

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0534
Responsible Officer:	Adam Mitchell
Land to be developed (Address):	Lot CP SP 89359, 209 - 211 Ocean Street NARRABEEN NSW 2101
Proposed Development:	Modification of Development Consent DA2017/1136 granted for alterations and additions to a shop top housing development
Zoning:	Warringah LEP2011 - Land zoned B1 Neighbourhood Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	The Owners Strata Plan 89359
Applicant:	Boston Blyth Fleming Pty Ltd
Application lodged:	05/10/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	24/10/2018 to 10/11/2018
Advertised:	27/10/2018
Submissions Received:	0
Recommendation:	Approval

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

Warringah Development Control Plan - D9 Building Bulk

Warringah Development Control Plan - D18 Accessibility

SITE DESCRIPTION

Property Description:	Lot CP SP 89359 , 209 - 211 Ocean Street NARRABEEN NSW 2101
Detailed Site Description:	<p>209 - 211 Ocean Street, Narrabeen (the subject site) is a shop top housing development located on land zoned for B1 Neighbourhood Centre purposes pursuant to the Warringah Local Environmental Plan 2011.</p> <p>The site is a corner allotment bound by Ocean Street to the west, Malcolm Street to the north and a Council carpark (zoned for RE1 Public Recreation) to the east. Further east of the site is North Narrabeen Beach. South of the site are two other shop-top housing developments (203 and 205-207 Ocean Street) which have shared walls with the subject development site.</p> <p>The site is generally rectangular in shape with a 3m step on the eastern edge, a frontage of 36m to Malcolm Street, a 22.2m frontage to Ocean Street and an overall surveyed area of 795m².</p> <p>Presently the allotment accommodates a part two / part three storey shop top housing development comprising of three food and drink premises on the ground floor and seven apartments on the two floors above. The site has a basement level for the purpose of car parking.</p> <p>The entirety of the site has been built upon and therefore there are no noteworthy topographical or landscape features of the site.</p>

Map:



SITE HISTORY

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

Development Application No. 2017/1136

Application for alterations and additions to a shop top housing development, including the addition of a new penthouse unit. The application was determined by way of approval by the Northern Beaches Local Planning Panel on 21 March 2018.

PROPOSED DEVELOPMENT IN DETAIL

This modification application to Development Consent DA2017/1136 is lodged pursuant to Section 4.55 (2) of the Environmental Planning and Assessment Act 1979 and seeks to modify the approved plans of the building. Specifically, the application seeks consent for the following items:

- Internal reconfiguration of approved Unit 8 of the development (unbuilt, and approved under DA2017/1136)
- Upgrade lift shaft to provide access to the roof terrace level from the lift, equating to a change in height from RL20.850 to RL21.510
- Construction of a small glazed lobby at roof level to provide weather coverage from the lift
- Enclosure of existing stairwell that provides access to the roof terrace
- Addition of two skylights
- Relocation of air conditioning units and associated screening in accordance with Condition 2 of DA2017/1136

AMENDED PLANS

The above works reference a revised revision of plans received by Council on 20 November 2018. Revised plans were requested from the applicant as the application as lodged was considered excess by virtue of the size of structures proposed on the roof terrace (larger lobby, bathrooms).

The scope of difference between the plans and lodged and the revised plans received is considered minor and the two design schemes are akin enough to each other, and of equal environmental impact, that re-notification of the revised plans is not warranted in accordance with Part A.7 of the Warringah Development Control Plan 2011 (**WDCP 2011**).

Herein this report will discuss only the revised plans received on 20 November 2018, and will refer to such as the '**development**.'

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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 and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2017/1136, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2017/1136.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2017/1136 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the Environmental Planning and
(i) the regulations, if the regulations so require,	

Section 4.55 (2) - Other Modifications	Comments
or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environmental Plan 2011 and Warringah Development Control Plan 2011.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of 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	None applicable.
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)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application.</p> <p><u>Clauses 54 and 109</u> of the EP&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. No Additional information was requested.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p>Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter has been addressed via a condition in the original 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) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Strategic and Place Planning (Urban Design)	<p>The current height and extents of additional rooms to the rooftop area demonstrated in the proposed Modifications to the Development application is not supportable.</p> <p>However subject to the following amendments to the design, as conditioned, the Modification may be supported.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>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.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 65 - Design Quality of Residential Apartment Development

The magnitude of works sought as a part of this application does not change the previous assessment against the requirements of SEPP 65 nor the provisions of the Apartment Design Guide undertaken in the parent DA Assessment Report. The works sought under this modification application do not constitute as a substantial redevelopment of the building and does not trigger a re-assessment of SEPP 65.

