

COUNCIL ASSESSMENT REPORT

SYDNEY NORTH PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSNH- 613 – DA2025/0077
PROPOSAL	Demolition works and construction of shop top housing including strata subdivision
ADDRESS	<p>Lot 1 DP 900061, 28 Lawrence Street FRESHWATER NSW 2096</p> <p>Lot 1 DP 100563, 22 Lawrence Street FRESHWATER NSW 2096</p> <p>Lot 1 DP 578401, 20 Lawrence Street FRESHWATER NSW 2096</p> <p>Lot 45 DP 974653, 16 Lawrence Street FRESHWATER NSW 2096</p> <p>Lot 1 DP 595422, 10 Lawrence Street FRESHWATER NSW 2096</p>
APPLICANT	Md Living Construction Pty Ltd
OWNER	Lawrence Street Pty Ltd
DA LODGEMENT DATE	28 January 2025
APPLICATION TYPE	Development Application
REGIONALLY SIGNIFICANT CRITERIA	Section 2.19(1) and Clause 2 of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021 declare the proposal regionally significant, being development that has an estimated development cost of more than \$30 million (\$33,046,200).
CIV	\$34,523,329
CLAUSE 4.6 REQUESTS	Warringah Local Environmental Plan 2011 - 4.3 (Height of Buildings)
KEY SEPP/LEP	<ul style="list-style-type: none"> State Environmental Planning Policy (Housing) 2021 & Apartment Design Guide (ADG) SEPP (Transport and Infrastructure) 2021 SEPP (Resilience and Hazards) 2021 Warringah Local Environmental Plan 2011 Warringah Development Control Plan 2011
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	<p>46 submissions raising concern with:</p> <ul style="list-style-type: none"> Bulk and Scale LEP and DCP non-compliance Amenity Parking and Traffic Construction impacts Impact on Freshwater Willage
DOCUMENTS SUBMITTED FOR CONSIDERATION	<p>Plans- Architectural Master Set</p> <p>Plans - Strata Subdivision</p>

	<p>Plans - Survey</p> <p>Report - Operational Plan of Management</p> <p>Report – Design Verification</p> <p>Certificate Report - Remedial Action Plan</p> <p>Report - Detailed Site Investigation Report</p> <p>Arboricultural</p> <p>Report - Landscape</p> <p>Report - Waste Management</p> <p>Plan Report - Traffic Impact</p> <p>Assessment Report - Stormwater Management Plan</p> <p>Report - Groundwater take Assessment</p> <p>Report - Clause 4.6 variation request - Height Report –</p> <p>Report - BCA Report</p> <p>Report - BASIX Certificate</p> <p>Report - NABERS Emissions</p> <p>Report - Acoustic and Vibration</p> <p>Assessment Report - Geotechnical</p> <p>Report – Accessibility Design</p> <p>Review Report - Fire Engineer</p> <p>Assessment Report - Engineering</p> <p>Report – Visual Impact</p> <p>Assessment Report – Coastal Assessment</p> <p>Report - Heritage Impact Statement</p> <p>Report - Ecologically Sustainable Design</p> <p>Report - Crime Prevention Through Environmental Design</p> <p>Report - Post Demolition Investigate Statement</p>
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	Nil
RECOMMENDATION	Refusal
DRAFT CONDITIONS TO APPLICANT	N/A
SCHEDULED MEETING DATE	6 August 2025

PLAN VERSION	Plans prepared by CHROFI, Revision 4
DATE OF REPORT	23 July 2025

EXECUTIVE SUMMARY

This development application seeks consent for demolition works and construction of a shop top housing development, comprising 30 apartments, ground floor retail and basement carparking at 10 - 28 Lawrence Street, Freshwater.

The application is reported to the Sydney North Planning Panel (**SNPP**) for determination as the proposal has an estimated capital investment value of more than \$30 million.

The proposal is Nominated Integrated Development, requiring a Water Supply Work approval under the *Water Management Act 2000*.

The application has been assessed against the relevant provisions of both the Warringah Local Environmental Plan (**WLEP**) 2011 and State Environmental Planning Policy (**SEPP**) (Housing) 2021. The development seeks consent for additional building height pursuant to section 18 of the SEPP (Housing). As detailed within this report, the extent of additional building height is not deemed to be in accordance with the requirements of the SEPP, and as such is not supported.

Additionally, the application is recommended for refusal because of the non compliant building height and rear setback to the adjoining R2 Zone. The proposal is not considered to be an appropriate or suitable response in its current form, with unreasonable amenity impacts on adjoining properties as well as insufficient information being provided to Council.

Council's Design and Sustainability Advisory Panel (**DSAP**) reviewed the proposal and recommended design changes. However, the recommendations were not addressed by the applicant and as such cannot be supported.

The notification of the application resulted in 46 submissions in objection to the proposal being received. The issues raised in the submissions are addressed in this report and are broadly categorised as follows:

- Bulk and scale
- LEP and DCP non-compliance
- Amenity (Privacy, solar and views loss) impacts to neighbouring properties
- Parking and traffic
- Construction impacts
- Impact on Freshwater village

On 9 July 2025, the applicant filed a Class 1 Appeal (Deemed Refusal) with the Land and Environment Court and served on Council on 16 July 2025.

In summary, the proposal does not satisfy a number of primary planning controls within SEPP Housing, the Apartment Design Guide (ADG), WLEP and WDCP as detailed within this report, all of which contribute to an unacceptable development outcome.

Therefore this report concludes with a recommendation that the SNPP **refuse** the development application.

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for demolition works and construction of a four (4) storey shop top housing development including basement carparking, pursuant to SEPP (Housing) 2021.

Specifically, the proposal comprises of:

- Site preparation works and the demolition of all existing structures on the site;
- Construction and use of a four-storey shop-top housing development, comprising:
 - 1,379m² of retail floorspace across 4-9 tenancies (subject to future fit out) including signage;
 - 3,299m² of residential GFA, including 522m² of affordable housing, across 30 residential apartments comprising:
 - 6 x one-bedroom apartments;
 - 15 x two-bedroom apartments;
 - 9 x three-bedroom apartments;
 - Rooftop communal open space;
 - Multi level basement with 44 residential and 62 retail car parking spaces;
 - A 268m² public plaza fronting Lawrence Street;
 - Public domain landscaping including within the new public plaza and buffer planting zone along the rear of the site;
- Lot consolidation and strata subdivision; and
- Vehicular access via Dowling Street and pedestrian access via Lawrence Street.

6 out of the 30 proposed apartments are to be affordable housing within the meaning of Chapter 2 of the SEPP (Housing) 2021.

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 Local Environmental Plan 2011 - Zone E1 Local Centre

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings

Warringah Local Environmental Plan 2011 - 6.2 Earthworks

Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
 Warringah Development Control Plan - C2 Traffic, Access and Safety
 Warringah Development Control Plan - C3 Parking Facilities
 Warringah Development Control Plan - C4 Stormwater
 Warringah Development Control Plan - C9 Waste Management
 Warringah Development Control Plan - D6 Access to Sunlight
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D9 Building Bulk
 Warringah Development Control Plan - E1 Preservation of Trees or Bushland Vegetation
 Warringah Development Control Plan - F1 Local and Neighbourhood Centres
 Warringah Development Control Plan - 2. Number of storeys
 Warringah Development Control Plan - 5. Access and loading
 Warringah Development Control Plan - 10. Front setback
 Warringah Development Control Plan - 11. Side and rear setbacks
 Warringah Development Control Plan - 18. Development in the vicinity of heritage items

SITE DESCRIPTION

Property Description:	Lot 1 DP 900061 , 28 Lawrence Street FRESHWATER NSW 2096 Lot 1 DP 100563 , 22 Lawrence Street FRESHWATER NSW 2096 Lot 1 DP 578401 , 20 Lawrence Street FRESHWATER NSW 2096 Lot 45 DP 974653 , 16 Lawrence Street FRESHWATER NSW 2096 Lot 1 DP 595422 , 10 Lawrence Street FRESHWATER NSW 2096
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<p>Detailed Site Description:</p>	<p>The subject site consists of five (5) allotments located on the southern side of Lawrence Street and at the corner of Dowling Street. The sites are legally known as Lot 1 in DP 595422, No. 10 Lawrence Street; Lot 45 in DP 974653, No. 16 Lawrence Street; Lot 1 in DP 578401, No. 20 Lawrence Street, Lot 1 in DP 100563, No. 22 Lawrence Street; and Lot 1 in DP 900061, No. 28 Lawrence Street, Freshwater.</p> <p>The site is rectangular in shape with a frontage of 82.22m along Lawrence Street and a frontage of 30.48m along Dowling Street. The site has a surveyed area of 2,581m². The southern boundary is irregular due to the variable lot depths of neighbouring residential properties along Undercliff Road.</p> <p>The site is located within the E1 Local Centre (E1) zone and accommodates an eclectic mix of buildings of varying age and architectural style. Commercial uses occupy the ground floor tenancies while residential apartments occupy the upper floors of the double storey buildings. The rear yards of Nos. 20, 22 and 28 Lawrence Street predominantly consist of concrete hardstand and contain a variety of outbuildings.</p> <p>Customer car parking is limited to a roof top area above No. 10 Lawrence Street. The car park accommodates 18 spaces and is accessed via a variable width 50m long two way driveway and ramp from Dowling Street. A garage to No. 28 Lawrence Street is also accessed via the Dowling Street driveway. A 2.0m wide crossover and concrete driveway is provided between Nos. 20 and 22 Lawrence Street and provides vehicular access to a garage at the rear of No. 20 Lawrence Street.</p> <p>Due to the topography of the area, the properties along Undercliff Road are sited higher than the ground level of Lawrence Street by approximately 5.5m.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>The site is immediately surrounded by mixed use retail, commercial and restaurant uses to the north, east and west and by low density residential uses to the south. Two heritage listed buildings are located diagonally opposite the site to the north-west which accommodate the Harbord Literary Institute and the Harbord Early Childhood Health Centre.</p>
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Map:



SITE HISTORY

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

PLM2024/0064 - Construction of shop top housing

DA2016/0022- Partial demolition and Construction of a mixed use building comprising retail, commercial and residential uses at Nos. 10 to 28 Lawrence Street Freshwater. (Withdrawn 30 May 2016)

DA2011/1361 - Demolition works and Construction of a Mixed Use (Commercial/Retail and Residential) Building, Subdivision (Stratum and Strata) and Signage. (Approved 22 March 2012)

CURRENT PROPOSAL

The application was referred to the Design Review Panel at the meeting of 27 February 2025, where the application was reviewed and recommendations were provided regarding the overall design. Following the meeting, minutes were issued to the applicant detailing the recommendations of the DSAP. Overall, the DSAP did not support the application in its current form.

Following a preliminary assessment of the application, Council wrote to the applicant on 9 May 2025 outlining a number of concerns with the proposed development including:

- Building Height non-compliance
- Inconsistency with affordable housing provisions of SEPP (Housing)
- Visual privacy
- External Referral issues - WaterNSW
- Internal Referral issues - Traffic, Environmental health, Heritage, Landscaping and Stormwater engineer
- Insufficient information.

Council spoke with the applicant on 15 May 2025 following up the correspondence of 9 May 2025, who requested additional time to respond.

Since 15 May 2025 Council has made numerous attempts to contact the applicant via phone and email with the only response being a phone call on 4 June 2025 with the applicant advising they will be informing Council of their response.

On 16 June 2025 an email was sent to the applicant advising the application would be reported to the Regional Panel with a recommendation of refusal given the lack of response to Council's concerns.

No further correspondence was received from the applicant until the Class 1 proceedings were served on Council on 16 July 2025.



Figure 1 - View of adjoining R2 Low Density Residential zone from subject site.



