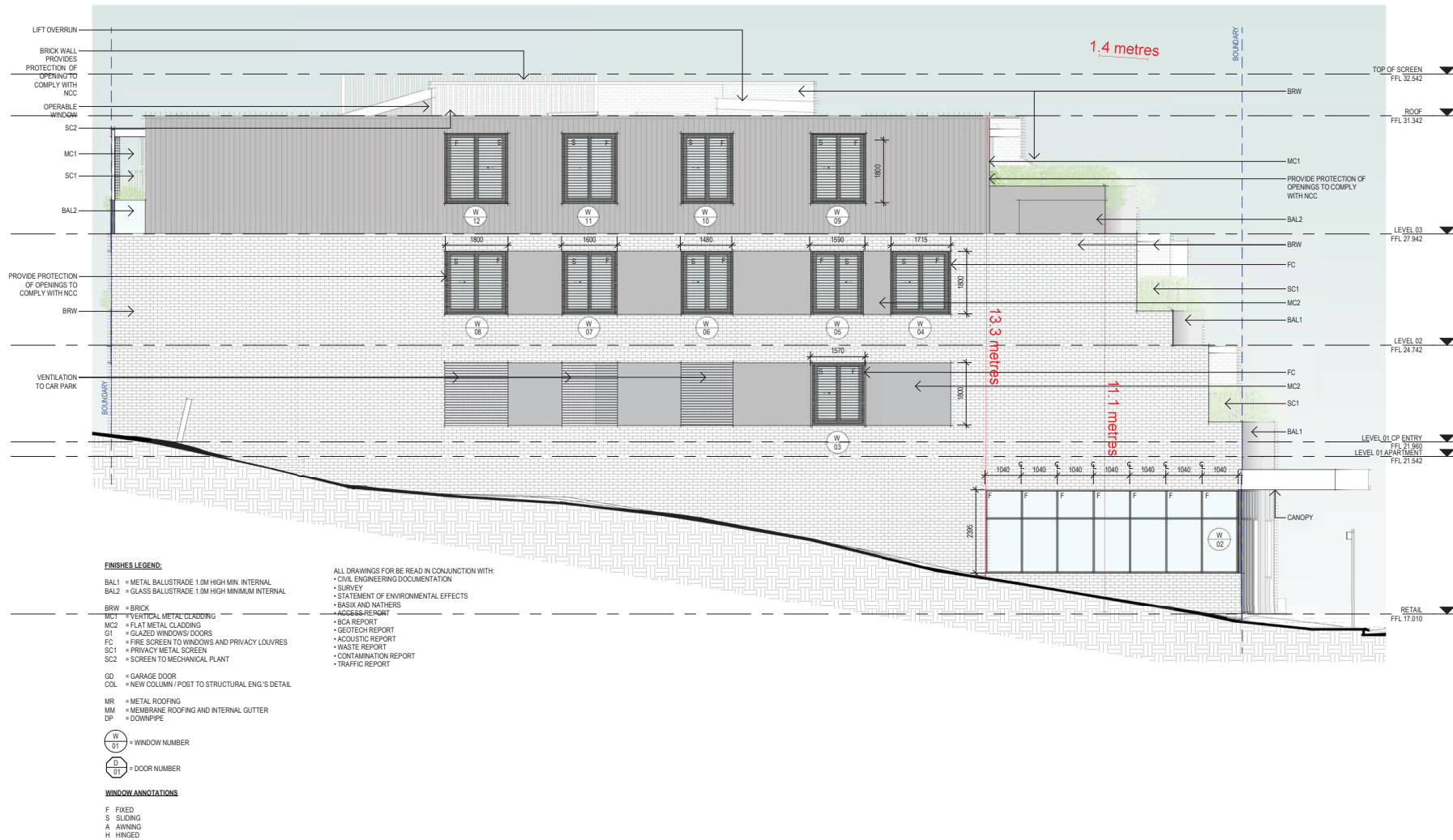
(D 01) = DOOR NUMBER

**WINDOW/DOOR ANNOTATIONS**

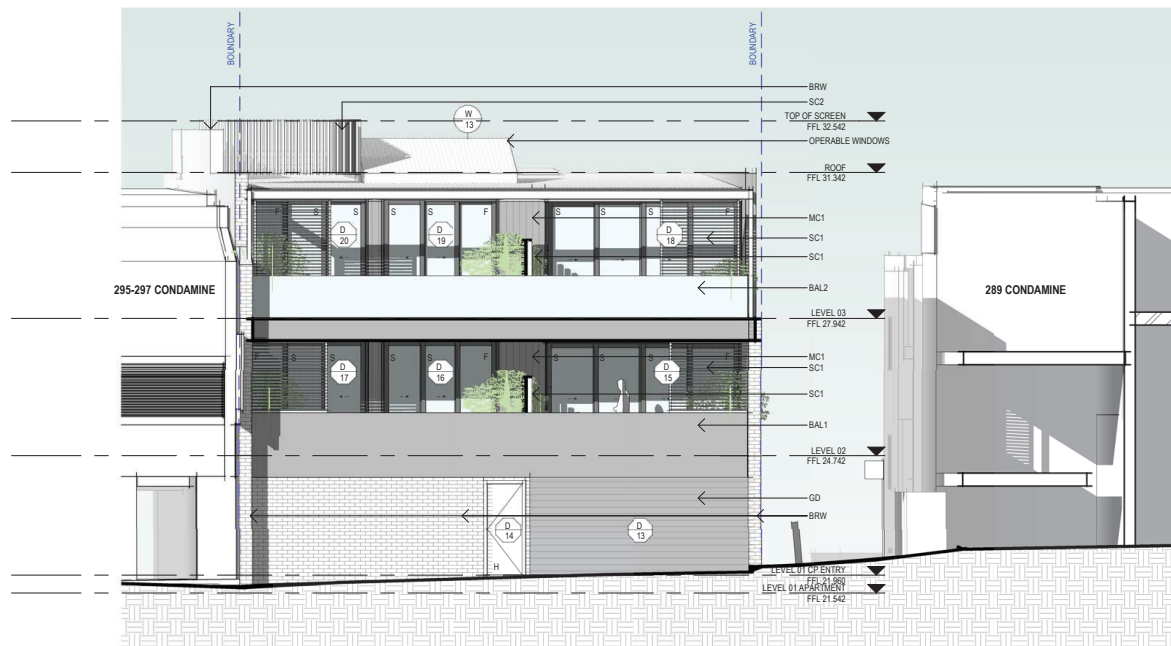
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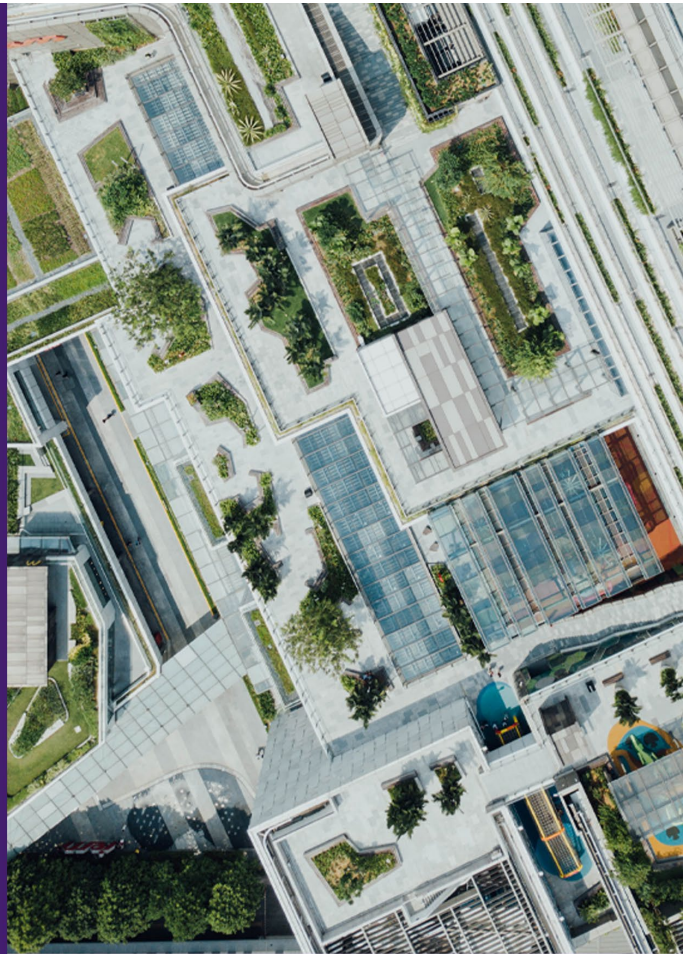
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## 291-293 Condamine St Manly Vale