Accordingly, the previous SEPP 65 assessment remains, and has been included hereunder for reference only:

START OF EXTRACT FROM DA2017/1136 ASSESSMENT REPORT BY NORTHERN BEACHES COUNCIL

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.

Council's assessment finds that the addition of a second floor atop of a portion of the existing building and the addition of a new apartment warrants the development to be a *substantial redevelopment* as per Cl.4 (1) (ii) and accordingly, 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.

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 site is situated in an irregular context given the subject zoning of the site and the different zoning of other sites within the immediate vicinity (including R2 Low Density Residential, R3 Medium Density Residential and RE1 Public Recreation). Additionally, the site borders a carpark to the north and east, a road to the west and a similar scale shop top housing development to the south.

However irregular the zoning layout is of the immediate area, the proposed second floor addition will contextually respond to the scale of the existing building on site and the pre-existing prevailing heights of developments south and on the opposite side of Ocean Street (as they are subject to a greater maximum building height). Additionally, the architecture of the proposal is consistent with the existing building on site and will contribute to enhance the visual aesthetic of the building when viewed from surrounding sites and when viewed driving south-bound on Ocean Street which is considered to be the most predominant aspect of the building.

Given that the proposed addition does not result in any reduction of landscaping, is lesser than the existing maximum height of the building and results in negligible amenity impacts upon other surrounding properties, it is considered that the proposal satisfies Principle 1 on context and 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 proposed development has an architecture that is sympathetic to the pre-existing building on site and to the sensitive coastal environment of which the site is situated. The proposal has adopted traditional design features of a podium form where the proposed storey is setback between 2.0m and 3.5m from the outer edge of the levels below and has an integrated wide-brimmed eave/awning to visually compress the building. Additionally, the facades facing out onto Ocean Street and Malcolm Street are predominantly finished with floor-to-ceiling operable glazing that further reduces the perceived bulk of the building juxtaposed to a solid mass.

The development also proposes a wrap-around balcony fronting Ocean Street and Malcolm Street. The glazed balustrade for the balcony is setback approximately 900mm from the outer edge of the floor below. This simple architectural technique reduces the overall perceived height of the development as nothing abuts the levels below, and contributes to the visual manipulation of the second floor having a greater setback than it really does.

Overall, it is thought that the proposal has a well-considered architecture that is both responsive to the streetscape and the existing building on site and is therefore considered to satisfy Principle 2 on built form and scale.

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 is for the addition of one unit only comprising of three bedrooms. The proposed unit is large in terms of floor area and provides a full wrap-around balcony that ensures that there is adequate indoor and outdoor recreational space for occupants of the development. Additionally it is worth noting the beach-front location of the site which provides a much greater level of outdoor recreational space. Therefore, the occupants of the development will not be impacted by an unreasonable density and the proposed addition is consistent with the existing density of the site.

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 proposed development has an orientation that ensures it receives an abundance of natural light and cross-ventilation in accordance with the requirements of the ADG. The concrete roof and awning design of the proposal provides an appropriate level of passive thermal mass where it will obstruct the high sun from directly entering the apartment in the summer months, but will allow for the floor slab of the apartment to benefit from thermal massing in the winter months.

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, co-ordinating 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 development is for the addition of a second storey atop of an existing two storey building and thereby has no impact or changes to any provision of landscaped open space.

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 proposed development provides a second storey 'penthouse' apartment that is large in scale, achieves natural sunlight and ventilation throughout the day and has a positive outlook across the streetscape and the adjoining public lands. The design provides an acceptable amenity for occupants without impacting on the amenity of other surrounding sites and is therefore considered to be satisfactory in terms of Principle 6.

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 utilises the existing security systems in place at the existing development which are considered to be satisfactory. The orientation of the apartment and the wrap-around balcony provide for additional opportunities for passive surveillance of the vast surrounding public open spaces and car parks which enhances the general safety of the area.

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:

It is likely that the proposed second storey 'penthouse' apartment would be fitted with the specifications required for a multi-million dollar apartment, thereby providing a level of diversity from some other surrounding residential flat buildings and shop top housing developments. The development does not directly impinge on any social interactions (being an addition to an existing shop-top housing

development), but creates a better connection between the building and the surrounding public open spaces through the large wrap-around balcony.