Figure 2 - View of adjoining development to the north of the subject site (No. 9 Lawrence Street).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 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 Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> 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.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to building height non-compliance, privacy, basement tanking, traffic, stormwater, site contamination, landscaping and heritage.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter may be addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&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 Matters for Consideration	Comments
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 unsuitable 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	This assessment has found the proposal to be contrary to a number of relevant requirements of WLEP 2011 and WDCP 2011 and will result in a development that will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community.

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 application has been publicly exhibited from 14/02/2025 to 14/03/2025 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 46 submission/s from:

Name:	Address:
Nina Tesseyman	5 / 17 Bolingbroke Parade FAIRLIGHT NSW 2094
Kevin William Tuckey	15 Undercliff Road FRESHWATER NSW 2096

Name:	Address:
Mrs Nicole Alison Poole	39 Robert Street FRESHWATER NSW 2096
Mr Claudio Nino Minns	35 A Crescent Road NEWPORT NSW 2106
Lawrence Street Nominees Pty Ltd	1 / 9 Narabang Way BELROSE NSW 2085
Ms Luciana Sa Bittencourt	16 Undercliff Road FRESHWATER NSW 2096
Miss Maree Portanger	22 Undercliff Road FRESHWATER NSW 2096
Isabella Molinari	116 Pittwater Road MANLY NSW 2095
Ms Georgia Frances Shillington	17 / 28 Cavill Street FRESHWATER NSW 2096
Karl Dieter Adamsas	118 Lawrence Street FRESHWATER NSW 2096
Mrs Lauren Mary Richardson	29 Albert Street FRESHWATER NSW 2096
Ursula Finola Moloney	4 / 117 Crown Road QUEENSCLIFF NSW 2096
Merran Regan	1 / 6 Lawrence Street FRESHWATER NSW 2096
Withheld Joanne Torta	FRESHWATER NSW 2096
Lauren Gayle Channells	2 / 157 Wyndora Avenue FRESHWATER NSW 2096
Mr Wesley John McPherson	51 Curl Curl Parade CURL CURL NSW 2096
Mr Kevin Watson	5E Castle Circuit SEAFORTH NSW 2092
Kay Watson	Address Unknown
Ms Skye Elizabeth Clarke	13 Carrington Parade FRESHWATER NSW 2096
Natalie Dunlop	24 Johnson Street FRESHWATER NSW 2096
Ms Amber Kay Addicott	27 Pitt Road NORTH CURL CURL NSW 2099
Callum Keith Joseph Torning	4 Milga Road AVALON BEACH NSW 2107
Mr Charl Justus Potgieter	4 Hill Street QUEENSCLIFF NSW 2096
Mr Phillip Lionel Victor Castle Mrs Sandra Michelle Castle	10 Undercliff Road FRESHWATER NSW 2096
Mrs Leonie Janice Phillips	11 / 32 Undercliff Road FRESHWATER NSW 2096
Mr Francis Gerald Smith	17 / 28 Cavill Street FRESHWATER NSW 2096
Ms Jennifer Gaye Leete	5 / 32 Undercliff Road FRESHWATER NSW 2096
Mr Geoffrey Charles Lowe	49 Undercliff Road FRESHWATER NSW 2096
Judy Hsu	Address Unknown
Simon Christopher Dean	109 / 11 Lawrence Street FRESHWATER NSW 2096
Mr Jeffery Eugene Watt	29 Soldiers Avenue FRESHWATER NSW 2096
Ms Sharon Veronica Yardy	24 Marmora Street FRESHWATER NSW 2096
Mrs Janis Ruth Priest	71 Lawrence Street FRESHWATER NSW 2096
Friends Of Freshwater Inc	4 Marmora Street FRESHWATER NSW 2096

Name:	Address:
Mr Gary John Wearne	6 Undercliff Road FRESHWATER NSW 2096
Mr Aidan Kenneth Austen Watson	8 Undercliff Road FRESHWATER NSW 2096
Mr Rodney Charles Selvage	606/36 Victoria Street EPPING NSW 2121
Mr Paul Kingston McCarthy	18 Kempbridge Avenue SEAFORTH NSW 2092
Mr Nicholas Graham Edmonds	65 Brighton Street CURL CURL NSW 2096
Mr Cameron William Berkman	12 Undercliff Road FRESHWATER NSW 2096
Mrs Josieanne Alonso	12 Undercliff Road FRESHWATER NSW 2096
Noela Rose Roberts	7 Undercliff Road FRESHWATER NSW 2096
Ms Samantha Eve Yann	28 Ian Avenue NORTH CURL CURL NSW 2099
Ms Merran Catriona Gillies	51 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Ms Pamela Hazel Collins	32 Oliver Street FRESHWATER NSW 2096
Martin Andrew Barnes	1 / 32 Undercliff Road FRESHWATER NSW 2096

The following issues were raised in the submissions:

- **Building Height**
- **Bulk and Scale**
- **Visual privacy**
- **Acoustic privacy**
- **View loss**
- **Traffic**
- **Parking**
- **Setbacks, physical separation**
- **Solar access**
- **Waste**
- **Construction impacts**
- **Impact upon Freshwater village**
- **Communal open space - loss of amenity**
- **Sustainability**
- **Contamination**
- **Tree removal**

The above issues are addressed as follows:

- **Building Height**

The submissions raised concerns that the height of the proposed development, noting the non-compliance with the WLEP 2011 and bonus SEPP (Housing) provisions.

Comment:

SEPP (Housing) permits bonus building height to incentivize affordable housing. However, the proposal exceeds the allowable bonus resulting in a proposal with excessive

building height that is visually dominant and incompatible with the future desired character of the Freshwater area.

- **Bulk and scale**

The submissions raised concerns with the bulk and scale of the development

Comment:

This matter is discussed in detail throughout the report. In summary, the bulk and scale of the proposed development is not satisfactory given the constraints of the site and the level of amenity impact on adjoining R2 zone properties. The amenity impacts of the proposal are directly linked to the height and setback non-compliances and resultant bulk and scale cannot be supported in its current form.

- **Visual privacy**

Concern was raised about visual privacy impacts from the proposed south facing apartments to the outdoor living areas and living room windows of adjoining dwelling houses to the south along Undercliff Road, Freshwater.

Comment:

The development fails to provide adequate separation to mitigate overlooking impacts. The proposal does not comply with the separation requirements of the ADG, which requires at least 9m separation. The bulk and height of the development further compounds the loss of amenity for the dwelling houses located in the R2 Low Density Residential zone to the south of the subject site.

- **Acoustic privacy**

The submissions raised concerns regarding the acoustic privacy impacts from the proposed shop top housing development, particularly between commercial and residential uses and between residential uses and neighbouring residential uses.

Comment:

The proposal achieved a satisfactory level of acoustic privacy for future residents and the neighbouring residential development. The acoustic report (prepared by Acoustic Logic, dated November 2024). recommends a number of measures be undertaken to mitigate the potential acoustic impacts of the development. Should the application be approved, it is advised that the recommendations contained in the applicants acoustic report be incorporated into the conditions of consent to mitigate the potential acoustic impacts

- **View Loss**

The submissions raised concerns that proposed development would result in unreasonable view loss impacts to adjoining residential development.

Comment:

While a degree of view loss is unavoidable. Insufficient information in the form of height poles or

Visual analysis has been provided to demonstrate the extent of view loss from neighbouring residential properties specifically the apartments of No. 48 Lawrence Street, Freshwater.

- **Traffic**

A number of submissions raised concerns regarding the additional traffic generated by the proposed development given insufficient parking provided by the development,

Comment:

Council's Traffic Engineer has reviewed the proposed development and has raised concerns in relation to number of issues relating to traffic impacts. Based on Council's Traffic Engineer's assessment, the concerns raised in this regard are concurred with and are included as reasons for refusal.

- **Parking**

The submissions raised concerns that insufficient off-street parking has been provided to accommodate the scale of the development.

Comment:

The proposal has been reviewed by Council's Traffic Engineer, who noted that the proposed works would have limited impact on parking demand, and there is sufficient parking to service the proposed development.

- **Setbacks, physical separation**

The submissions, specifically the dwelling houses to the south of the site, have raised concern with the setbacks to the rear property boundary and associated solar and privacy impacts to these dwelling houses

Comment:

This issue is discussed in detail later in the report. The non-compliance with separation requirements of the ADG is a listed a reason for refusal.

- **Solar access**

Concerns have been raised in relation to the potential overshadowing created by the proposed development.

Comment:

A detailed assessment has been undertaken against the solar access provisions of SEPP (Housing) within this report. In summary, the development as a result of its bulk and scale leads to unreasonable overshadowing impacts of adjoining properties living room windows and private open space of adjoining properties.

- **Waste**

Concern was raised in regard to the extent of waste management.

Comment:

- The application was referred to Council's waste officer for review. The proposed waste management was supported, subject to conditions.

Construction impacts

Concern was raised in regard to the construction impacts of the development if approved

Comment:

Suitable conditions including a Construction Traffic Management Plan may be imposed to mitigate construction impacts if the application is approved.

- **Impact upon Freshwater village**

The submissions raised concerns that proposal is out of character for the Freshwater village locality, and the bulk and scale of the development is not appropriate for the site.

Comment:

This issue has been discussed in detail throughout this report. In summary, the assessment has found that the design of the proposed development is inconsistent with the character of the area and the development in its current form is excessive in terms of bulk and scale.

- **Communal open space - loss of amenity**

The submissions raised concerns that the proposed communal open space on the roof would lead to a loss of amenity to adjoining residential development.

Comment:

As detailed throughout the report, the communal open space is not supported.

- **Sustainability**

The submissions raised concerns about the overall sustainability initiatives of the proposal.

Comment:

A compliant BASIX and NatHERS Certificate has been submitted with the proposal. Outstanding sustainability concerns raised by DSAP could be dealt with via condition. This issue does not warrant refusal of the application.

- **Contamination**

The submissions raised concerns that the site is contaminated.

Comment:

The applicant has provided a Detailed Site Investigation (DSI) by an environmental consultant to address outstanding site contamination concerns. The proposal satisfies the requirements of Chapter 4 (Remediation of land) of SEPP (Resilience and Hazards) 2021.

Tree removal

The submissions raised concerns with the proposed removal of trees on the road reserve.

Comment:

Council does not support the proposed loading zone on the road reserve, which results in the loss of a street tree.

REFERRALS

Internal Referral Body	Comments
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Design and Sustainability
Advisory Panel

Not supported

General

The project came to the Panel as a pre-lodgement meeting on 25th July 2024 (PLM2024 0064). The Panel remains generally supportive of the design direction.

The Panel retains reservations about the planning and treatment of the southern side of the development.

Whilst the site analysis is thorough, further analysis is required to enable Council to fully assess the impacts to adjoining properties to the south and west on overshadowing, privacy and views.

Strategic context, urban context: surrounding area character

A key element of the strategic context is the change in zoning from E1 Local Centre to R2 Low Density along the southern (rear) boundary.

The proposal acknowledges that the ADG 2F minimum separation to be considered as a benchmark is 9m (6m+3m).

In the context of a low density residential adjacent to an area with higher density, residents living in the R2 zone must accept that a higher density and larger scale residential development can happen in the adjoining zones and whilst impacts must be within reason, they can nevertheless occur.

The Panel acknowledges that the rear boundary is stepped but does not accept that an averaging strategy for setbacks is appropriate for assessing the reasonableness of amenity impacts based on numerical guidelines. A more nuanced approach is required that takes into account factors such as habitable/non-habitable to habitable/non-habitable actual separations (No.4, No.6, No.16 by example), habitable to blank walls (No.2), the nature of private open space in Undercliff Road rear gardens, the relative height of private open space (for example balconies that are above the level of open space in rear gardens are more sensitive to privacy impacts than those that are lower than open space in rear gardens).

Refer Amenity below for detail.