Clause 4.6 Variation to Height of  
Buildings

On behalf of  
Eastview (Australia) Pty Ltd  
April 2022

## Table of Contents

1	Introduction .....	4
2	Clause 4.6 Exceptions to Development Standards .....	5
3	The Development Standard to be varied .....	7
4	Extent of Variation to the Development Standard .....	8
5	Objectives of the Standard .....	9
6	Objectives of the Zone .....	10
7	Assessment .....	11
7.1	The Objectives of the standard are achieved notwithstanding non-compliance with the standard (Wehbe#1) .....	11
7.1.1	Objectives of Clause 4.3 - Height of Buildings Development Standard ..	11
7.2	Clause 4.6(3)(b) - There are sufficient environmental planning grounds to justify contravening the development standard. ....	14
7.3	Clause 4.6(4)(a)(i) – 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 .....	16
8	Secretary's Concurrence .....	18
8.1	Clause 4.6(5)(a): Any matters of significance for state or regional environmental planning .....	18
8.2	Clause 4.6(5)(b): Any public benefit of maintaining the development standard .....	18
8.3	Clause 4.6(5)(c): Other matters required to be taken into consideration before granting concurrence .....	18
9	Conclusion .....	19

## Schedule of Figures

Figure 1	Height of Buildings Map Extract (WLEP 2011) .....	7
Figure 2	Proposed Height Exceedance (DA.A-3001 B) (RFA Architects) .....	8
Figure 3	View from across the street (RFA Architects) .....	11
Figure 4	Condamine Street upper-level setbacks (RFA Architects) .....	12
Figure 5	Developments to the north of subject site along Condamine St (The Planning Studio)	12



Figure 6 Developments to the south of subject site along Condamine St (The Planning Studio) 13

Figure 7 Upper floor height exceedance due to fall of land (DA.A-3001 B) (RFA Architects) 15

## 1 Introduction

This Clause 4.6 Variation Request relates to the Development Application (DA) for 291-293 Condamine Street, Manly Vale (subject site), which proposes:

- Demolition of the existing commercial building;
- New ground-floor retail facing Condamine Street (79m<sup>2</sup>), access and lobby for residential dwellings, and bin storage area;
- Car access from Somerville Place for 11 cars (permitted through stackers), including 1 accessible parking space; and
- 9 residential units comprising:
  - 6 x 1-bedroom units;
  - 2 x 2-bedroom units; and
  - 1 x 3-bedroom units.

The Clause 4.6 Variation Request seeks to vary one development standard within the Warringah Local Environmental Plan 2011 (WLEP2011):

- Clause 4.3 – Height of Buildings

This Clause 4.6 Variation Request demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case, and that the justification is well founded. The variation allows for a development that represents the orderly and economic use of the land in a manner which is appropriate when considering the site's context and existing building, and as such, is justified on environmental planning grounds.

This Clause 4.6 Variation Request demonstrates that, notwithstanding the non-compliances, the proposed development:

- Achieves the objectives of the development standard in Clause 4.3 of WLEP 2011, despite the non-compliance with the numerical standard in Clause 4.3;
- Achieves the objectives of the B2 Local Centre zone under WLEP 2011;
- Will deliver a development that is appropriate for its context, despite the numerical breach to development standard 4.3, and therefore has sufficient environmental planning grounds to permit the variation; and
- Is in the public interest.

As a result, the DA may be approved as proposed in accordance with the flexibility afforded under Clause 4.6 of the WLEP 2011.



## 2 Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the WLEP 2011 aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development. Specifically, the objectives of this clause are:

- To provide flexibility in the application of a development standard; and
- To achieve better outcomes for and from development.

Clause 4.6 enables a variation to the relevant development standards in the WLEP2012 for Clause 4.3 (Height of Buildings) – which ordinarily permits a maximum Height on the subject site of 11m

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has provided a written request that has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant has provided a written request that has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- That 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 consent authority's satisfaction as to those matters must be informed by the objectives of Clause 4.6, which are:

- providing flexibility in the application of the relevant control; and
- to achieve better outcomes for and from development.

Clause 4.6 of the WLEP 2012 reads as follows:

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

1. *The objectives of this clause are as follows:*
  - (a) *to provide an appropriate degree of **flexibility in applying certain development standards** to particular development,*
  - (b) ***to achieve better outcomes for and from development by allowing flexibility** in particular circumstances.*
2. *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
3. *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*



- (a) that compliance with the development standard is ***unreasonable or unnecessary in the circumstances of the case***, and
  - (b) that there are ***sufficient environmental planning grounds to justify contravening the development standard***.
- 4. Development consent must not be granted for development that contravenes a development standard unless:
  - (a) the consent authority is satisfied that:
    - (i) the applicant's written request has adequately ***addressed*** the matters required to be demonstrated by subclause (3), and
    - (ii) the proposed development will be ***in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out***, and
  - (b) the concurrence of the Secretary has been obtained.
- 5. In deciding whether to grant concurrence, the Secretary 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 Secretary before granting concurrence.