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:

The proposed development will enhance the aesthetic of the overall development when viewed from the surrounding public open spaces and the adjoining and nearby developments. The architecture of the proposal is consistent with the existing built form and maintains the predominant curved corner at the north-western vertex of the site which will make the building appear as though it had all been constructed at the same time. Additionally, the palette of materials selected is the same as the pre-existing building which already responds positively to the streetscape and surrounding areas.

Overall, the development is considered to be well designed and responsive to the existing scale of development on site, surrounding developments and the surrounding coastal environment. The development is considered to satisfy Principle 9.

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
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Consistent The development is assessed as satisfactorily responding to its context in accordance with the 9 Principles of SEPP 65 as above.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Consistent The development is orientated in such a manner which provides an adequate provision of visual outlook, solar access and ventilation whilst enhancing the streetscape aesthetic from Malcolm Street and Ocean Street.

Public Domain Interface	<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>Consistent</p> <p>Whilst the proposed development is located at the second storey of the pre-existing development (thereby not having any direct impact on the immediate street interface), the openness of the proposed apartment (wrap around balcony) will create a visual connection between private and public space and will increase opportunities for passive surveillance of the surrounding land.</p>												
Communal and Public Open Space	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter) 	<p>Not Applicable</p> <p>The development is for the addition of one apartment only and proposes no modification to the existing provision of communal open space.</p>												
Deep Soil Zones	<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 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> <tr> <td>Greater than 1,500m² 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 ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	<p>Not Applicable</p> <p>The application proposes no amendment to the existing provision of deep soil zones.</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <tr> <td></td><td></td><td></td></tr> </table>				<p>Consistent</p> <p>The site only shares one boundary with an adjoining development.</p>									

	<table> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</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> </table> <p>Note: 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 habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>North of the site is Malcolm Street, a public car park, a public park and the North Narrabeen Surf Life Saving Club some 100m away.</p> <p>West of the site and across Ocean Street is No.214 Ocean Street which has a spatial separation of approximately 30m from the subject development. Thereby the development satisfies this requirement.</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												
Pedestrian Access and entries	<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>Not Applicable</p> <p>No changes are proposed to the existing building entry and therefore this requirement is not for consideration.</p>												
Vehicle Access	<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>Not Applicable</p> <p>No amendment to the existing vehicle access is proposed.</p>												
Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <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>Consistent</p> <p>The development provides a sufficient provision of carparking for the apartment in accordance with Appendix H of the Warringah Development Control Plan 2011.</p>												

Visual and environmental impacts are minimised.

Part 4 Designing the Building

Amenity

Solar and Daylight Access	<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">• 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.• A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter	Consistent <p>The proposed apartment achieves an adequate provision of access to sunlight without detrimentally impacting upon the existing provision of access to sunlight enjoyed by surrounding buildings.</p>												
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">• 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.• Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	Consistent <p>The apartment is openable on the entire northern and western facade which provides a sufficient provision of natural cross ventilation in accordance with the requirements of the 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</td><td>2.7m for main living area floor</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	2.7m for main living area floor	Consistent <p>The entire apartment attains a floor to ceiling height of 2700mm which satisfies the requirement of the control.</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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	<table><tr><td>mixed used areas</td><td>2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr></table>	mixed used areas	2.4m for second floor, where its area does not exceed 50% of the apartment area									
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Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p> <p>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space).</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none">• 3.6m for studio and 1 bedroom apartments• 4m for 2 and 3 bedroom apartments <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>Consistent</p> <p>The three bedroom, 2.5 bathroom penthouse apartment is required to have a minimum internal area of 95m².</p> <p>The proposed internal area is approximately 142m² and therefore satisfies the requirement of the control.</p>
Apartment type	Minimum internal area											
Studio	35m ²											
1 bedroom	50m ²											
2 bedroom	70m ²											
3 bedroom	90m ²											
Private Open Space and Balconies	<p>All apartments are required to have primary balconies as follows:</p> <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td></td><td></td><td></td></tr></table>	Dwelling Type	Minimum Area	Minimum Depth				<p>Consistent</p> <p>The apartment has a 2.4m wide west facing balcony that measures</p>				
Dwelling Type	Minimum Area	Minimum Depth										