Recommendations

1. Undertake a more targeted separations analysis, modify the design where appropriate and justify final proposed setback separations on a property-by-property basis. Note: that the ADG 2F Building Separation indicates a 15m built form rule of thumb should be applied to separations habitable to habitable built form and 9m to actual boundary for elevated open space balconies.

Scale, built form and articulation

Generally, the Panel's PLM concerns on car park entry have been addressed. The built form scale transition from the E1 zone to the R2 zone along Dowling Street may be better handled by removing the landscaped roof planter garden area over the driveway entry to the roller shutter to create a "shadow line" of an open space recess with the pavement to the roller shutter being of high quality finish. See image in Figure 40 Artist impression of the proposal as seen from Dowling Street in the Ethos View Impact Assessment Report

Internal Referral Body	Comments
	<p>The Panel remains generally supportive of the scale and articulation of the built form with the proviso that,</p> <ul style="list-style-type: none"> • on the south, the complexity of the three-dimensional built form of the stepped building and stepped buffer garden spaces and their relationship to adjacent gardens is difficult to visualise for thorough design review. The built form here is visually articulated with larger setbacks which, with stepping forms, reduce visual bulk. • The built form of the communal roof terrace does not result in additional detrimental impacts such as overshadowing of private open space <p>The aim of ADG 2F Building Separation in terms of appropriate built form is to “ensure that new development is scaled to support the desired future character with appropriate massing and spaces between buildings”.</p> <ul style="list-style-type: none"> • On the basis that the south façade building envelope generally relates to the 11m height controls and is set back a minimum of 9m the built form envelope here is acceptable. • The built form of projecting balconies on Second Floor and Third Floor is effectively a two storey scale, so the setback reduction to a minimum 6m is appropriate as the built form elements relate to the lower density (two storey) scale adjacent. <p>The Panel is of the view that the overall scale and bulk proposed is acceptable when the articulated recesses are also taken into account, subject to Amenity considerations discussed below in Amenity.</p> <p>Note:</p> <p>The height lines on the South Elevation–Site–Rear Neighbours (Dwg. Elevations A-DA-201-04) are at the boundary and are not for useful assessment of general compliance assumed above.</p> <p>Section 4 and Section 3 (Dwg. Elevations A-DA-201-04) show diagrammatic height planes but are not referenced on the plans. In both these locations the southern built form at the façade is slightly above the 11m height limit and which the Panel assumes that the impacts on views and overshadowing of this non-compliance will be negligible and agrees with PLM Panel’s comments in this regard.</p> <p><u>Recommendations</u></p> <ol style="list-style-type: none"> 2. Consider opening the car park entry to the sky and use high quality pavement to articulate the built form transition to the R2 zone. 3. Provide massing diagrams using sun-eye view type 3D modelling with neighbouring fences shown to assist Council further in assessment of built form. 4. Provide height lines on the South Elevation – Site – rear Neighbours (Dwg. Elevations A-DA-201-04) at the building roof alignment (approximately 10.1m from rear boundary at Dowling Street.) to facilitate built form scale assessment in relation to LEP heights. 5. Reference Section 4 and Section 3 (Dwg. Elevations A-DA-201-04) on the floor plans for clarity. 6. Provide RL’s on roof plans for clarity.

Internal Referral Body	Comments
	<p>Access, vehicular movement and car parking</p> <p>The PLM Panel referred to ensuring appropriate shelter to lobbies. The current design does not provide shelter to mailbox areas.</p> <p>The proposed development incorporates access to the carpark from the west-side as recommended by the Panel at the PLM.</p> <p><u>Recommendations</u></p> <p>7. Consider moving the mail box area closer to the security gates to have full awning shelter.</p> <p>Landscape</p> <p>Generally, the landscape response and integration with the architecture is positive as is the consideration of maintenance to the inaccessible landscape areas. It is noted however that detailed landscape plans showing levels, soil depths and detailed planting plans are not provided with the DA.</p> <p>Without detailed landscape plans it is unclear of the southern landscape will be feasible (weight) and successful in providing filtered views and privacy to the properties behind.</p> <p>Several species specified are identified as weeds in the northern beaches and should be substituted. Where possible planting should utilise native / endemic species.</p> <p>The substation, which appears to be limited in location, results in the removal of a significant street tree. In addition, the impacts of the works on tree 5 and the mitigation to ensure its future health are not clear.</p> <p>There appear to be opportunities to enhance soil depth and at the same time simplify constructability in a number of areas including under the public courtyard to the street.</p> <p><u>Recommendations</u></p> <p>8. Provide detailed landscape plans including planting plans and sections illustrating soil depths. The structural engineer should confirm that the proposed extent and location of tree planting and soil volumes can be accommodated.</p> <p>9. Planting species to be reconsidered to preference locally endemic species to enhance local ecology and reduce maintenance. It is noted that shaded areas, may require exotic shade tolerant species to be successful.</p> <p>10. Updated arborist advice and treatments to ensure the health of tree 5 should be provided.</p> <p>11. Where possible soil depths should be maximised for planting. Sections should dimension soil depths. Soil volumes would be useful to note on the plans for ease of assessment.</p> <p>Amenity</p> <p>Refer also Strategic context, urban context: surrounding area character above.</p> <p>The Panel is of the view that communal open space on the rooftop is supported for residential amenity. It seems to be located far enough away the southern boundary to ensure visual and acoustic privacy. The built form needs to be analysed and modified to ensure the final configuration does not result in additional overshadowing of private open space in Undercliffe properties between 9am and 3pm. More</p>

Internal Referral Body	Comments
	<p>detailed assessment of built forms impact on views of non compliant height components is required.</p> <p>VIEW IMPACTS</p> <p>The Panel is of the view that more detailed view analysis for properties most affected adjacent in Dowling Street and from the south along Undercliffe Road would be prudent.</p> <p>Whilst the views are largely local to district views mainly of a treed suburban landscape the interface of the land with sky is a key amenity feature. From adjoining sites in Undercliffe Road, it appears that with a compliant 11m envelope these views are lost and the dwellings currently enjoy a borrowed amenity due to underdevelopment of the subject site. On the high side of Undercliffe Road view impacts of non-compliant height components need to be accurately assessed to provide certainty (eg. See Ethos Visual Impact Assessment Report Figures 26/27. Viewpoint 2: 3 Undercliffe Road, and Figure 28/29 Viewpoint 3: 6-8 Undercliffe Road).</p> <p>The more elevated sites include glimpses of the Pacific Ocean and could be sensitive to impacts from height non-compliant built form. (Figure 33. Viewpoint 5: 48 Lawrence Street (corner with Dowling Street) – proposed view (with trees)). Again view impacts of non compliant height components need to be accurately confirmed to provide certainty.</p> <p>PRIVACY</p> <p>To adjoining properties</p> <p>The Panel's opinion below takes into consideration context, density, separation, use and design. In terms of privacy, there is a reasonable expectation that the Undercliffe Road dwellings' primary windows and some of their private open space will remain private.</p> <p>Generally numerical separations between apartment windows to the boundary are achieved by the proposal. In this instance we are assessing the privacy impacts between private open spaces.</p> <ul style="list-style-type: none"> • Where the private open spaces in the proposal are below the level of the Undercliffe Road gardens, acceptable privacy appears to be achieved. • Where the private open spaces in the proposal are above the level of the Undercliffe Road gardens, privacy is protected by the proposed use of screening which is not an ideal outcome for the residents of the development in those locations where the balcony is the primary balcony. i.e. Second floor Units A206, A207 and A212. While the proposed vegetation within the development is valuable, landscaping should not be relied on as the sole protection against overlooking. <p>Within the site</p> <p>The windows to Bed 2 in Units A104, A109, A204 and A209 are in very close proximity to adjacent primary balcony spaces resulting in significant visual and acoustic privacy issues. The adjoining balconies serve 1B apartments and would be able to be reduced in width/area to reconfigure the Bed 2 windows to be north facing. This could resolve both visual and acoustic privacy problems.</p> <p>OVERSHADOWING</p>

Internal Referral Body	Comments
	<p>Overshadowing to living space windows on the Undercliffe Road properties appears to have acceptable impacts for a building on a site adjoining a higher density zoning.</p> <p>The Panel's assessment of overshadowing considers the additional impacts between 9am and 3pm to private open space on Undercliffe Road properties. Significant open space sunlight impact generally occurs after 2pm with most properties retaining at least 3 hours of mid-winter sunlight which seems reasonable. No.16 has no sunlight in mid-winter but it also does not suffer additional impact as a result of the scale of existing adjoining development and its own reduced setback (less than 6m).</p> <p>When assessing additional impacts of non-compliant height, shown in blue hatch on the Shadow Diagrams A-DA-501-04 the Panel cannot clearly understand the 1pm to 3pm (blue hatch) impact on No. 8 (2pm) and No.18 (2pm) Undercliffe. Further understanding of what noncompliant part of the development is creating this additional shadow is worth understanding as a small change may result in the provision of sunlight to the ground adjacent to living areas. From the sun eyes blue hatch overshadowing it appears to be arising from the increase in the height of the stair shaft accessing the communal rooftop.</p> <p><u>Recommendations</u></p> <p>12. VIEW IMPACTS: Undertake a detailed view assessment of non compliant height components with the scope and methods to be agreed with Council prior to commencement.</p> <p>13. VISUAL PRIVACY: Where privacy screens are required on primary balconies they should be minimised to a functional height and designed to enable oblique views from living spaces and bedrooms to the outside world. Consideration should be given to an alternate screen design that ensures full privacy to any principal useable areas of open space in the Undercliffe Road gardens within 9m of the overlooking balconies whilst enabling longer distance oblique views through the buffer landscape areas.</p> <p>14. ACOUSTIC PRIVACY: Reconfigure the Bed 2 windows in Units A104, A109, A204 and A209 , to be north facing to resolve visual and acoustic privacy conflicts with adjacent balconies.</p> <p>15. OVERSHADOWING: Consider opportunities to reduce the blue hatch impacts with particular focus on No.8 and No.18 at 2pm mid-winter</p> <p>Façade treatment/Aesthetics Façade treatments and aesthetics are considered acceptable and high-quality design.</p> <p>Sustainability The well-designed complex shop top housing project has the bones of offering many sustainable living opportunities. The following comments are made to help realise that potential. Firstly, the Panel notes the following responses to the previous panel's recommendations:</p>

Internal Referral Body	Comments	
	15. Rainwater recycling – show what the rainwater will be connected to	While the location of the water storage is clear, what it will be connected to still needs to be clarified.
	16. Detail the EV charging strategy and make sure fire safety provisions are going to be accommodated	This appears to have been satisfactorily addressed.
	17. Ensure there is enough bike parking for all apartments and the retail spaces	Bicycle parking indicated – unclear on if enough. Also need to ensure it is suitable for heavy e-bikes, which are difficult to lift into a vertical position.
	18. Remove any gas from the building, including the retail. Induction cooktops and heat pump hot water is recommended	Gas appears to have been removed from apartments, unclear about retail. Ensure that no gas should be included in the building.
	19. The common corridors should be naturally ventilated, make sure the windows to those spaces are operable and weather protected	Most corridors now have windows allocated, need to clarify they are openable.
<p>It is also noted:</p> <ul style="list-style-type: none"> • Achieving minimum BASIX requirements is required as a bare minimum. This is not leading in sustainability. • The inclusion of ceiling fans to all bedrooms and living rooms, which will provide comfort with minimal energy while reducing the need and energy required for air-conditioning. • All electric services have been specified for the apartments • The min 4 stars for all water fixtures and appliances <p><u>Recommendations</u></p> <p>The following aspects of design and servicing can be easily and cost effectively considered for inclusion:</p> <p>Decarbonisation of energy supply</p> <p>16. All services should be electric – in addition to NO gas for cooking, hot water and heating for the residences, ensure this is also the case for retail.</p> <p>17. Using heat pump hot water systems for hot water instead of instantaneous electric should be considered. They are extremely efficient and the storage of hot water can be considered a de facto battery if heated by PVs during the day. Additionally, they can reduce the impact on peak electricity times.</p> <p>18. Consider inclusion of on site battery storage, which has benefits for the grid and may be a highly desirable back-up for both residences and retail during the transition to a de-carbonised grid</p>		