### 3 The Development Standard to be varied

This Clause 4.6 variation has been prepared as a written request seeking to justify a contravention of the maximum Height of Buildings development standard as set out in Clause 4.3(2) of the WLEP 2011. Clause 4.3(1) states:

#### 4.3 Height of buildings

The objectives of this Clause are as follows:

- (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

As identified on the WLEP 2011 Height of Buildings Map associated with Clause 4.3, the site is subject to a height limit of 11m (refer to **Figure 1**).



**Figure 1** Height of Buildings Map Extract (WLEP 2011)



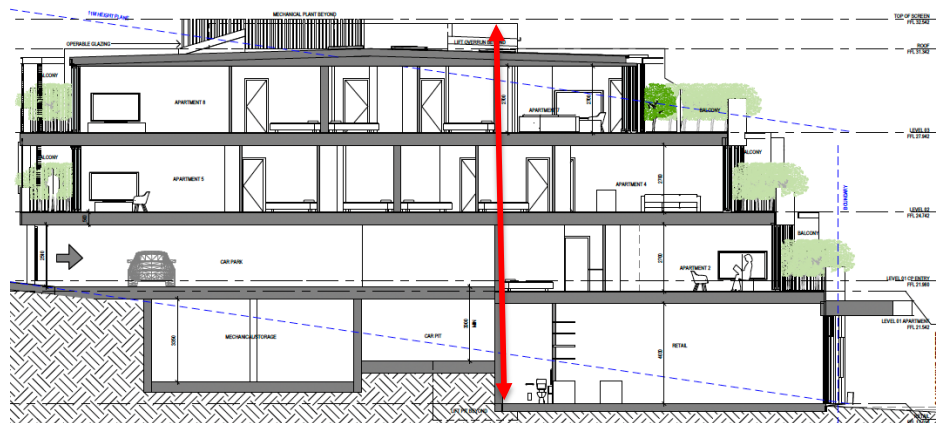
## 4 Extent of Variation to the Development Standard

As addressed above, Clause 4.3 of the WLEP 2011 prescribes a maximum height of 11m for the site. The proposed maximum building height is 14.8m when measured from existing ground level of the retail space on Condamine Street (RL17.01) to the top of the lift overrun at RL31.84. This represents a 30% variation to the height control.

It is noted that the top of the mechanical plant screen presents a taller RL of 32.542. However, as there is no existing ground level RL at this location and the surrounding public domain is higher compared to the lower existing retail space, the variation to the height control is less at this point (12.542m height or 14% variation).

This approach is consistent with measuring 'ground level (existing)' from the existing excavated retail space on Condamine Street consistent with the approach taken in *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*. As there is no excavated level at the point of the building of the mechanical plant screen, 'existing ground level' for this portion of the building has been measured from surrounding public domain levels, consistent with *Bettar v Council of the City of Sydney [2014] NSWLEC 1070*.

The height variation is illustrated in **Figure 2**.



**Figure 2** Proposed Height Exceedance (DA.A-3001 B) (RFA Architects)

## 5 Objectives of the Standard

The objectives of the Clause 4.3 Height of Buildings development standard are as follows:

- (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*





## 6 Objectives of the Zone

To provide a range of retail, business, entertainment, and community uses that the objectives of the B2 Local Centre zone are as follows:

- *To provide a range of retail, business, entertainment, and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To provide an environment for pedestrians that is safe, comfortable, and interesting.*
- *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.*
- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*



## 7 Assessment

### Clause 4.6(3)(a) - Is Compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Compliance with the height standard is considered unreasonable and unnecessary in the circumstances for the reasons outlined in **Section 7.1** below.

### 7.1 The Objectives of the standard are achieved notwithstanding non-compliance with the standard (Wehbe#1)

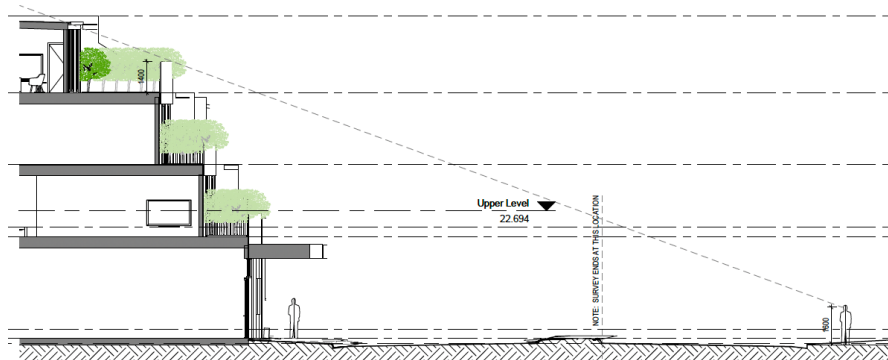
The following sections demonstrate that the proposed variation will result in a built form outcome that achieves the objectives set out under Clause 4.3 of the WLEP2011.

#### 7.1.1 Objectives of Clause 4.3 - Height of Buildings Development Standard

The following sections demonstrate that the objectives associated with the Clause 4.3 development standard are achieved notwithstanding the proposed non-compliance.

##### *(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

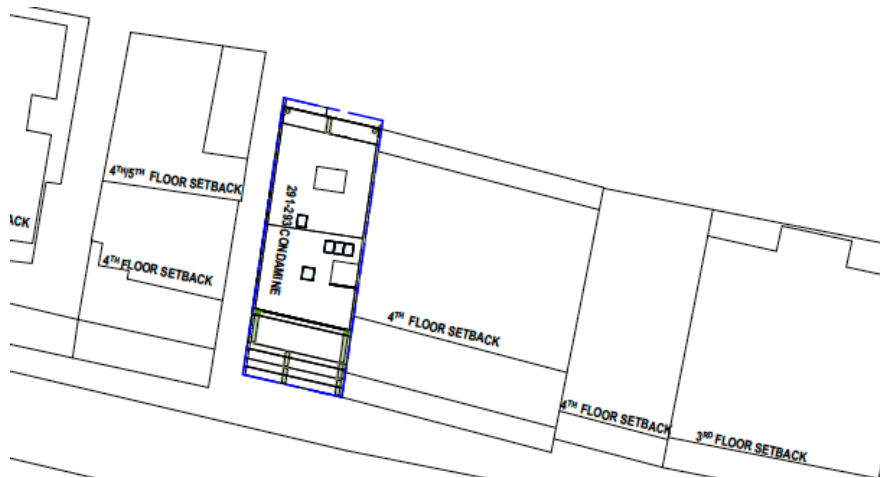
The proposed development has been carefully designed to be compatible with the height and scale of surrounding and nearby development. As shown in the Figure below, the built form that exceeds the height control will have limited visual impact from the eastern side of Condamine Street.