	<table><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table> <p>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 15m² and a minimum depth of 3m.</p>	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	approximately 45m ² . An additional narrow balcony measuring approximately 9m ² is north of the apartment.
Studio apartments	4m ²	-												
1 bedroom apartments	8m ²	2m												
2 bedroom apartments	10m ²	2m												
3+ bedroom apartments	12m ²	2.4m												
Common Circulation and Spaces	<p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	Consistent The proposed apartment will be the single residence accessible from this level.												
Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²	Consistent The proposed apartment has a sufficient provision of storage space within the apartment to satisfy this requirement.		
Dwelling Type	Storage size volume													
Studio apartments	4m ²													
1 bedroom apartments	6m ²													
2 bedroom apartments	8m ²													
3+ bedroom apartments	10m ²													
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Consistent The proposed apartment is located further than 3.0m from any service infrastructure that could acoustically impact on the occupants of the development. The apartment adjoins the existing communal roof terrace to the east, and the bedrooms are situated on the opposite side of the apartment to maximise their amenity by virtue of acoustic privacy and solar access.												
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Consistent The design and layout of												

		the apartment is considered to be satisfactory in accordance with the surrounding potential noise pollution.
Configuration		
Apartment Mix	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.	Consistent The proposed scale of the one proposed apartment is considered to be appropriate for the context of the site and will support the housing needs, choice and availability for the community.
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Consistent The proposed second storey facade is consistent with the pre-existing architecture on the site which is respectful of the character of the area. The recessed second floor contributes to reducing any perceivable visual bulk of the facade and is appropriate within the context of the site.
Roof Design	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.	Consistent The proposed roof level of the development is assessed as being satisfactory in accordance with Clause 4.3 and 4.6 of the WLEP 2011. However, as noted elsewhere in this report, the addition of air conditioning units atop of the roof is not supported given the potential visual impact from surrounding sites (both present and in future) and given the level of non-compliance that would result in such a development. This matter has been adequately

		addressed via conditions of consent in the recommendations of this report.																																			
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	<p>Not Applicable</p> <p>No amendment to the existing landscape provision is proposed.</p>																																			
Planting on Structures	<p>When planting on structures the following are recommended as minimum standards for a range of plant sizes:</p> <table> <tr> <th>Plant type</th> <th>Definition</th> <th>Soil Volume</th> <th>Soil Depth</th> <th>Soil Area</th> </tr> <tr> <td>Large Trees</td> <td>12-18m high, up to 16m crown spread at maturity</td> <td>150m³</td> <td>1,200mm</td> <td>10m x 10m or equivalent</td> </tr> <tr> <td>Medium Trees</td> <td>8-12m high, up to 8m crown spread at maturity</td> <td>35m³</td> <td>1,000mm</td> <td>6m x 6m or equivalent</td> </tr> <tr> <td>Small trees</td> <td>6-8m high, up to 4m crown spread at maturity</td> <td>9m³</td> <td>800mm</td> <td>3.5m x 3.5m or equivalent</td> </tr> <tr> <td>Shrubs</td> <td></td> <td></td> <td>500-600mm</td> <td></td> </tr> <tr> <td>Ground Cover</td> <td></td> <td></td> <td>300-450mm</td> <td></td> </tr> <tr> <td>Turf</td> <td></td> <td></td> <td>200mm</td> <td></td> </tr> </table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		<p>Not Consistent</p> <p>The development does not propose any modification to the existing provision of planting on structures.</p> <p>Given the harsh coastal environment and prevailing winds that the building is exposed to, it is considered unreasonable and impractical to require planter boxes on the building.</p>
Plant type	Definition	Soil Volume	Soil Depth	Soil Area																																	
Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent																																	
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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.	<p>Consistent</p> <p>The proposed apartment achieves greater than silver level universal design features in accordance with the Livable Housing Guidelines.</p>																																			
Adaptive Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	<p>Not Applicable</p> <p>The development does not propose to reuse or re-purpose any elements</p>																																			