Internal Referral Body	Comments
	<p>19. Consider installing PV panels from the start on the roof space allocated for future PV installations to enable their immediate benefit. Their efficacy can be greatly enhanced when placed over a green roof, which has additional ecological benefits.</p> <p>20. Passive design and thermal performance of building fabric o Well sealed double glazed windows would be beneficial for both thermal and acoustic reasons, especially in areas located on busy roads.</p> <p>21. Water use minimisation</p> <ul style="list-style-type: none"> Clearly identify where the rainwater from the roofs will be plumbed to. This should at least include the landscaping and toilets Landscape design and planting should be water tolerant and suitable for the microclimate – see landscaping comments. <p>Materials</p> <p>22. A new area of BASIX and NABERS, it would be good to understand how you are aiming to reduce the impact of materials.</p> <p>23. Where is the roof cladding/construction noted?</p> <p>24. Where is the insulation for walls and ceilings indicated?</p> <p>25. Consideration should be given to:</p> <ul style="list-style-type: none"> agreeing to the low emissions options for the concrete noted in the BASIX report, lean design strategies such as optimising structural layout and slab design, posts to support balconies instead of cantilevers etc dematerialisation throughout reducing basement carparking and/or its impacts <p>The inclusion of cantilevered awnings hosting desirable plants presents a number of issues to be resolved. The design will need to consider:</p> <p>26. how to minimise the embodied carbon from the concrete and steel reinforcement required to hold them up in their saturated states</p> <p>27. how to minimise the thermal bridging resulting from the need to connect these to the inside slabs</p> <p>28. how they will be built to last, not cracking after a short time due to weight, failings of waterproofing, issues arising from maintenance of the plants etc.</p> <p>PANEL CONCLUSION</p> <p>The Panel considers that the development application has merit subject to implementation of the recommendations above. Key factors including more detailed analysis and assessment of amenity impacts need further attention to guide final design modifications.</p> <p>Planner Comment: The applicant did provide any amended plans or additional information to address any of the concerns raised by DSAP. Therefore Council cannot be satisfied that the issues raised have been resolved, and as such will be listed as a reason for refusal.</p>

Internal Referral Body	Comments
Environmental Health (Contaminated Lands)	<p><i>Supported, with conditions</i></p> <p>The applicant has provided updated information in the form of a Detailed Site Investigation (DSI) by an environmental consultant.</p> <p>The DSI concludes that the site can be made suitable for the proposed development subject to the implementation of a number of recommendations.</p> <p>Environmental Health supports the proposal and recommends a number of conditions of consent.</p> <p>Recommendation</p> <p>APPROVAL - Subject to conditions</p>
Environmental Health (Industrial)	<p><i>Supported, with conditions</i></p> <p>The proposal is accompanied by a report by an acoustic consultant which provides a number of recommendations, both on going and during the construction phase which seek to minimise the noise impact to the community.</p> <p>Environmental Health supports the proposal and recommends a number of conditions of consent.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>

Internal Referral Body	Comments
Landscape Officer	<p>Not supported The proposal is not supported with regard to landscape issues.</p> <p>The application is assessed by Landscape Referral against Warringah Local Environmental Plan (WLEP) 2011 and the following Warringah Development Control Plan (WDCP) 2011 controls (but not limited to):</p> <ul style="list-style-type: none"> • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation • G5 Freshwater Village <p>It is noted under section 1.4 of the Arboricultural Impact Assessment (AIA) that the report relies on superseded architectural plans. The plans submitted with the application are dated 28/11/24 revision 04 and the plans referenced in the AIA are dated 29/10/24 revision 03. This is also evident in Appendix 8 of the AIA, as the hardstand extent around tree 5 differs to what is proposed. Tree 5 must be retained and the Arborist should reference the engineering drawings (DRG-000011) which show the proposed footpath levels and hardstand extent around tree 5. Please provide updated comments from the Arborist addressing the impact to tree 5, and adopt any design recommendations to ensure tree 5 can be retained. If the application is approved it is noted the requirement to access the substation and waste facilities necessitates the removal of tree 4.</p> <p>Northern Beaches Council Development Application Lodgement Requirements outlines that the landscape plans need to show the proposed plant species locations and quantities. This information is missing from the plans and is required to enable an accurate assessment of the planting proposal (including the dense landscape buffer to adjoining R2 land required under the DCP). Please provide a complete planting plan for the landscape proposal. Please note Council considers <i>Cupaniopsis anacardioides</i>, and all <i>Pennisetum</i> and <i>Rhaphiolepis</i> species an environmental threat and as such these species shall be replaced with suitable alternatives. The on structure planters with 250mm soil depth is insufficient and all on structure planters must meet the Apartment Design Guides soil depth requirements. Plant species selected for on structure planters must be suitable for the proposed soil depths. The planted awning shall not include any cascading species to avoid conflict issues with the public domain below.</p> <p>It is unclear whether or not sufficient on structure planter width is provided for the southern side balconies of apartments A201, A206, A207, A212, A301, A303, A304 and A306. The planter widths shown on drawing DA-302 appear to differ from what is shown on drawings DA-102 and DA-103; please clarify. All on structure planters should have a minimum 500mm internal width to allow suitable soil volume for planting.</p> <p>Any planting under the windows along Lawrence Street, adjoining the public domain, must be wholly contained within the legal property</p>

Internal Referral Body	Comments
	<p>boundaries. Consider the OSD tank and any impact it has on the available soil depth for the adjacent planters.</p> <p>Landscape referral can continue their assessment upon receipt of further information.</p> <p>Note to planner: the engineering drawing DRG-000011 shows a 'balustrade' adjacent to tree 5 on public land which appears to be across the BOH entry. Whether or not a balustrade or handrail is required is deferred to the relevant referral team.</p>

Internal Referral Body	Comments
NECC (Coast and Catchments)	<p><i>Supported, with conditions</i></p> <p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience & Hazards) 2021 and has also been assessed against requirements of the Warringah LEP 2011 and Warringah DCP 2011.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' map under the State Environmental Planning Policy (Resilience & Hazards) 2021. Hence, Clauses 2.10 and 2.12 of the SEPP apply for this DA.</p> <p>Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Ethos Urban dated 28 January 2025 the DA satisfies requirements under clauses 2.10 and 2.12 of the SEPP R&H. As such, it is considered that the application is generally consistent with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>Warringah LEP 2011 and Warringah DCP 2011</p> <p>The subject site is also shown to be as "Landslide Risk B" on Council's Landslide Risk Map in Warringah LEP 2011. As such, Clause 6.4 (development on sloping land) of the Warringah LEP 2011 and Part E10 (Landslip Risk) of the Warringah DCP 2011 will apply to proposed development on the site.</p> <p>Comment: A Geotechnical Report by EI Australia dated 12 November 2025 assessing landslide/landslip hazard has been submitted with the DA. The report concludes that the proposal will not result in an adverse landslide risk.</p> <p>As such, it is considered that the application is generally consistent with, subject to conditions, the requirements of Clause 6.4 of the Warringah LEP 2011 and Part E10 of the Warringah DCP 2011.</p>

Internal Referral Body	Comments
NECC (Development Engineering)	<p><i>Not supported</i></p> <p>The proposal is for demolition works and construction of a four-storey shop top housing development and strata subdivision. The access is proposed off Dowling Street. A vehicle crossing in accordance with Council's standard normal profile will be conditions. Internal Parking arrangement and maneuverability to be assessed by Traffic team.</p> <p><u><i>Stormwater</i></u></p> <p>The submitted stormwater management report by TTW has been reviewed. No stormwater plan has been provided, only a general arrangement plan is provided showing the OSD tank location and connection to the existing pit in Lawrence Street is provided with the report. The OSD volume proposed in the report and the plan appears to differ. Insufficient details have been provided for assessment.</p> <p>The applicant is to provide detailed stormwater plans showing the arrangement of the stormwater system including plans and sections for the OSD tank with levels and dimensions and orifice size. The proposed connection to the existing Council pipeline is acceptable in concept however, the oblique angle of the proposed connection is not acceptable. Connection from the site is to be at maximum 45 degree angle.</p> <p>Stormwater plans are to be submitted for further assessment.</p> <p>Planner comment: The outstanding engineering issues raised above are included as part of the reasons for refusal.</p>
NECC (Flooding)	<p><i>Supported, no conditions</i></p> <p>This proposal is for the demolition of existing buildings on the property and the construction of a four-storey shop-top housing development. The proposal is assessed against Section E11 of the Warringah DCP and Clause 5.21 of the Warringah LEP.</p> <p>The proposed development is not within the Flood Planning Area and is therefore not subject to flood related development controls.</p> <p>The proposal generally complies with Section E11 of the Warringah DCP and Clause 5.21 of the Warringah LEP.</p>

Internal Referral Body	Comments
NECC (Water Management)	<p><i>Supported, with conditions</i></p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Northern Beaches Water Management for Development Policy (WMD Policy); and • Relevant LEP and DCP clauses <p>This proposal is for the demolition of existing buildings on the property and the construction of a four-storey shop-top housing development.</p> <p>Section 4.0 of the WMD Policy applies. Water sensitive urban design (WSUD), water reuse and infiltration into the soil, and the resulting quality of stormwater leaving the site are interconnected concepts that guide a merit-based assessment under the section. The proposed stormwater treatment chain includes rainwater tank, pollutant traps, and a chamber containing filter cartridges. It is noted that the proposal also includes planter boxes suitable for water reuse via irrigation.</p> <p>On consideration the water treatment chain proposed, no objections regarding section 4.0.</p> <p>Section 4.1 of the WMD Policy applies. Under this section the proposal must meet Table 5 – General Stormwater Quality Requirements. A stormwater plan has been provided including the layout and output from MUSIC modelling.</p> <p>Section 4.2 of the WMD Policy applies. As acknowledged in the geotechnical report provided, the proposal will intercept the groundwater table. As such, the proposal requires aquifer interference approval from WaterNSW, making it integrated development. General Terms of Approval issued by WaterNSW are forming part of the condition of consent.</p> <p>The proposed stormwater quality management system is satisfactory with the use of stormwater harvesting, reuse and filtration prior discharge to the stormwater network.</p>

Internal Referral Body	Comments	
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS	
	Discussion of reason for referral	
	<i>Not supported</i>	
	The proposal has been referred to Heritage as the subject site is within proximity to two heritage items, listed in Schedule 5 of Warringah LEP 2011:	
	Item I71 - Building known as 'Harbord Literary Institute' - Corner Lawrence and Oliver Street	
	Item I72 - Building known as 'Early Childhood Health Centre' - 29 Lawrence Street, Freshwater	
	Details of heritage items affected	
	Building known as 'Harbord Literary Institute' <u>Statement of significance</u> "Harbord Literary Institute" has great social & historical significance for the community, having been part of community life since early 1900's. Historically the buildings indicate the growing need for facilities for the increasing permanent community. <u>Physical description</u> Essentially two buildings with original building at rear which is a single storey brick building with 2 stringcourses of darker brick in line with top & bottom of windows. Gabled corrugated iron roof. Brick flat roofed addition on eastern side. Building on corner-single storey brick with hipped tiled roof. Brick gable located over entrance with arched opening & semi-circular plain leadlight. Timber weatherboards under eaves. Flag poles.	
	Building known as 'Early Childhood Health Centre' <u>Statement of significance</u> A representative example of inter-war fire station architecture displaying high integrity of fabric. Strong social significance as the 1st permanent fire station building in Freshwater & in its continual use for the provision of community services. <u>Physical description</u> Single storey brick building with multi-gabled roof and detailed parapet on front facade. Roof of slate with terracotta capping & finials. Timber louvres to small gable ends. Facade partly rendered. Changes to entrance when changed to baby health centre. Canopy over entrance door. Brick course around door. Public toilets have been added to rear of building. Tree still exists to east of building adjacent to public pathway. Timber flag pole on top.	
	Other relevant heritage listings	
	SEPP (Biodiversity and Conservation) 2021	No
	Australian Heritage Register	No