**Figure 3** View from across the street (RFA Architects)

It is noted that all surrounding developments on the same side of Condamine Street have a fourth (or fifth) level that is set back from Condamine Street. There is no established setback for these upper floors, and the Figures below show that all of these upper floors have some visibility from the eastern side of Condamine Street similar to the proposed development.





**Figure 4** Condamine Street upper-level setbacks (RFA Architects)



**Figure 5** Developments to the north of subject site along Condamine St (The Planning Studio)





**Figure 6** Developments to the south of subject site along Condamine St (The Planning Studio)

The subject development is proposing a similar upper level as has been previously approved at all of these sites, and its setback is over 8m from the boundary to ensure it has an equivalent minimal visual impact as these other developments from a height and scale perspective.

It is also noted that this is the last remaining development site along this block between Condamine St and Somerville Place, and that all surrounding developments have a fourth storey (or higher) facing Condamine Street. As such, the proposed development, and height variation are not seeking a development precedent for the precinct. Rather, it is the final remaining development block seeking a compatible height and scale with surrounding and nearby development.

**(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,**

As demonstrated in the above Figures, the proposed development will have minimal visual impact from the surrounding public domain that is consistent with the visual impact of surrounding developments. The portion of the development that exceeds the height control does not disrupt any views to surrounding properties.

Whilst the development does create in some additional privacy and solar impacts to the development to the south, the portion of the development that exceeds the height control does not contribute to these impacts. The southern neighbour's proximity to the site and its orientation has resulted in some additional impacts that cannot be avoided, even by a strictly compliant building.



Accordingly, the development has been carefully designed to mitigate privacy impacts to the southern neighbour by applying privacy screens to the south-facing windows, which are all bedroom windows to further reduce impacts. A detailed elevational solar analysis has been done of the north-facing windows and balconies, which shows that the solar impacts of a strictly compliant envelope create the same overshadowing impacts to these windows and balconies as the subject proposal. Further, the existing building creates overshadowing to these windows and balconies.

**(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,**

The subject proposal is within the Manly Vale Local Centre and will not create any adverse impact on the scenic quality of Warringah's coastal and bush environments.

**(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.**

As highlighted under the assessment against height objective (a), the development, including the portion that exceeds the height control has limited visibility from the surrounding public domain, which is primarily the eastern side of Condamine Street.

The development is a modest 3-4 storey building that is consistent with surrounding and nearby development and does not create any visual impact from any public places beyond that of the existing built form.

## 7.2 Clause 4.6(3)(b) - There are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6(3)(b) of the WLEP 2011 requires that the consent authority be satisfied that the applicant's written request has adequately demonstrated that:

*There are sufficient environmental planning grounds to justify contravening the development standard.*

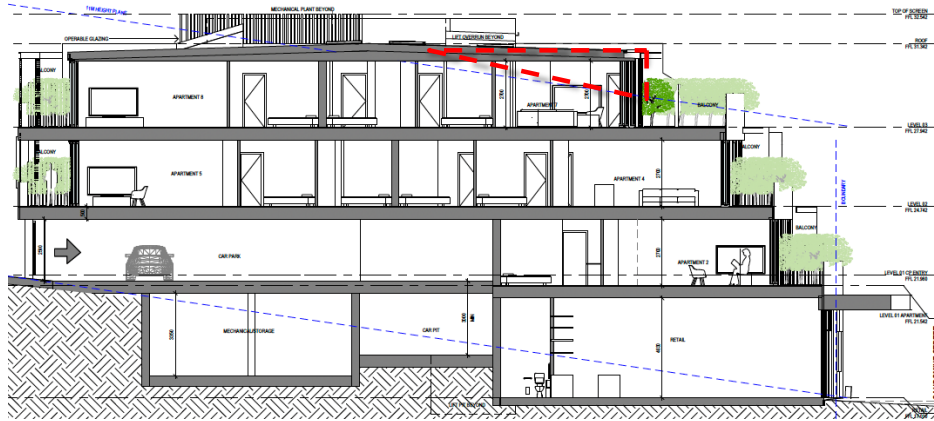
The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511 and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118), also 'Rebel MH' and 'Baron' (2019).

The environmental planning grounds relied upon to justify the exceedance of the development standard in the circumstances of the proposal are considered sufficient and specific to the site and the proposed contravention. Further discussion is provided below.

The height variation being sought is primarily as a result of the fall of the land (being approximately one storey) from Somerville Place to Condamine Street, which is a particular environmental planning consideration of the site. The existing ground level at Somerville Place is at approximately RL22m, which then drops to approximately RL17m at Condamine Street. This drop of almost 5m across the length of the site is a key reason for the variation being required.



As highlighted in the Figure below, the fall of the land results in a portion of this top storey exceeding the height control in order to deliver a functional floor plate at the top most level of the development.



**Figure 7** Upper floor height exceedance due to fall of land (DA.A-3001 B) (RFA Architects)

Further, recent changes to the approach in measuring 'existing ground level' for the purpose of building height has also resulted in a height variation that is technically greater, despite having no impact in terms of environmental, amenity or built form outcomes.

The proposed maximum building height is 14.8m when measured from existing ground level of the retail space on Condamine Street (RL17.01) to the top of the lift overrun at RL31.84. This represents a 30% variation to the height control.

It is noted that the top of the mechanical plant screen presents a taller RL of 32.542. However, as there is no existing ground level RL at this location and the surrounding public domain is higher compared to the lower existing retail space, the variation to the height control is less at this point (12.542m height or 14% variation).

This approach is consistent with measuring 'ground level (existing)' from the existing excavated retail space on Condamine Street consistent with the approach taken in the recent Land and Environment Court determination *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582.

As there is no excavated level at the point of the building of the mechanical plant screen, 'existing ground level' for this portion of the building has been measured from surrounding public domain levels, consistent with *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070. Had the longer-standing Bettar approach been used across the overall development, the variation to the control would be numerically less despite no change to the actual built form being sought.

This is a relevant consideration for the purpose of highlighting that the extent of variation to the control for the subject proposal appears artificially greater due to the new measurement approach advocated in *Merman*. This is supported by the fact that the survey levels of the adjoining development to the south (RL31.04) show that this building will sit approximately only 1m lower than the proposed development.





For the above reasons, it is considered that there are sufficient environmental planning grounds to justify a variation to the height of buildings development standard in the circumstances of the site.