		of the existing building and thereby, does not warrant adaptive reuse to be an applicable criterion in the assessment of this application.
Mixed Use	<p>Can the development be accessed through public transport and does it positively contribute to the public domain?</p> <p>Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.</p>	<p>Not Applicable</p> <p>The development is solely for the purpose of residential accommodation and therefore, does not warrant mixed use to be an applicable criterion in the assessment of this application.</p>
Awnings and Signage	<p>Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.</p> <p>Signage must respond to the existing streetscape character and context.</p>	<p>Not Applicable</p> <p>This development application proposes no amendment to the existing (and approved) awning over the public footpath servicing the site. No signage is sought in this development consent.</p>
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	<p>Consistent</p> <p>The applicable is buttressed by a BASIX and NatHERS Certificate which are endorsed by the recommendations of this report.</p>
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	<p>Consistent</p> <p>The development seeks to utilise the existing stormwater system available on site which has been assessed as satisfactory by Council's Development Engineers.</p>
Waste Management	Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and recycling.	<p>Consistent</p> <p>The provision of waste management proposed under this application is satisfactory when tested</p>

		against the relevant Council policies.
Building Maintenance	Incorporates a design and material selection that ensures the longevity and sustainability of the building.	Consistent The architecture of the building has selected materials that are consistent with the existing architecture and that will remain durable in longevity.

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:

None of the standards specified in Clause 30 (1) of SEPP 65 are being used as grounds for refusal of this development application.

(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 application has given appropriate regard to the design quality principles of SEPP 65 and the objectives and requirements specified in the Apartment Design Guide. This is self-evident in the architectural plans and in the documentation buttressing the application.

END OF EXTRACT FROM DA2017/1136 ASSESSMENT REPORT

SEPP 71 - Coastal Protection

Council's Coastal Officer reviewed the parent development application and raised no objections to the proposal as the works will have no impact on coastal processes, will not give rise to coastal hazards and will not obstruct public access to the beach. The magnitude of works sought as a part of this application does not change this previous assessment, and therefore the application is considered to comply with the provisions of the SEPP.

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

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.15m (Building - RL19.903) 11.09m (AC Units - RL20.850 - aligned with lift overrun)	11.76m (RL21.51)	- 38.3% (to requirement) - 15.8% to approved building height	No

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

In accordance with the Land and Environment Court caselaw of *North Sydney Council v Michael Standley & Associates Pty Ltd [1009] NSW 163 (Michael Standley & Associates)* the Court determined that Section 96 (now Section 4.55) is a "free-standing provision" meaning that "a modification application may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application." This means that Clause 4.6 of the WLEP 2011 does not strictly apply to the assessment of a modification application.

Notwithstanding the findings in *Michael Standley & Associates*, the Court later detailed in *Gann v Sutherland Shire Council (2008)* that consideration should still be given to the relevant standard objectives:

"This does not mean that development standards count for nothing. Section 96(3) still requires the consent authority to take into consideration the matters referred to in s 79C, which in turn include the provision of any environmental planning instrument. That is, any development standard in an environmental planning instrument must be taken into consideration by the consent authority, but the absolute prohibition against the carrying out of development otherwise than in accordance with the instrument in s 76A(1) does not apply."

Accordingly, with consideration to the above caselaw, a merit assessment of the variation sought against the approved development is undertaken below to identify the developments consistency with the zone objectives and prevailing development standard objectives.

The following assessment of the variation to Clause 4.3 Height of Buildings development standard has taken into consideration the questions established in *Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46* and the Clause 4.6 Exceptions to Development Standards assessment undertaken in the Assessment Report for DA2017/1136.

Requirement:	8.5 metres
Approved	10.15 metres (building) @ RL 19.903 11.09 metres (air-conditioning units, aligned with existing lift overrun) @ RL 20.850
Proposed:	11.76 metres (lift overrun) @ RL 21.510 (increase of 0.66m) 11.61 metres (lobby and stair roof) @ RL 21.360
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
Variation:	Up to 38.3% variation

The proposal must satisfy the objectives of Clause 4.3 Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 Exceptions to Development Standards under the WLEP 2011. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the WLEP 2011 is a development standard as defined by the Environmental Planning and Assessment Act 1979.

What are the underlying objectives of the 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 entirety of the structures proposed and subject of this Section 4.55 (2) application breach the building height standard plane of 8.5 metres by up to 3.26 metres (maximum). Relative to the approved development, this increase is negligible and equates to a 0.66m increase to the liftshaft structure, and an increase in height over the small portions of the stairwell and lift door. Other breaches that form a part of the application (A/C Units and screening) are as envisioned by the Development Consent DA2017/1136.