Internal Referral Body	Comments		
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		

Internal Referral Body	Comments
	<p>The proposal seeks consent for the demolition of existing structures on the subject site and the construction of a four-storey shop-top housing development comprising 30 residential apartments and ground floor retail tenancies. The Pre-Lodgement meeting, held on 8 August 2024, concluded "<i>Generally, Council will be seeking the DA proposal be adjusted to demonstrate much closer consistency with the Warringah DCP controls and ADG, subject to the relevant overriding SEPP provisions, that must also be mindful of the local public interest (particularly adjoining residential land).</i>" Heritage comments were mainly related to the new development having an integrated facade treatment within the existing streetscape by having a visually compatible design approach and respecting the significance of the heritage listed buildings the Harbord Literary Institute and the Early Childhood Health Centre on the opposite side of Lawrence Street and the character of the Freshwater Village.</p> <p>The current proposal is considered to have an improvement on the streetscape presentation by providing further articulation to both Lawrence Street and Dowling Street elevations. Vertical articulation on the street level and first floor level along with the setbacks on the upper levels to the Lawrence Street elevation and the usage of compatible materials is considered to relate better to the existing streetscape and the character of the area. The stepping back on the upper levels and using compatible materials at the Dowling Street frontage help to break up the otherwise extensive building mass when viewed from the heritage items and from the corner of Lawrence Street and Oliver Street. However, it is considered that an increased setback (eg from 1860mm to 2860mm at the north-west corner of the third level) from Dowling Street boundary would further reduce the bulk and scale of the development and improve the streetscape presentation. Similarly, the proposed Rooftop Plant is also required to be set further back from Dowling Street to minimise its visibility.</p> <p>Therefore, Heritage require minor amendments to the proposal.</p> <p><u>Consider against the provisions of CL5.10 of WLEP 2011.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Addressed in SEE.</p> <p>Planner comment: The outstanding heritage issues raised above are included as part of the reasons for refusal.</p>

Internal Referral Body	Comments
Traffic Engineer	<p><i>Not supported</i></p> <p><u>Proposal description:</u> Demolition works and construction of shop top housing, including strata subdivision</p> <p>The proposed development involves the demolition of the existing structures and the construction of a new mixed-use residential complex. This complex will feature 6 one-bedroom units, 15 two-bedroom units, and 9 three-bedroom units, along with several retail spaces. Access to the site will be provided through an existing single crossover on Dowling Street, which will lead directly to two levels of basement parking.</p> <p>The traffic team has reviewed the following documents:</p> <ul style="list-style-type: none"> • Plans (Master Set) – issue for DA, Revision 04, designed by FUSE Architects, dated 28/11/2024, • Traffic Impact Assessment report (Revision B: Final) prepared by Stantec dated 06 December 2024, • Statement of Environmental Effects prepared by Ethos Urban dated 28 January 2025, and • Pre-Lodgement Advice (PLM2024/0064) dated 08 August 2024. <p><u>Access</u></p> <ul style="list-style-type: none"> • Access to parking from Dowling Street is proposed and supported. The proposed driveway has been widened to allow inbound and outbound vehicles to pass each other simultaneously. The driveway is approximately 6.1 meters wide for the first 6 meters into the property, which facilitates ease of access. Swept path plots indicate that this design is appropriately sized to allow a B99 vehicle to pass a B85 vehicle entering or exiting the site, as required by AS2890, clause 3.2.2. • Dowling Street is narrow, carries buses, and experiences high traffic volumes. The proposed vehicle access at the southern boundary of the site is supported, as it minimises traffic impacts. • The driveway and ramp gradients appear satisfactory; however, a vertical clearance assessment on the driveway ramp should be undertaken, using traffic engineering software such as Autotrack/Autoturn, for a B99 car entering and accessing the carpark to demonstrate that there is adequate overhead clearance and that scraping and bottoming do not occur. • A pedestrian sightline triangle of 2.0 metres by 2.5 metres should be plotted at the property boundary in accordance with AS2890.1:2004 for pedestrian visibility. It is noted that the pedestrian sightline triangle on the exit side of the driveway is not feasible due to the existing site constraints. To enhance safety for pedestrians along the Dowling Street frontage, we propose the installation of convex mirrors on both sides of the driveway, as well as a speed bump in the internal layout of the site. Additionally,

Internal Referral Body	Comments
	<p>we recommend considering the implementation of LED signage that alerts pedestrians when a vehicle is exiting the property. This option is expected to have minimal impact on the surrounding local amenities and would be activated by a beam system as vehicles approach the exit. The LED signage includes voice alerts for effective warnings and features an audio cut-off timer.</p> <p><u>Loading/servicing</u></p> <ul style="list-style-type: none"> • According to the PLM referral comments, the Warringah DCP requires that sufficient space be allocated on the building or development site for the loading and unloading of vehicles. Currently, there is no provision for off-street loading, which is unacceptable for a development of this size. Considering the number of retail tenancies and the expected delivery and servicing needs, it is essential to provide off-street loading and servicing space that can accommodate at least a Medium Rigid Vehicle (MRV). It is not acceptable to depend on existing kerbside Loading Zones, and we cannot assume the long-term availability of the Lawrence Street Loading Zone. • The current bus zone measures only 18.5 meters in length, which falls short of the 30 meters required by the relevant TfNSW guidelines. Council believes that establishing a compliant bus zone is a more suitable use of kerb space than a loading zone. Additionally, the proposed loading zone on Dowling Street is not favoured. Dowling Street is narrow, accommodates buses, and experiences relatively high traffic volumes during peak hours. There is an existing bus zone on the west side of Dowling Street, directly opposite the development. If a loading zone were to be placed opposite the bus zone, it could hinder two-way traffic flow if both zones are occupied simultaneously. • Furthermore, since buses travel southbound along Dowling Street and occasionally pass each other, a loading zone outside the development could obstruct bus access. <p><u>Parking rates/requirements:</u></p> <ul style="list-style-type: none"> • The land is zoned E1 Local Centre under the Warringah Local Environmental Plan 2011 (LEP). • Warringah DCP applies to the subject site. When calculating required parking for development, car parking rates are to be rounded up to the nearest whole number. The parking requirements for the development comprising 30 units (6 x one-bedroom, 15 x two-bedroom and 9 x three & four-bedroom apartments) and 1291m² retail/commercial premises are 38 resident spaces, 6 visitor spaces, 72 retail/commercial users = 116 spaces. In response, 106 parking spaces have been proposed (38 residential parking spaces, 6 visitor parking spaces and 62 retail parking

Internal Referral Body	Comments
	<p>spaces). There is therefore a shortfall of 10 retail parking spaces.</p> <ul style="list-style-type: none"> • The retail parking shortfall spaces for the proposal are considered acceptable given that: <ul style="list-style-type: none"> o The retail parking rate specified in the Warringah DCP is significantly higher compared to the rates in other Northern Beaches Council DCPs. Therefore, it may be reasonable to consider relaxing these requirements. For instance, the Pittwater DCP mandates one parking space for every 30 square meters of GLFA, while the Manly DCP requires one parking space for every 40 square meters of GLFA for the retail component. If we apply these rates to the retail aspect of the development, the parking requirements would be 43 and 32 car spaces, respectively. This is much lower than the number of spaces required under the Warringah DCP. o The development currently provides 62 retail car spaces, which translates to a parking ratio of approximately one space for every 20 square meters of GLFA. o It is essential to take into account the characteristics of nearby uses since the development is part of the larger Freshwater Village precinct. It is unlikely that the development will generate a substantial number of new vehicle trips. Instead, it is more likely to encourage linked trips to nearby retail establishments, residents living above the development, or those who reside in close proximity to the site. <p>Due to the reasons stated above, providing 62 retail parking spaces meets the retail car parking requirements.</p> • The plans show three (3) residential accessible parking spaces and two (2) retail accessible parking spaces, which is acceptable. The design of the accessible parking space should be in accordance with the Australian Standard AS2890.6:2022 Parking Facilities-Off Street Parking for People with Disability. Space should be provided with a clear width of 2.4m and located adjacent to a minimum shared area of 2.4m. • Bollards are provided for the disabled shared area as shown in Figure 2.2 of the Australian Standard AS2890.6:2022 Parking Facilities-Off Street Parking for People with Disability.

Internal Referral Body	Comments
	<ul style="list-style-type: none"> The design of the parking spaces appears to comply with the Australian Standard AS 2890.1:2004 for Off-Street Parking. However, the architectural plans do not provide dimensions for the widths and lengths of the parking spaces and the access driveway. Although swept path plots have been included to demonstrate that access to and from each space is feasible for a B85 vehicle, this must be confirmed with dimensioned plans. Dimensioned plans should be submitted for the parking area to ensure that all parking bays and the access driveway are appropriately sized. The traffic and parking report, along with the swept path analysis in Appendix B, illustrates the entry and exit movements, as well as the circulation patterns of B85 and B99 vehicles within the parking space modules. It shows that B99 vehicles can successfully access and exit the driveway in accordance with the requirements outlined in clause B2.2 of AS2890. The WDCP mandates that each residential unit must provide one (1) bicycle parking space, along with one visitor bicycle parking space for every twelve (12) dwellings. Additionally, the DCP stipulates the requirement for retail bicycle parking at a rate of one space per 200 m² of GFA with a high-medium security level for staff, and one space per 600 m² of GFA with a high-low security level for visitors. According to the plans, there will be a total of 30 secure bicycle parking spaces for residents on the upper ground floor. Furthermore, the facility will include 7 secure bicycle parking spaces for staff, 12 lockers, and 2 shower cubicles within the end-of-trip facilities area, as well as 6 visitor bicycle parking spaces on the upper ground floor. This provision meets the Council's DCP requirements and supports alternative modes of travel. The development proposes a total of 5 motorcycle parking spaces and therefore complies with Council's motorcycle parking requirements. <p><u>Traffic generation</u></p> <ul style="list-style-type: none"> The proposal will generate minimal traffic (up to 10 additional vehicle movements) in the Saturday peak hours; therefore, it will not have any unacceptable implications in terms of road network capacity performance. The operation of the key intersections within the study area was assessed using SIDRA INTERSECTION software. Based on the sidra modelling outputs included in Appendix A of the report, the surrounding intersections would continue to operate satisfactorily with generally only minor increases to average delay and 95th percentile queue lengths. The LOS of each intersection would operate well with spare capacity. It is noted that the modelling has been completed for the intersections of Lawrence Street/ Dowling Street and

Internal Referral Body	Comments
	<p>Oliver Street/ Lawrence Street. These intersections are closely spaces intersections. For the development of this scale, it would normally be recommended that a network-wide process (Sirda Network Model) is developed and assessed. This would take into account the effects of pedestrian crossings. This determines the backward spread of congestion as queues on downstream lanes block upstream lanes (queue spillback), and applies a capacity constraint to oversaturated upstream lanes, thus limiting the flows entering downstream lanes. However, as TfNSW who are the roads authority for management of signalised interesections has not requested this and as the modelling has not identified intersections that will perform poorly post-development, it will not be required.</p> <p>Conclusion The current plans and traffic report are unacceptable for the reasons outlined above.</p> <p>Planner comment: The outstanding traffic issues raised above are included as part of the reasons for refusal.</p>
Waste Officer	<p><i>Supported, with conditions</i></p> <p>Waste Storage room for 15 units in Block A/B to contain 5 x 240L waste (red) lid 240L, 4 x 240L paper (blue) lid, 4 x 240L container (yellow) lid</p> <p>Waste Storage room for 15 units in Block C/D to contain 5 x 240L waste (red) lid 240L, 4 x 240L paper (blue) lid, 4 x 240L container (yellow) lid</p> <p>Waste allocation of bins to be as per Appendix A of Northern Beaches Waste Management Guidelines.</p> <p>Areas of waste rooms are acceptable but doors of waste storage rooms must open outwards being able to be latched in an open position.</p> <p>Over 5m3 of bulky storage waste has been provided and this will be managed by the building manager.</p> <p>Commercial collection area suitable for waste generation assumed and collection frequency to be subject to actual users.</p> <p>Garbage Loading area on Dowling Street must accommodate council's standard HRV collection vehicles and doors to bin holding area must open outwards and be able to be latched in an open position during service. The loading dock must be available to Council's waste contractor exclusively on collection day (Wednesday).</p> <p>Commercial collection to be by a commercial contractor from the commercial waste room and should not occur on a Wednesday which is council collection day for that area.</p> <p>All the above would be conditioned</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	Supported, without conditions <i>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.</i>
Nominated Integrated Development - DCCEEW - Water - Water Management Act 2000, s90(2) - Water management works approval to construct and use a specified water supply/drainage/flood work at a specified location	Supported, with conditions The proposal was referred to WaterNSW under Section 90(2) of the Water Management Act 2000. WaterNSW raised no objections to the development, and provides General Terms of Approval (ref:IDAS1160300 dated 09 July 2025).