### 7.3 Clause 4.6(4)(a)(i) – 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

1. The proposed development is in the public interest as it is consistent with the objectives of the development standard. The objectives of the development standard are addressed below under the relevant headings:
2. The objectives of the particular standard
  - i. It has been demonstrated elsewhere in this report that the development achieves the objectives of Clause 4.3 within the WLEP2011 notwithstanding the non-compliance with the standard.
3. The objectives for development within the zone in which the development is proposed to be carried out.
  - i. The site falls within the B2 Local Centre zone. As outlined below the proposed development is in the public interest because it is consistent with the objectives of the zone as detailed below.
  - ii. *To provide a wide range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*  
  
The proposal will deliver retail and business premises at ground-floor, while also delivering 9 residential dwellings in an accessible location, thus contributing to the diversity of housing needs in the Northern Beaches.
  - iii. *To encourage employment opportunities in accessible locations.*  
  
The ground-floor use will provide employment opportunities for local retail and/ or business premises.
  - iv. *To maximise public transport patronage and encourage walking and cycling.*  
  
The proposal provides for a lower number of parking spaces in order to encourage public transport patronage and walking, particularly given the site's accessibility to the B Line buses. Storage facilities will be provided to enable appropriate bicycle storage for the future residents.
  - v. *To provide an environment for pedestrians that is safe, comfortable and interesting.*  
  
The proposal provides vehicular access off Somerville Place to minimise vehicular movements across the important pedestrian footpath on Condamine Street. The proposed retail design delivers a glazed 'wrap around' treatment at the corner of Condamine Street and the pedestrian





path to Somerville Place that will increase activation and interest for pedestrians on this key street.

- vi. *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment*

As discussed in detail in Sections 7.1 and 7.2, this is the last remaining development site along this block between Condamine St and Somerville Place, and that all surrounding developments have a fourth storey (or higher) facing Condamine Street. As demonstrated in drawing A-2100 Revision A, there is no established setback for these upper floors, with a number of the existing building setbacks having a similar or reduced setback to Condamine Street.

The proposed development, including the portion of it above the height control, is contextually appropriate, and aligns with the scale and architectural treatment of neighbouring land uses.

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

The proposed development delivers compatible land uses to existing surrounding shop top housing and the lower-scale residential zone to the west.

4. For all of the reasons above, the proposal is considered in the public interest as it is consistent with the objectives of the development standard and the B2 Local Centre zone.



## 8 Secretary's Concurrence

Under Clause 4.6(5) of the WLEP 2011, the Secretary's concurrence is required prior to granting consent to a variation. Under Clause 64 of the Environmental Planning and Assessment Regulation (2000), the Secretary has given written notice dated 21 February 2018 to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice.

The Planning Circular PS 20-002, issued on 5 May 2020 (the Planning Circular), outlines the conditions for assuming concurrence. The Planning Circular establishes that all consent authorities may assume the Secretary's concurrence under Clause 4.6 of the Standard Instrument (Local Environmental Plans) Order 2006 (with some exceptions). The RLEP 2012 is a standard instrument LEP and accordingly, the relevant consent authority may assume the Secretary's concurrence in relation to Clause 4.6(5). This assumed concurrence notice takes effect immediately and applies to pending development applications.

Under the Planning Circular this assumed concurrence is subject to conditions. Where the development contravenes a numerical standard by greater than 10%, the Secretary's concurrence may not be assumed by a delegate of council unless the Council has requested it. The variation to the Clause exceeds 10% and accordingly the Secretary's concurrence cannot be assumed.

### 8.1 Clause 4.6(5)(a): Any matters of significance for state or regional environmental planning

The proposed development will not contravene any matters of significant for state or regional environmental planning

### 8.2 Clause 4.6(5)(b): Any public benefit of maintaining the development standard

As demonstrated above there is no public benefit in maintaining the development standard in terms of State and regional planning objectives, or in terms of minimising the environmental impacts of the development given the proposal's compliance with other key DCP and ADG built form and amenity controls.

### 8.3 Clause 4.6(5)(c): Other matters required to be taken into consideration before granting concurrence

Other than those identified above, there are no further matters that the Secretary (or Consent Authority under delegation) must consider before granting concurrence.



## 9 Conclusion

The assessment above confirms that compliance with the maximum Height of Buildings development standard contained in Clause 4.3 of WLEP 2011 is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the contravention to the development standard.

This written request is for a variation to the Height of Buildings development standard, under Clause 4.6 of the WLEP 2011. It justifies the contravention to the development standards by demonstrating that compliance is unreasonable and unnecessary in the circumstances of the case because the proposal:

- Achieves the objectives of the development standard;
- Achieves the objectives of the B2 Local Centre zone under WLEP 2011;
- Will deliver a development that is appropriate for its context despite the breach to the height development standard, and therefore has sufficient environmental planning grounds to permit the variation; and
- Therefore, is in the public interest.





Design + Sustainability Advisory Panel Meeting Report – Date 29 September 2022

### **Item 3 - DA2022/0682 - 291-293 Condamine Street MANLY VALE**

## **PANEL COMMENT AND RECOMMENDATIONS**

### ***General***

Proposal: Following the receipt of the PLM advice, the applicant has submitted a development application which has generally responded well to DSAP recommendations, particularly in relation to the configuration of vehicular access, car parking, building height and front setbacks.

Generally, the overall composition, bulk and form of the revised development can be supported subject to the recommendations set out below.

### ***Strategic context***

No further comment required

### ***Urban context: surrounding area character.***

Prior issues resolved. No further comment required

### ***Public domain: relationship to public domain, safety/security.***

The applicant is commended for improving the presentation to the street and the wrapping of the retail frontage around into the laneway.

The quality of the landscape in the existing laneway connecting Somerville Place with Condamine Street is poor and will be further degraded during construction. There is minimal landscaping in the development and the opportunity exists to enhance the public domain with appropriate landscape treatment in the laneway.

### **Recommendations**

1. Make good the existing public link with new landscape treatment and footpath. Refer Landscape Treatments below
2. Liaise with Council to develop a landscape design for the laneway to ensure adequate and good quality pedestrian level lighting is provided on completion
3. Give careful consideration to the potential light spill to windows of units both sides of the laneway.

### ***Car parking***

The Panel commends the resolution of carparking access and supports the minor shortfall in parking provision given the location.

The SEE states that each unit has bicycle parking but these are not shown on the plans and there is no mention of bicycles in the transport and parking report.

### **Recommendations**

4. Show where bicycle parking is provided, it is not sufficient to say, "storage allocated for required bicycles for each unit" (SEE p 7) without indicating location. It would be preferable to provide bicycle parking near the lift on the entry level.



### ***Built form, façade and articulation***

The proposal exceeds the 11m height control applicable to the site, up to a maximum of approximately 12.6m. The built form generally conforms with the controls that anticipate a 3-storey development in this area, when viewed from Condamine Street and the rear lane. The upper level has been setback 8m and impacts to adjoining properties have been assessed in comparison to a fully compliant scheme and are considered minimal and reasonable.