Contextually the further breach to the Development Standard sought by this application is considered to be acceptable in the circumstances of the case for the following reasons:

- The proposed additional height is for the purpose of providing equitable access to persons of all mobility to the roof terrace. The approved scheme does not enable lesser-abled persons to access and enjoy the same amenity that more-abled persons can enjoy on the roof terrace.
- The proposed additional height measures to be only 0.66 metre higher than the existing and approved height of the development (from RL20.850 to RL21.360). The breach is found to cause no unreasonable nor adverse amenity or environmental impacts.
- Across Ocean Street are a series of residential flat buildings on land zoned for R3 Medium Density Residential development pursuant to the WLEP 2011. The R3 zone is subject to an 11 metre Height of Buildings Development Standard and therefore, contextually, the proposed structure is only 0.76m above the permitted height of directly adjacent buildings (which would accordingly equate to a 6.9% variation).
- The site is bound by public open space on three sides, meaning that the development won't be visually perceived as incompatible with the surrounding height of buildings and will not present as an anomaly in the skyline as it is the first building on the eastern-side of Ocean Street in a south-bound direction.

Accordingly, this assessment finds that the building is 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,

Comment:

The assessment of this application has determined that the works sought will not attribute to any unreasonable nor detrimental view loss, loss of privacy or loss of solar access. As demonstrated by the photo montages provided to accompany the application, it is evident that the subject structures will be seldom visible from the public and private domain, and where they are visible, they are consistent with the architecture of the development as a whole and are therefore of an

acceptable visual impact.

Accordingly, this assessment finds that the development will not have any unreasonable nor adverse impacts upon surrounding public or private properties.

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

Comment:

The proposed development will not have any adverse impacts on the scenic quality of the Northern Beaches coastal and bushland environment, given that the structures sought are atop of an existing three storey building in a highly urbanised area. No vegetation is sought to be removed by this application, and the beachfront and surrounding vantage points will not be impacted by the development.

Accordingly, this assessment finds that the development has no unreasonable nor detrimental impact on the scenic quality of 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,

Comment:

As elaborated upon in objectives (b) and (c) above, the development will have an acceptable visual impact when viewed from public places such as parks, reserves, beaches and surf clubs.

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the B1 Neighbourhood Centre zone.

The underlying objectives of the B1 Neighbourhood Centre zone

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

Comment:

The proposed development does not impact on the existing provision of small scale retail businesses which are within the immediate vicinity of, and on, the site.

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

Comment:

The proposed development will not impact on the existing atmosphere of the neighbourhood centre, given the quality of the architecture overall and the consistency with surrounding developments.

- *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:

It is not anticipated that the proposed development will give rise to any land use conflict nor unreasonably impact on the existing provision of amenity enjoyed by adjoining or nearby

residents.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the WLEP 2011?

(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.

Comment:

The subject modification application does not rely upon the flexibility that may be granted by Clause 4.6 for the reasons outlined in the first paragraph of this assessment.

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Comment:

The development seeks a minor increase to the approved height of the development in order to provide equitable access to the roof terrace of the building. The proposal does not increase the yield of the development and has a negligible, if any, impact upon surrounding lands. In the interest of orderly development and equitable access to all, it is found that the development as proposed achieves a better outcome than that of the approved development.

(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.

Comment:

As detailed in the first paragraph of this assessment, Clause 4.6 does not strictly apply to a modification application, and therefore the applicant is not required to submit a written request to justify the contravention to the development standard. Notwithstanding this, the applicant addressed the development in the Statement of Environmental Effects accompanying the development application.

No further assessment on the provisions of Part (3) (a) and (b) is to be undertaken.

(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

Comment:

N/A refer discussion at Part (3) (a) and (b).

(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:

For reasons detailed above, the proposal is considered to be consistent with the objectives of the B1 Neighbourhood Centre zone in the WLEP 2011.

(b) the concurrence of the Director-General has been obtained

Comment:

Clause 4.6(4) (b) requires that the concurrence of the Director-General has been obtained, however, Clause 4.6 does not strictly apply to the development. The parent DA Assessment Report concluded with the following remarks regarding the concurrence of the Director-General:

As the height variation exceeds 10% it is not possible to assume the concurrence of the Director-General. Concurrence can now only be assumed if the consent authority (i.e Northern Beaches Local Planning Panel/or Sydney North Planning Panel) has first considered the following issues:

- *Whether contravention of the development standard raises any matter of significance for state or regional environmental planning.*

The applicant and Council's Officers are of the opinion that there are no matters of significance for State or regional environmental planning as a consequence of the variation.