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)

Housing and Productivity Contribution

Part 2 Development for which contribution is require and determination of contribution, Division 2 Housing and productivity contribution amounts, Clause 7 Base component.

This Clause details the base component amounts that apply to the calculation of the housing and productivity contribution, as set out in the following table:

Region	HPC class of development	Amount	HPC unit
Greater Sydney	Residential subdivision	\$12,000	new dwelling lot
	Residential strata subdivision	\$10,000	new strata dwelling lot
	Non-strata multi-dwelling development	\$10,000	new non-strata dwelling
	Commercial development	\$30	square metre of new GFA
	Industrial development	\$15	square metre of new GFA

Comment:

The subject site is a shop top housing development including 24 dwellings (6 x proposed affordable dwellings excluded) and is sited within the Greater Sydney region. As such, the contribution is \$240,000.00. As such, the contribution payable is \$240,000.00 if the application is approved. There is a net loss of retail gross floor area compared to existing, and therefore there is no commercial contribution applicable.

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. 1776381M dated 6 December 2024).

The embodied emissions have been quantified in the above BASIX Certificate.

A condition may be included if the final conditions of consent if the application is to be approved requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Housing) 2021

Division 1 – In-Fill Affordable Housing

Section 15C – Development to which Division applies	
Standard	Compliance/Comment
(1) This division applies to development that includes residential development if:	
(a) the development is permitted with consent under Chapter 3, Part 4 or another environmental planning instrument, and	Compliant The proposal is for shop top housing.
(b) the affordable housing component is at least 10%, and	Compliant 11.16% (522sqm) of the gross floor area is proposed as affordable housing.
(c) all or part of the development is carried out: (i) for development on land in the Six Cities Region, other than in the City of Shoalhaven local government area—in an accessible area, or (ii) for development on other land—within 800m walking distance of land in a relevant zone or an equivalent land use zone. relevant zone means the following— (a) Zone E1 Local Centre, (b) Zone MU1 Mixed Use, (c) Zone B1 Neighbourhood Centre, (d) Zone B2 Local Centre, (e) Zone B4 Mixed Use.	Compliant The subject site is located in the E1 local Centre Zone.

Section 18 – Affordable housing requirements for additional building height	
Standard	Compliance/Comment

<p>(1) This section applies to development that includes residential development to which this division applies if the development:</p> <p>(a) includes residential flat buildings or shop top housing, and</p> <p>(b) does not use the additional floor space ratio permitted under section 16.</p>	<p>Compliant</p> <p>The proposal is for shop top housing. FSR is not applicable to this site.</p>
<p>(2) The maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height of up to 30%, based on a minimum affordable housing component calculated in accordance with subsection (3).</p>	<p>Non-compliant</p> <p>The application proposes a building height of 16.35m (48.6% or 5.35m variation), based on the extent of variation 24.3% of the proposed Gross Floor Area would need to be dedicated to affordable housing. The application proposes 11.6%. The additional building height does not correspond to the minimum required affordable housing component. Accordingly, the building height variation is assessed against the development standard at Clause 4.3 of the WLEP in this report.</p>
<p>(3) The minimum affordable housing component, which must be at least 10%, is calculated as follows:</p> $\text{affordable housing component} = \frac{\text{additional building height}}{(\text{as a percentage})} \div 2$	<p>Non-compliant</p> <p>As above</p>

Section 19 – Non-Discretionary Development Standards – the Act, s 4.15	
Standard	Compliance/Comment
(a) A minimum site area of 450m ² .	<p>Compliant</p> <p>The subject site has an area of 2,568m²</p>
<p>(b) a minimum landscaped area that is the lesser of:</p> <p>(i) 35m² per dwelling, or</p> <p>(ii) 30% of the site area,</p>	<p>Non-compliant</p>
<p>(c) A deep soil zone on at least 15% of the site area, where:</p> <p>(i) each deep soil zone has minimum dimensions of 3m, and</p> <p>(ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site,</p>	<p>Non-applicable</p> <p>This subsection does not apply pursuant to subsection (3).</p>
<p>(d) Living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter.</p>	<p>Non-applicable</p> <p>This subsection does not apply pursuant to subsection (3).</p>

(e) the following number of parking spaces for dwellings used for affordable housing: (i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces, (ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces, (iii) for each dwelling containing at least 3 bedrooms—at least 1 parking space,	The application is unclear as to the allocation of parking spaces to the proposed affordable housing under SEPP Housing. It is considered that this matter could be resolved through the imposition of conditions were the application recommended for approval.
(f) the following number of parking spaces for dwellings not used for affordable housing: (i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces, (ii) for each dwelling containing 2 bedrooms—at least 1 parking space, (iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,	Compliant The proposal complies with the above car parking rates.
(g) the minimum internal area, if any, specified in the Apartment Design Guide for the type of residential development,	Compliant The internal area of all units complies with the minimum requirements of the ADG.
(h) for development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces): the minimum floor area specified in the Low Rise Housing Diversity Design Guide,	Not applicable N/A - the development is for the purposes of a shop top housing
(i) if paragraphs (g) and (h) do not apply, the following minimum floor areas: (i) for each dwelling containing 1 bedroom—65m ² , (ii) for each dwelling containing 2 bedrooms—90m ² , (iii) for each dwelling containing at least 3 bedrooms—115m ² plus 12m ² for each bedroom in addition to 3 bedrooms.	Not applicable Paragraph (g) applies to the development.

Section 20 – Design Requirements	
Standard	Compliance/Comment
(1) Development consent must not be granted to development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces) under this division unless the consent authority has considered the Low Rise Housing Diversity Design Guide, to the extent to which the guide is not inconsistent with this policy.	Not Applicable

<p>(3) Development consent must not be granted to development under this division unless the consent authority has considered whether the design of the residential development is compatible with:</p> <p>(a) the desirable elements of the character of the local area, or</p> <p>(b) for precincts undergoing transition—the desired future character of the precinct.</p>	<p>Due to the deficient boundary setbacks and extent of building height variation, the proposal is unable to provide adequate physical separation commensurate with the scale of the development that successfully mitigates the bulk of the buildings. It is considered that a larger setback and reducing the scope of bulk on the proposed roof is required to reduce the impact upon residential properties to the south of the site in the R2 Low Density Residential zone, given the additional building height that is achievable under Section 18 of SEPP Housing.</p>
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Section 21 – Must be used for Affordable Housing for at least 15 years	
Standard	Compliance/Comment
<p>(1) Development consent must not be granted to development under this division unless the consent authority is satisfied that for a period of at least 15 years commencing on the day an occupation certificate is issued for the development:</p> <p>(a) the development will include the affordable housing component required for the development under section 16, 17 or 18, and</p> <p>(b) the affordable housing component will be managed by a registered community housing provider.</p>	<p>This matter could be resolved through the imposition of conditions were the application recommended for approval.</p>

Application of Chapter

Clause 144 of State Environmental Planning Policy Housing 2021 (SEPP Housing) stipulates that:

(1) This chapter applies to development only if:

- (a) the development consists of:
 - (i) the erection of a new building,
 - (ii) the substantial redevelopment or the substantial refurbishment of an existing building, or
 - (iii) the conversion of an existing building, and
- (b) the building concerned is at least 3 or more storeys, not including underground car parking storeys, and
- (c) the building contains at least 4 dwellings.

As previously outlined the proposed development is for the erection of a three (3) storey residential apartment development (not including the ground level commercial) plus basement car parking for the provisions of 30 self-contained dwellings. As per the provisions of Clause 144 outlining the application of the policy, the provisions of Chapter 4 SEPP Housing are applicable to the assessment of this application.

As previously outlined within this report Clause 29 of the Environmental Planning and Assessment Regulation 2021 requires the submission of a Design Verification Statement from the qualified designer at lodgement of the development application. This documentation has been submitted with the

development application.

Referral to design review panel for development applications

Clause 145 of SEPP Housing requires:

(2) Before determining the development application, the consent authority must refer the application to the design review panel for the local government area in which the development will be carried out for advice on the quality of the design of the development).

Comment: Northern Beaches Council has an appointed Design and Sustainability Advisory Panel (DSAP). Refer to the DSAP referral comments section within this report.

Determination of development applications and modification applications for residential apartment development

Clause 147 of SEPP Housing requires that:

(1) Development consent must not be granted to residential apartment development, and a development consent for residential apartment development must not be modified, unless the consent authority has considered the following—

(a) the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,

(b) the Apartment Design Guide,

(c) any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.

Comment: The below part of the report makes an assessment against the design quality principles contained within Schedule 9 (a) and an assessment is carried out against the ADG below (b).

The proposal does not meet the design quality principles of Schedule 9 for the reasons outlined below.

Non-discretionary development standards for residential apartment development

Clause 148 of SEPP Housing contain non-discretionary development standards that, if complied with, prevent the consent authority from requiring more onerous standards for the matters (i.e 'must not refuse' standards).

The following are non-discretionary development standards under sub clause (2):

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

Comment: As noted in the below assessment, the proposal meets the minimum requirements of the ADH in relation to Part 3J, 4D and 4C. This assessment has not required more onerous standards and does not

recommend refusal of any of these reasons.

DESIGN QUALITY PRINCIPLES - Schedule 9

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 desired future character of the Freshwater Village is set out by the planning controls contained within the Warringah LEP and DCP. Having regard to these controls in conjunction with the bonus height provisions for affordable housing and considering that the area is undergoing change, the proposal does is inconsistent with the desired character of Freshwater Village. The height is inconsistent with what is anticipated for the area and would lead to a undesirable precedent for the area if approved in its current form.

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 form of the building is considered to be excessive in consideration of size and scale of surrounding development, and the siting of the building is not considered to be an appropriate response to the siting of adjoining development.

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:

Whilst a higher density may be appropriate in this general location, the proposed development does not appropriately respond to the constraints of the site and a high level of amenity for future occupants is not achieved.

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 application was supported by a BASIX and NatHERS Certificate, which includes recommendations to ensure that the building performs in accordance with industry standards.

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 proposed landscape design is generally acceptable in the context of the site. However, as discussed in detail elsewhere in this report, insufficient information relating to planting has been provided in the landscape documentation.

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:

As detailed in the assessment against the ADG and WLEP 2011, the proposed development is not appropriately resolved and fails to provide a reasonable level of amenity for future occupants of the development. Furthermore, the proposal also attributes to impacts upon the amenity of adjoining properties.