The Panel does not consider the height breaches significant, and supports the overall built volume.

The upper level-built form does not have roof overhangs to the street facades (east and west elevation) and the built form and amenity would be improved by providing eave overhangs extended to the extent of the flanking blade walls.

Balustrades to the west terrace on Level 03 are glazed which will expose neighbours opposite to any clutter on balconies and reduce privacy of the occupants.

Balustrades are not dimensioned but appear to be 1m high which generally results in poor internal amenity when seated at dining tables and lounges when balconies are narrow.

#### **Recommendations**

5. Provide eaves overhangs or shade elements to the Level 03 roof that extend to the extent of the containing blade walls on the side pedestrian link
6. Provide improved amenity to west terrace balustrades by incorporating non visually permeable components to a minimum height of 760mm, but maximise the height of solid balustrade components to 900mm. This is to get an appropriate balance between internal privacy and views to the outside.

### ***Dwelling Planning and Amenity***

Impacts on the visual privacy of private open space in the existing single dwelling opposite in Somerville Place is of concern and needs to be addressed.

Some entries to apartments remain convoluted. Though generally apartment planning is much approved, further improvements can be explored. Particular attention is brought to APT5. As a rule of thumb, whilst direct sight lines from entry to external space/daylight are preferred, where this cannot be achieved, plan an apartment so that at the first turn from entry hall views to external space/daylight are available.

Storage areas for each apartment are not indicated on the plans of the apartments or in the basements. The storage area indicated has poor access and it is not clear how much of this area will be required for plant.

#### **Recommendations**

7. Provide full width adjustable sliding screening to the west facing terrace areas on Levels 02 and 03
8. Explore opportunities to simplify the entry sequence to APT5 to achieve views to external space/daylight at the first turn from the entry hallway
9. Review internal layouts including whether laundry facilities could be simplified with the aim of increasing the living areas
10. Check NCC requirements regarding door swings to bathrooms
11. Provide storage in accordance with ADG 4G-1 and indicate on plans.

### ***Landscape Treatments***

The Panel is aware of the minimal landscape opportunities of this site, however there are opportunities for vegetation in planters as shown on the plans. This is strongly encouraged and the Panel supports additional planting for screening, general amenity for residents, shading and improved privacy.



### Recommendations

12. Add further 1m width planters on levels 1,2 & 3. With particular reference to planters on the Southern flank of the terraces and the opportunity to provide viable green screening to the units directly to the South over the laneway
13. Investigate and include if possible potential additional planters at least 4.5m above the “truck line” on eastern facing terraces facing Sommerville Place
14. Additional planting in deep soil could be considered on the ground floor of the garage fronting Sommerville Place
15. The Panel recommend that the Proponent work with Council in creating additional tree and low shrub planting on the laneway linking Sommerville Place and Condamine Street. Understanding this is a Council asset the new landscape works could add amenity to this low-quality pedestrian link. See note above re additional amenity pedestrian lighting.
16. Give careful consideration to species selection and irrigation to ensure low maintenance and viability of planting.

### ***Sustainability and resilience***

The Panel made a number of recommendations in previous advice. Some of these appear to have been adopted and the applicant is strongly encouraged to go further.

SEPP BASIX explicitly precludes the setting of either higher or lower targets by other Environmental Planning Instruments or Development Control Plans.

However, we are living in a climate emergency – all new dwellings should be designed to be as naturally comfortable as possible without heating and cooling (passive design) and should not rely on energy from fossil fuels.

Arguably, the impacts of climate change and the changes to energy supply and security are out-pacing policy and regulation.

There are several aspects of design and servicing that could be easily and cost effectively considered for inclusion in all developments:

- Decarbonisation of energy supply
  - All services should be electric – gas for cooking, hot water and heating should be avoided
  - Heat pump systems for apartments or other ways of providing electric hot water should be considered
  - The storage of hot water can be considered a de-facto battery if heated by PVs during the day
  - Until technologies for the use of hydrogen are developed and introduced, note the risk of gas reticulation becoming a ‘stranded asset’ and the possibility of additional costs to remove gas and rewire the building
  - Guidance is also provided by the Australian Green Building Council <https://gbca-web.s3.amazonaws.com/media/documents/a-practical-guide-to-electrification.pdf>
- Onsite power generation and storage
  - Unshaded roof space is a valuable resource
  - Using PV to provide shade to roof top common areas will generally be supported by the Panel if there are no additional adverse impacts
  - PVs over green roofs perform better due to the local lower ambient air temperature
  - On site battery storage has benefits for the grid and may be a highly desirable back-up during the transition to a de-carbonised grid.
- EV charging
  - Provide EV charging points for each unit



- Allow for bi-directional (2-way) charging of EV battery for powering the building.

#### Recommendations

17. Provide PV on the roof
18. Provide heat pump hot water and induction cooktops – remove gas
19. Consider ceiling fans to improve low-energy comfort options for the apartments, they will also improve the NatHERS scores
20. Provide a rainwater tank to recycle rainwater
21. Provide EV charging points for each unit
22. Allow for bi-directional (2-way) charging of EV battery for powering the building.

### PANEL CONCLUSION

**The Panel supports the proposal subject to the recommendations above being incorporated and strongly encourages the applicant to investigate and incorporate additional sustainability features noting the growing awareness of buyers and marketability of efficient units.**



## 5.0 NON PUBLIC MEETING ITEMS

ITEM 5.1	DA2022/1070 - 10 ROMFORD ROAD, FRENCHS FOREST - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A CARPORT.
AUTHORISING MANAGER	Steve Findlay
TRIM FILE REF	2022/633910
ATTACHMENTS	1 <a href="#">↓ Assessment Report</a> 2 <a href="#">↓ Site Plans &amp; Elevations</a>

### PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the applicant/land owner is a member of council staff who is principally involved in the exercise of council's functions under the Environmental Planning and Assessment Act 1979.

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### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/1070 for demolition works and construction of a new carport and pergola on land at Lot 2 DP 31552, 10 Romford Road, FRENCHS FOREST subject to the conditions set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2022/1070
<b>Responsible Officer:</b>	Ben Tesoriero Creative Planning Solutions Pty Limited
<b>Land to be developed (Address):</b>	10 Romford Road, French Forest
<b>Proposed Development:</b>	Alterations and additions to a dwelling house including a carport.
<b>Zoning:</b>	Warringah LEP 2011 - R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Determination Level</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Phillip Andy Lane
<b>Applicant:</b>	Pergola Land Australia Pty Ltd
<b>Application Lodged:</b>	14/07/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Other
<b>Notified:</b>	22/07/2022 to 05/08/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	Nil
<b>Clause 4.6 Variation:</b>	No
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$27,870

### EXECUTIVE SUMMARY

Council is in receipt of a development application (DA2022/1070) for the demolition of an existing carport and pergola and construction of a new carport and pergola in the same location at 10 Romford Road, Frenchs Forest (Lot 2 in DP 31552). The site is zoned R2 Low Density Residential under the *Warringah Local Environmental Plan 2011* (WLEP 2011) and the proposed development is permissible with consent as the carport and pergola are ancillary to an existing dwelling house.