- *The public benefit of maintaining the development standard.*

In the circumstances of this particular development application, it is considered that there is no discernible or significant public benefit in maintaining the development standard given the overall consistency with the streetscape, existing development on site and negligible amenity impact. Therefore, variation to the standard will allow for a greater architectural aesthetic from the public domain.

The above is supported by Council's Officers.

The other consideration is whether there are any other matters which are required to be taken into consideration before granting consent. In the opinion of Council's Officers, there are not considered to be any other matters that are required to be taken into consideration. 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 can be assumed by the Northern Beaches Local Planning Panel.

Therefore, whilst the additional height to the proposed building is not the subject of a Clause 4.6 assessment, and thereby negates the requirement to be determined by the Northern Beaches Local Planning Panel (**NBLPP**), other criteria triggers the application to

be determined by this Panel.

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B5 Side Boundary Setbacks	South - Merit Assessment	Nil	No change	Yes
	East - Merit Assessment	22.7m	No change	Yes
B7/B8 Front Boundary Setbacks	Ocean Street - Merit Assessment	3.5m	No change	Yes
B7/B8 Secondary Front Boundary Setbacks	Malcolm Street - Merit Assessment	2.05m	No change	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B8 Merit assessment of front boundary setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
B10 Merit assessment of rear boundary setbacks	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C8 Demolition and Construction	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D18 Accessibility	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

Detailed Assessment

D9 Building Bulk

It is considered that the additional height proposed as a part of this application will not cause any excessive or unreasonable bulk and scale when viewed from the public domain or surrounding properties. The scope of structures is consolidated within a small footprint and integrates with the overall design, rather than appearing as arbitrary structural elements.

D18 Accessibility

The proposed extension of the lift is to enable equitable access to all persons of varying mobility to the common roof terrace of the building.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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 Council Contributions Plan 2018

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, 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

The application is referred to the Northern Beaches Local Planning Panel (**NBLPP**) as the parent development application was determined by the same Panel, the application involves SEPP 65, and the Height of Buildings is subject to increase greater by more than 10% of the permitted height limit, and above what has previously been approved on the site.

This modification application lodged pursuant to Section 4.55 (2) of the Environmental Planning and Assessment Act 1979 is considered to be substantially the same development as that approved under DA2017/1136 and is deemed to be appropriate for the site.

The core component of the development application is for the increase in the height of the lift shaft from RL20.850 (existing and approved) to RL21.51, equating to a difference of 0.66m. This increase is to provide equitable access to the roof terrace of the building for persons of varying mobility in accordance with the relevant accessibility requirements.

In addition to the increase in lift height, a small glazed lobby is proposed to provide weather access, the existing stairwell covered to provide weather access, minor internal reconfiguration of an approved unit is proposed, and the air conditioning units and associated screening servicing the development is relocated in accordance with Condition 2 of DA2017/1136.

There is no discernible impact caused by or from the development by virtue of visual bulk, view loss, privacy or overshadowing. An assessment against the provisions of Clause 4.6 of the WLEP 2011 (whilst not strictly applying to a Section 4.55 (2) application) demonstrates that the development achieves consistency with the zone objectives and the objectives of the Height of Buildings development standard.

This Assessment Report for MOD2018/0534 concludes with a recommendation for approval for the NBLPP's consideration.

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2018/0534 for Modification of Development Consent DA2017/1136 granted for alterations and additions to a shop top housing development on land at Lot CP SP 89359,209 - 211 Ocean Street, NARRABEEN, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
S4.55-A-102 Rev. A	14 November 2018	Quattro Architecture
S4.55-A-103 Rev. A	14 November 2018	Quattro Architecture
S4.55-A-104 Rev. A	14 November 2018	Quattro Architecture
S4.55-A-200 Rev. A	14 November 2018	Quattro Architecture
S4.55-A-201 Rev. A	14 November 2018	Quattro Architecture

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

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

B. Modify Condition 2 - Amendments to the approved plans - to read as follows:

Any screening around the air-conditioning units and exhaust duct is to be constructed of the same materials as the enclosing structure of the lift shaft.

Reason: To minimise the visual impact of the development when viewed from the public domain.

C. Add Condition 16 - Fire Safety Matters - to read as follows:

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.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed

The application is determined on 05/12/2018, under the delegated authority of:

Matthew Edmonds, Manager Development Assessments

Peter Robinson, Executive Manager Development Assessment