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 proposal does not provides safe and secure access to the site via the centrally located vehicular and pedestrian access points.

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 proposed mix of one, two and three-bedroom apartments is appropriate in the context of the site.

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:

Notwithstanding the concerns relating to the scale of the development, the architectural treatment of the facades of the development are considered to be of good design, utilising a variety of materials, colours and textures.

APARTMENT DESIGN GUIDE

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

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?	Inconsistent The proposal is appropriately sited but is of excessive proportions and does not respond appropriately to the desired character of the locality.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Inconsistent The overall design of the development does not ensure satisfactory outcomes in relation to visual bulk, privacy or solar access either within the development or to adjoining properties.
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	Consistent The proposed building incorporates safe and secure access from the street frontage and provides opportunities for casual surveillance of the public domain.
Communal and Public Open Space	Appropriate communal open space is to be provided as follows: <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) 	Inconsistent The communal open space as proposed on the roof exacerbates the exceedance of the height of building development standard under the WLEP and cannot be supported.

Deep Soil Zones	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1" data-bbox="475 376 1042 925"> <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>Inconsistent</p> <p>No deep soil areas proposed. The landscaped area proposed does not meet the minimum requirement to be considered as deep soil.</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" data-bbox="475 1108 1042 1462"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <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> </tbody> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>To resolve amenity impacts, apartment buildings should increase the building separation distance (+3m) when adjacent to a different zone that permits lower density residential development.</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>Inconsistent</p> <p>The varied setbacks from the southern facing balconies of the proposed development is not supportable and it results in unreasonable visual privacy impacts. The balconies do not meet the 9-metre separation requirements of the ADG to provide adequate protection for when development is adjacent that permits lower residential development, in this case the R2 Low Density Residential zone.</p> <p>The proposal as currently proposed represents an inappropriate interface between the E1 Local Centre zone and the R2 Low Density Residential zone. The proposal heavily relies upon landscaping and privacy screens to overcome to outstanding visual privacy issues.</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>	Consistent
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>	Consistent
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>Visual and environmental impacts are minimised.</p>	N/A
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. 	<p>Inconsistent</p> <p>See comments under D6 (Access to Sunlight) of WDCP 2011.</p>
	<ul style="list-style-type: none"> A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter. 	As above

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.	Consistent												
	<ul style="list-style-type: none">Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	Consistent												
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>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</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	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	Consistent
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Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope													
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use													

Apartment Size and Layout	Apartments are required to have the following minimum internal areas:	Consistent										
	<table><tr><td>Apartment type</td><td>Minimum internal area</td></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>		Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²
	Apartment type		Minimum internal area									
	Studio		35m ²									
	1 bedroom	50m ²										
	2 bedroom	70m ²										
	3 bedroom	90m ²										
	The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each.											
	A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m ² each.											
	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.	Consistent										
Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Consistent											
In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Consistent											
Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	Consistent											
Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	Consistent											
Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none">3.6m for studio and 1 bedroom apartments4m for 2 and 3 bedroom apartments	Consistent											
The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Consistent											

Private Open Space and Balconies	All apartments are required to have primary balconies as follows:	Consistent															
	<table><tr><td>Dwelling Type</td><td>Minimum Area</td><td>Minimum Depth</td></tr><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>		Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m²	-	1 bedroom apartments	8m²	2m	2 bedroom apartments	10m²	2m	3+ bedroom apartments	12m²	2.4m
	Dwelling Type		Minimum Area	Minimum Depth													
Studio apartments	4m²	-															
1 bedroom apartments	8m²	2m															
2 bedroom apartments	10m²	2m															
3+ bedroom apartments	12m²	2.4m															
The minimum balcony depth to be counted as contributing to the balcony area is 1m																	
	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.	N/A															
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Consistent															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A															
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	Consistent The building design is satisfactory in this regard.															
	<table><tr><td>Dwelling Type</td><td>Storage size volume</td></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>		Dwelling Type	Storage size volume	Studio apartments	4m²	1 bedroom apartments	6m²	2 bedroom apartments	8m²	3+ bedroom apartments	10m²					
	Dwelling Type		Storage size volume														
Studio apartments	4m²																
1 bedroom apartments	6m²																
2 bedroom apartments	8m²																
3+ bedroom apartments	10m²																
At least 50% of the required storage is to be located within the apartment.																	
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 building design is satisfactory in this regard.															
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															

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 <ul style="list-style-type: none"> • 6 x one-bedroom apartments; • 15 x two-bedroom apartments; • 9 x three-bedroom apartments; <p>The application proposes a range of apartment types as above.</p>
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	N/A
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Consistent
Roof Design	<p>Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features.</p> <p>Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.</p>	Consistent
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Inconsistent Insufficient information in the form of a landscape plan specifying plant species locations and quantities.

Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes:				Inconsistent As above, a detailed landscape plan has not included specific detail with regards to plant species locations and quantities.
	Plant type	Definition	Soil Volume	Soil Depth	
	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	
	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	
	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	
	Shrubs			500-600mm	
	Ground Cover			300-450mm	
	Turf			200mm	
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features				Consistent
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.				N/A

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.	Consistent
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 contribute to the identity of the development. Signage must respond to the existing streetscape character and context.	Consistent
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Consistent
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Consistent
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	Consistent
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Consistent

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 who raised no objections, subject to conditions which can be included as part of conditions of consent if the application is to be approved.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
 - b) coastal environmental values and natural coastal processes,
 - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
 - d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
 - e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - f) Aboriginal cultural heritage, practices and places,
 - g) the use of the surf zone.

Comment:

Council's Coasts and Catchments team has reviewed the proposal and considers that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021, supporting the proposal, subject to conditions.

- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
- a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
 - b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

Council's Coasts and Catchments team has reviewed the proposal and considers that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021, supporting the proposal, subject to conditions.

Division 5 General

2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The development is unlikely to cause increased risk of coastal hazards. The subject site is setback 400m from the nearest coastline.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

The proposal has regard to the Northern Beaches coastal management programs.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (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.

In response to the above requirements of Chapter 4, the applicant has submitted a Preliminary Environmental Site Investigation dated 12 November 2024 and prepared by eiaustralia. In its key findings, the investigation states:

The conceptual site model established a potential for contamination to be present within the site area. Therefore, the risks to human and environmental receptors posed by the identified contaminant sources warrant further (detailed/field-based) investigations"

Therefore, as the Investigation indicates that there is a potential for contaminants to exist on the site, sub-section 4.6 (1)(b) and 7(1)(c) of this chapter must be considered.

Sub-section 4.6(1)(b) stipulates that *"if the land is contaminated, it [Council] is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out"*.

Given the claimed potential of contamination on the site as noted in the Phase 1 Investigation, a Phase 2 Environmental Site Assessment should be provided to confirm whether contamination is actually present, at what levels and at what locations. A Phase 2 Environmental Site Assessment has been provided (prepared by eiaustralia, dated 5 May 2025) which confirms the location and type of contaminants on the site and provides recommendations for the remediation of the site to enable the development to be safely carried out. In this regard, Council is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation are included as conditions in the Recommendation of this report.

Sub-section 4.6 (1)(c) stipulates that *"if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose"*.

Council is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation are included as conditions in the Recommendation of this report.

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?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	WLEP -11m	16.35m	WLEP - 48.6%	No
	SEPP Affordable Housing Bonus – 13.45m (11m + 22.32%)		SEPP bonus - 21.56%	

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
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	No
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

WLEP 1.2 Aims of the Plan

In relation to the aims of the plan the proposal fails to adequately address the following:

2.(d) *in relation to residential development, to—*

- (i) protect and enhance the residential use and amenity of existing residential environments, and*
- (ii) promote development that is compatible with neighbouring development in terms of bulk, scale and appearance, and*

2. (e) *in relation to non-residential development, to—*

- (i) ensure that non-residential development does not have an adverse effect on the amenity of residential properties and public places, and*

Comment: The development comprising of both residential and non-residential floor space does not protect the amenity of adjoining low density residential development, nor is compatible with neighbouring development in terms of bulk and scale

Zone E1 Local Centre

The underlying objectives of the E1 Local Centre zone:

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

Comment:

The proposal retains suitable ground floor level retail gross floor area contributing to a range of retail uses in the area.

To encourage investment in local commercial development that generates employment opportunities and economic growth.

Comment:

The retained retail space at ground level allows for small business, supporting local employment,

To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.

Comment:

The proposal is for 30 residential apartments and retail space to ensure a vibrant and active local centre.

To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.

Comment:

As above.

To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse, and functional streets and public spaces.

Comment:

The proposal retains retail space at ground floor level, ensuring an active street frontage for people in the live, work and visit the area.

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 bulk and scale and character of the building remain is inconsistent with desired character of the area and is it is not of appropriate built form to maintain suitable amenity to adjoining residential development in the R2 Low Density Residential zone to the rear of the property.

Conclusion

The proposal is found to be **inconsistent** with the objectives of the zone as assessed above.

This matter forms a recommended reason for refusal.

4.3 Height of buildings

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	WLEP -11m	16.35m	WLEP - 48.6%	No
	SEPP Affordable Housing Bonus – 13.45m (11m + 22.32%)		SEPP bonus - 21.56%	

(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 proposal is not compatible with the height and scale of surrounding development or the desired future character as it exceeds both the applicable WLEP building height standard and the additional building height permitted under SEPP Housing. The proposed building height would be an aberration from neighbouring development within Freshwater Village.

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

Comment:

The variation to the building height development standard directly contributes to view loss, privacy and

solar access impacts as discussed in detail throughout this report.

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

Comment:

The variation to the Height of Buildings development will not have 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,

Comment:

The bulk and scale of the development when viewed from public places has not been adequately mitigated.

The proposed development is inconsistent with the objectives of Clause 4.3 of the WLEP 2011.

4.6 Exceptions to development standards

Application of Section 18 of SEPP Housing

The application includes the dedication of 11.16% (522sqm) of the total gross floor area as affordable housing in order to obtain an additional 22.32% building height incentives available through Section 18 of SEPP (Housing). The additional building height does not comply Section 18 (2) as the additional proposed building height proposes a 48.6% (5.35m) variation to the development standard, which exceed the maximum 22.32% additional height available. For a 48.6% variation to the development standard, 24.3% of the total GFA would be required as affordable

The height does not correspond to the proportion of affordable housing GFA that is proposed to be dedicated, which is contrary to Section 18(2) and (3).

Accordingly, the proposed building height variation must be assessed against the WLEP building height standard rather than SEPP Housing standard, as the height standard reverts back to the WLEP where the SEPP maximum height is not met.

The application seeks consent to vary a development standard as follows:

Development standard:	Height of buildings
Requirement:	WLEP -11m Affordable Housing Bonus – 13.45m
Proposed:	16.35m

Percentage variation to requirement:	48.6% to the WLEP development standard
	21.56% to the affordable housing bonus

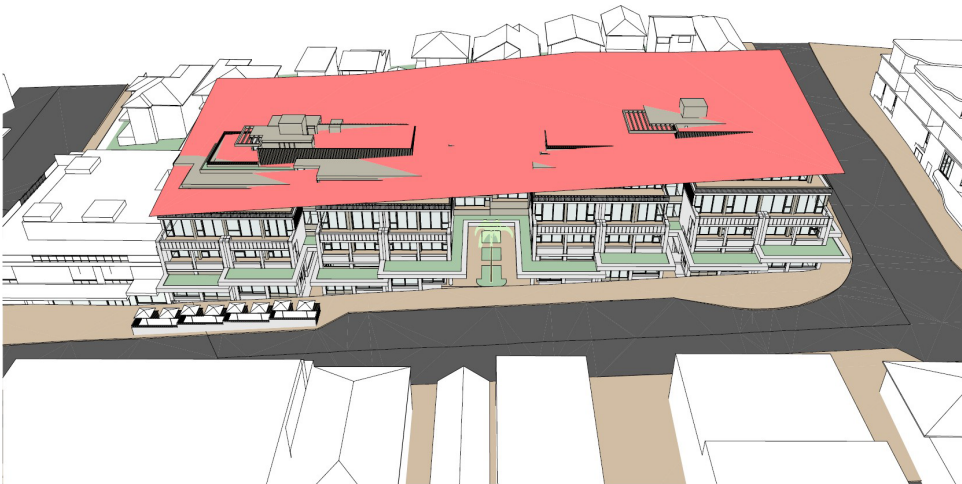


Figure 1 - Building height blanket.