The Development Application is being referred to the Northern Beaches Local Planning Panel under the Local Planning Panels Direction made pursuant to section 9.1 of the *Environmental Planning and Assessment Act 1979* (EPA Act), as an employee of Northern Beaches Council who is the owner of the land and is principally involved in the exercise of Council's functions under the EPA Act.

The Application has been assessed against the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979), *Environmental Planning and Assessment Regulations 2021* (EP&A Regulations 2021), Relevant Environmental Planning Instruments (EPIs), and Council policies.

Issues identified within the assessment relate to the proposal's side boundary setback (Control B5 of Warringah Development Control Plan 2011) and vehicles being able to enter and exit the site in a forward direction (Control C3 of Warringah Development Control Plan 2011). These issues are either justifiable in the circumstances of the case or satisfied through conditions of consent.

The Application was notified for a period of 14 days in accordance with Council's Community Participation Plan and no submissions were received during that time. Following the assessment of the application, it is recommended the application be approved subject to conditions. A discussion of the issues identified and consent conditions to be imposed are contained later within this report.

## PROPOSED DEVELOPMENT IN DETAIL

The development application proposes the following:

- **Demolition**
  - Existing timber framed carport that is located in the driveway – see *Figure 1* below.
  - Existing timber framed pergola roof that is located in the backyard of the dwelling house – see *Figure 2* below.
- **Construction**
  - New Colourbond carport in the same location as the existing carport to be demolished.
  - New insulated roof panelling pergola in the same location at the existing pergola to be demolished.



*Figure 1 – Photograph of existing single space carport with Colourbond roof to be demolished.*

Site Inspection - 21 September 2022



*Figure 2 – Photograph of existing timber framed pergola with roofing sheets to be replaced.*  
Site Inspection - 21 September 2022

## **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 on 21 September 2022 and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties has occurred, and a referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan has also been undertaken;
- No submissions were made by the public or community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.



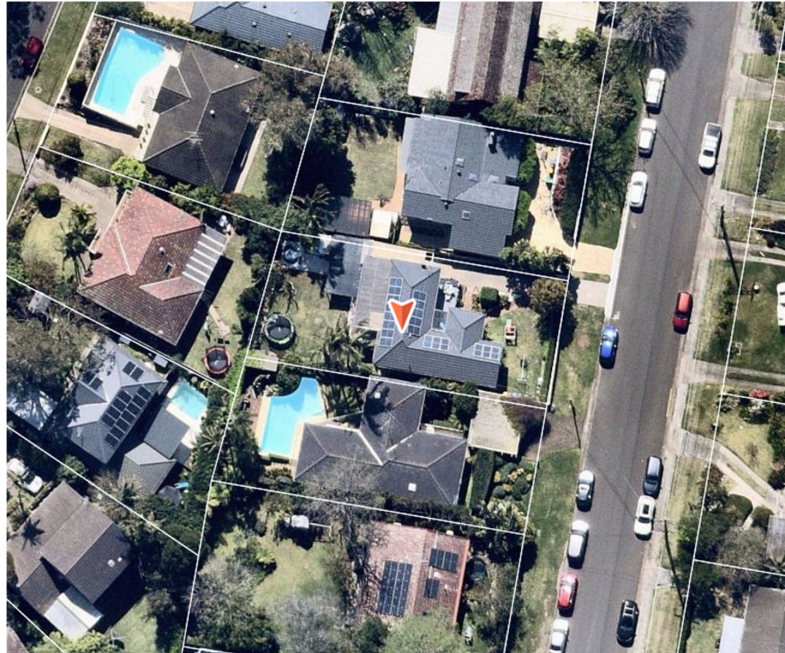
## **SUMMARY OF ASSESSMENT ISSUES**

Issues identified within the assessment relate to compliance with the side boundary setback (Control B5 of Warringah Development Control Plan 2011 (WDCP 2011)) and vehicles being able to enter and exit the site in a forward direction (Control C3 of WDCP 2011).

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 2 in Deposited Plan 31552 10 Romford Road, Frenchs Forest NSW 2086
<b>Detailed Site Description:</b>	<p>The subject site is located on the western side of Romford Road and has a site area of 556.4m<sup>2</sup> (by survey).</p> <p>The site is generally rectangular in shape and experiences a significant fall of 4.13m from the south-eastern Romford Road frontage (RL155.93) to the north-western rear corner (RL151.80).</p> <p>The site contains moderate tree and vegetation coverage that is a common characteristic in the local area.</p> <p>The site, along with the surrounding residential neighbourhood, is located within the R2 Low Density Residential zone under the WLEP 2011. Additionally, there is also RE1 Public Recreation zones surrounding the subject site, as well as B7 Business Park zoned land to the south near Warringah Road.</p> <p>The site does not contain a heritage item and is not within a heritage conservation area. The nearest heritage item is a landscape conservation area located approximately 100m to the east. With the minor scale of the proposed development there will be no foreseen adverse impact on this heritage item, nor any other heritage item near the subject site.</p> <p>The site is also identified being within a landslip risk area. This is discussed in more detail below.</p>





*Figure 3 Aerial image of the subject site – denoted by red pin.*

Source: <https://apps.nearmap.com/> - date accessed 12 September 2022

### Detailed Description of Adjoining/Surrounding Development

The site is surrounded predominantly by single and two-storey dwelling houses in a low density residential neighbourhood. Tree and vegetation growth is characteristic of the surrounding streetscape, with a number of public reserves and open spaces located nearby. Additionally, a B7 Business Park zone is situated south of the subject site and comprises of a number of industrial and business premises.

To the north, the site adjoins 12 Romford Road which includes a single-storey dwelling house. To the south, the site adjoins another dwelling house at 8 Romford Road. To the east, across Romford Road, the site adjoins 11 and 13 Romford Road, both of which comprise of single storey dwellings. To the western rear, the site adjoins 9 Bimbadeen Crescent which includes a two-storey dwelling house.

The local area includes consistent vegetation cover within rear yards. Patonga Park is located approximately 300m west of the subject site and also contains a large number of trees. Furthermore, the surrounding land experiences a common downslope towards the north-west.

The site is approximately 1.9km to the east of the Forestway Shopping Centre and approximately 600m to the west of Skyline Shops, which comprises of essential services such as a supermarket, pharmacy, and food. The Northern Beaches Hospital is located approximately 500m south-west of the site.

### SITE HISTORY

A search of Council's records has revealed the following relevant history:

- 24/03/2021 – Complying Development Certificate (CDC2021/0236) was lodged with Northern Beaches Council as the Principal Certifier for alterations and additions to existing dwelling.

Online aerial imagery demonstrates the land has been used for residential purposes for an extended period of time.



## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the *Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2021* and the relevant Development Control Plan.

As a result of the public exhibition process Council is in receipt of zero (0) submissions.

## REFERRALS

Internal Referral Body	Comments
Development Engineering	<b>Supported, subject to conditions</b>  The Development Engineer has no objection for the application subject to the conditions of consent. The proposal is therefore supported.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<b>Supported, no conditions recommended</b>  Ausgrid does not have any objections for the proposed development. The applicant is to note development requirements within overhead powerlines and underground cables.

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments applicable to proposed development on the subject site.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	Division 2 of the EP&A Regulation 2021 requires the consent authority to consider “Prescribed conditions” of development consent. These matters have been addressed via a condition of consent.



Section 4.15 'Matters for Consideration'	Comments
	<p>Clause 29(1) of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p>Clauses 36 and 104 of the EP&amp;A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p>Clause 61 (1) of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p>Clauses 64 of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p>Clause 69 (2) of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the <i>Home Building Act 1989</i>. This clause is not relevant to this application.</p> <p>Clause 69 of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</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) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## BUSHFIRE PRONE LAND

The site is not classified as bushfire prone land.

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\*

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

### State Environmental Planning Policy (Resilience and Hazards) 2021 (RH SEPP)

The proposal has been assessed against the RH SEPP and determined that it complies with the relevant requirements. The proposed development seeks to replace existing structures and will not result in any adverse impact to the natural environment.

### State Environmental Planning Policy (Biodiversity and Conservation) 2021 (BC SEPP)

The proposal has been assessed against the BC SEPP and determined that it complies with the relevant requirements. The proposed development seeks to replace existing structures and will not result in any adverse impact to the natural environment.

### State Environmental Planning Policy (Transport and Infrastructure) 2021 (TI SEPP)

The Ausgrid Referral has assessed the proposal against the TI SEPP and determined that it complies with the relevant requirements.

## WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

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

## Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes(demolition of the carport and pergola is proposed)
4.3 Height of buildings	Yes – maximum building height is 3m for proposed carport and 3m for proposed pergola.
5.1 Heritage Conservation	Yes, not identified as a heritage item, within a heritage conservation area, nor will it impact any nearby heritage item.
5.11 Bush fire hazard reduction	N/A, site not identified as bushfire prone.
5.21 Flood planning	N/A, site not identified as flood prone
6.2 Earthworks	No significant earthworks proposed.
6.4 Development on sloping land	Yes. The site is identified as being in Area B, and has a slope of 5 to 25 degrees. The proposal complies with this clause.

## WARRINGAH DEVELOPMENT CONTROL PLAN 2011

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C3 Parking Facilities	No	Yes
C4 Stormwater	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D15 Side and Rear Fences	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment

#### **B5 Side Boundary Setbacks**

##### **Comment:**

The proposed pergola and carport do not comply with the required 0.9m side boundary setback as outlined in the WDCP 2011. The proposal has a Nil setback from the northern side boundary and is to be constructed at the boundary line.

This non-compliance is justifiable given this arrangement is an existing non-compliance on site. The proposal seeks to replace an existing timber framed carport and pergola with a similarly sized metal framed carport and pergola in the same location. The existing Nil side setback to the northern boundary will be maintained.

There are also similar carports within close proximity of the site that include zero setbacks. Carports built to the boundary are located at No.s 8, 10, 13 and 15 Romford Road. As such, the development will not result in a discordant element within the streetscape.

#### **C3 Parking Facilities:**

##### **Comment:**

Section C3 of the WDCP 2011 requires vehicles to be able to enter and leave the site in a forward direction. The proposed carport does not allow for this and is therefore non-compliant with the control. This non-compliance is however justifiable given the existing arrangements on site also do not allow for vehicles to enter and exit the site in a forward direction. Additionally, the proposal seeks no change to vehicular manoeuvring arrangements, only replacement of the existing carport structure with a new structure.

Irrespective, the slope of the subject site creates difficulties when attempting to design parking facilities that allow for vehicles to enter and exit in a forward direction.

For the above reasons, non-compliance with the control is reasonable in the circumstances.

#### **7.12 CONTRIBUTIONS**

The proposal is not subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022 given the cost of the development is less than \$100,000. As such, no contributions are payable for the development.



## CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan 2011;
- Warringah Development Control Plan 2011; and
- Codes and Policies of Council.

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

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

## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, as the consent authority, grant Development Consent to DA2022/1070 for demolition works and construction of a new carport and pergola on land at Lot 2 DP 31552, 10 Romford Road, Frenchs Forest subject to the conditions printed below.

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 1. Approved Plans and Supporting Documentation

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

##### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Plan – 1, Rev A	7 April 2022	Pergola Land
Plan – 2, Rev A	7 April 2022	Pergola Land
Elevations – 3, Rev A	7 July 2022	Pergola Land
Colour Schedule	22 June 2022	Pergola Land

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	22 June 2022	Pergola Land Australia Pty Ltd



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

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

2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	n.d.

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities, or bodies.

3. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address, and telephone number of the Principal Certifier for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.



If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

#### 4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.





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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable



cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

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

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

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

#### 5. Stormwater Disposal

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's WATER MANAGEMENT FOR DEVELOPMENT POLICY. Details demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from development.

#### 6. Structural Adequacy and Excavation Work

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer.



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

Reason: To provide public and private safety.

7. **Compliance with Standards**

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

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

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

8. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA rating M or D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

9. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

10. **Boundary Identification Survey**

A Boundary Identification Survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the construction certificate are to accurately reflect the property boundaries as shown on the Boundary Identification Survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans, referenced in Condition 1 of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

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

11. **Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected, including:
  - i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
  - ii) all trees and vegetation located on adjoining properties,



iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970- 2009 Protection of Trees on Development Sites,
- ix) 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, and should additional pruning be required an application to Council's Tree Services shall be submitted for approval or otherwise.

The Certifying Authority must ensure that:

- c) 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.

## 12. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.



Reason: To demonstrate the proposal complies with the approved plans.

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

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

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

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

14. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

15. **Waste Management Confirmation**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

**FINAL DECLARATION**

Consultant Name: Ben Tesoriero, Creative Planning Solutions Pty Limited

In submitting this report to Council, I declare that I do not have a conflict of interest in making this recommendation.