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the WLEP 2011 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

(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.*

Comment:

The objectives of this clause have been considered pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979*.

Subclause (2) of this clause provides that:

(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 is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

Comment:

Council is not satisfied that the Applicant has demonstrated that compliance with Clause 4.3 Height of Buildings is unreasonable or unnecessary in the circumstances of this application because the proposed building height is inconsistent with the objectives of the development standard

(b) 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.'

The Clause 4.6 Request argues, in part:

- *The underlying intent of the height variation is to provide for a 268m² public plaza rather than to provide additional residential floorspace beyond what a fully compliant built form can deliver. Due to it being open to the sky, delivering the public plaza has resulted in significant potential floorspace at all levels of the building to be forfeited, thereby requiring this variation to ensure its continued viability.*
- *The variation is in part due to the significant sloping topography at the site, which drops towards Lawrence Street and the east. Due to this, while parts of the development exceed the height limit, others remain below it. This is especially true for the southern rear boundary (which is especially sensitive due to it being an interface with R2 Low Density Residential zoned land) where the entirety of the built form lies below the height limit.*
- *The extent of the variation relates predominantly to the rooftop communal open space and lift overrun. The communal space is intended to provide a high level of residential amenity for both the*

site's market and affordable housing residents rather than to provide additional habitable floorspace above the height plane. With regards to lift overruns, it is common for consent authorities to grant height variations for lift overruns as long as they are suitably screened from the streetscape, given they by their very nature are highly localised and need to rise above the roofline of a building.

- *The delivery of the proposed development (variation included) will provide critical market and affordable housing supply to an area with one of the highest rates of housing unaffordability in Sydney and New South Wales more broadly. This would be compromised if the proposed development were to not be delivered.*
- *The proposed development (including height variation) is consistent with the Objects of the EP&A Act, including promoting the orderly and economic use and development of land, and promoting the delivery and maintenance of affordable housing*

Council is not satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.3 (Height of Buildings) for the following reasons:

Council's Assessment of the Clause 4.6 Request

The applicant has not satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, in seeking to demonstrate that sufficient environmental planning grounds exist.

The applicant's request argues that the proposed breach is a result of the proposed public plaza and communal open space and lift overrun. While this is acknowledged, this does not justify the extent of variation proposed. Reducing the scale of development specifically, removal of the communal open space would significantly reduce the scale of the development when viewed from public open space. The subject is in close proximity to public open space including Freshwater Beach and reserve.

Public Interest:

Matters relevant to public interest in respect of the development are considered in the relevant sections of this report as per Section 4.15(1)(e) of the EPA Act.

Conclusion:

Council is not satisfied as to the matters set out in Clause 4.6 of the WLEP 2011.

Based on the proposal's inconsistency with objectives of the height of buildings development standard, and the lack of sufficient environmental planning grounds, it is considered that the proposed departure from the development standard is not acceptable and that flexibility in the application of the standard is inappropriate in this case.

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*
- (b) to allow earthworks of a minor nature without requiring separate development consent.*

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

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

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

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

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

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

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

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

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions may be included to limit impacts during excavation/construction if the application is approved.

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

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition may be included requiring any fill to be of a suitable quality if the application is approved.

(f) the likelihood of disturbing relics

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

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

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

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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.

(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
G2 Number of storeys	3	4	33%	No (see discussion)
G11 Side Boundary Setbacks	Merit assessment	Eastern side: 0m	-	Yes (acceptable on merit)

G10 Front Boundary Setbacks	Ground and first floor: 0m Second floor and up: 5m	Lawrence Steet (Primary) Upper ground floor: 0m First floor: balconies 0m, walls 2.5m Second floor: balconies 0m, walls 2.5m, breaks 7m - 10.3m Third floor: balconies 2m, walls 5m, breaks 7m - 10.3m	50% - 100%	No (see discussion)
		Dowling Street (Secondary) Upper ground floor: 0m First floor: 0m Second floor: 0m Third floor: 1.1m	78% - 100%	No (acceptable on merit)
G11 Rear Boundary Setbacks	Merit assessment	First floor: balconies 2.5m - 4.4m, walls 8.8m - 13.9m Second floor: balconies 5.2m - 7.1m, walls 7.8m - 12m Third floor: balconies: 7.3m - 9.2m, walls 10m - 13.9m	-	No (see ADG separation discussion)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	No	Yes
C4 Stormwater	No	No
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	No	No
D7 Views	No	No
D8 Privacy	No	No
D9 Building Bulk	No	No
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
E1 Preservation of Trees or Bushland Vegetation	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
F1 Local and Neighbourhood Centres	No	No
1. Built form in Freshwater	Yes	Yes
2. Number of storeys	No	No
3. Street activation	Yes	Yes
4. Street facades and shopfront design	Yes	Yes
5. Access and loading	No	No
6. Lighting	Yes	Yes
7. Safety and security	Yes	Yes
8. Signage	Yes	Yes
9. Awnings	Yes	Yes
10. Front setback	No	Yes
11. Side and rear setbacks	No	No
13. Roofs and building form	Yes	Yes
14. Building massing	Yes	Yes
15. Building sustainability	Yes	Yes
16. Materials and colours	Yes	Yes
17. Active travel links	Yes	Yes
18. Development in the vicinity of heritage items	No	No

Detailed Assessment

C2 Traffic, Access and Safety

Refer to comments under Part G5.5 of the WDCP for discussion.

C3 Parking Facilities

Merit consideration

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 (+/-)
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Residential	30 units (6 x one-bedroom, 15 x two-bedroom and 9 x three & four-bedroom apartments)	38 resident spaces 6 visitor spaces	38 residential parking spaces 6 visitor parking spaces	Compliant
Commercial	1291m2 retail/commercial premises	72 retail spaces	62 retail parking spaces	-10
Total		116	106	-10

The application was referred to Council's Traffic engineer who noted the following:

"The retail parking rate specified in the Warringah DCP is significantly higher compared to the rates in other Northern Beaches Council DCPs. Therefore, it may be reasonable to consider relaxing these requirements. For instance, the Pittwater DCP mandates one parking space for every 30 square meters of GLFA, while the Manly DCP requires one parking space for every 40 square meters of GLFA for the retail component. If we apply these rates to the retail aspect of the development, the parking requirements would be 43 and 32 car spaces, respectively.

This is much lower than the number of spaces required under the Warringah DCP.

The development currently provides 62 retail car spaces, which translates to a parking ratio of approximately one space for every 20 square meters of GLFA.

It is essential to take into account the characteristics of nearby uses since the development is part of the larger Freshwater Village precinct. It is unlikely that the development will generate a substantial number of new vehicle trips. Instead, it is more likely to encourage linked trips to nearby retail establishments, residents living above the development, or those who reside in close proximity to the site.

Due to the reasons stated above, providing 62 retail parking spaces meets the retail car parking requirements."

Therefore based on the above adequate retail off-street parking is proposed.

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

Comment:

The proposed parking entrance along Dowling Street is the desired street frontage for parking access.

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

Comment:

As above, The proposed parking entrance along Dowling Street is the desired street frontage for parking access.

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.

C4 Stormwater

Stormwater is not managed in accordance with Council's Water Management for Development Policy, which is contrary to Section C4 of the WDCP.

The objectives of the control read as follows:

- *Improve the quality of water discharged to our natural areas to protect and improve the ecological and recreational condition of our beaches, waterways, riparian areas and bushland.*
- *To minimise the risk to public health and safety.*
- *To reduce the risk to life and property from any flooding and groundwater damage.*
- *Integrate Water Sensitive Urban Design measures in new developments to address stormwater and floodplain management issues, maximise liveability and reduce the impacts of climate change.*
- *Mimic natural stormwater flows by minimising impervious areas, reusing rainwater and stormwater and providing treatment measures that replicate the natural water cycle.*
- *Reduce the consumption of potable water by encouraging water efficiency, the reuse of water and use of alternative water sources.*
- *To protect Council's stormwater drainage assets during development works and to ensure Council's drainage rights are not compromised by development activities.*

Comment:

As demonstrated within Council's Development Engineers referral responses, insufficient information has been provided to demonstrate compliance with clause. No stormwater plan has been provided.

Therefore, the development does not satisfy the objectives of Section C4 of the WDCP.

This matter forms a recommended reason for refusal.

C9 Waste Management

The application has been reviewed by Council's Waste Management Team who have reviewed the waste storage and waste transfer arrangements for the proposed development. Detailed comments from Council's Waste Officer are detailed above under the referrals section of this report. The proposal is supported, subject to conditions of consent if this application is to be approved.

D6 Access to Sunlight

Adjoining dwellings

Clause D6 (Access to Sunlight) of the Warringah DCP 2011 requires at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am

and 3pm on June 21. The proposed development will overshadow private open space of the adjoining south development (No. 2 - 16 Undercliff Road, Freshwater). The proposed development fails to provide 3 hours of sunlight to private open space of the adjoining southern development, non-compliant with the numeric control.

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 that reasonable access to sunlight is maintained.*

Comment:

The breach to the building height development standard and the insufficient setbacks contribute unreasonably to impacts on solar access. A more sensitive or innovative design solution would reduce the severity of solar access impacts to the neighbouring properties.

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

Comment:

The non-compliance to the storeys control and setback controls are deliberate choices to maximise the number of apartments on site. The substantial building footprint and non-compliant building height does not improve solar amenity to adjacent land, conversely removing any remaining solar access to the Private open space area of the adjoining dwelling houses to the south.

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

Comment:

The development is capable of accommodating solar energy.

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

During the notification period one objection was received which raised view loss as an objection. In Council's letter to the applicant it was noted that the development contributed to view loss from the adjoining property to the west of the subject site No. 48 Lawrence Street, Freshwater.

No revised plans were received and no height poles have been erected.

The objectives of Clause D7 Views are as follows:

- ***To allow for the reasonable sharing of views.***
- ***To encourage innovative design solutions to improve the urban environment.***

To ensure existing canopy trees have priority over views.

The absence of height poles or any computer-generated analysis of views results in Council having insufficient information to ensure that the objectives of the clause are met. Particularly, Objective 2 goes towards innovative design and the tests established in *Tenacity Consulting v Warringah Council (2004) NSWLEC 140* as to whether a more skillful design could still provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours.

The Council has insufficient information to establish that the development would not have an unacceptable impact on the views enjoyed by neighbours and as such, this formulates a reason for refusal.

D8 Privacy

See discussion within the assessment of SEPP (Housing) 2021 and the Apartment Design Guidelines.

D9 Building Bulk

The proposed development results in a 5.35m variation to the Height of Buildings development standard set out by Clause 4.3 of the WLEP 2011 and separation requirements under part 3F (Visual Privacy) of the *State Environmental Planning Policy (Housing) 2021* ('Housing SEPP'). The resultant building bulk and scale is unacceptable with respect to visual privacy, views and bulk and scale.

The development is considered against the underlying objectives of the control as follows:

*To encourage good design and innovative architecture to improve the urban environment.
To minimise the visual impact of development when viewed from adjoining properties, streets,
waterways and land zoned for public recreation purposes.*

Comment:

The resultant scale of the proposed development is not compatible with the adjoining low density residential environment to the south of the subject site. The proposal presents unreasonable, excessive built form, inconsistent with the character of the area. The proposed development does not suitable separation to the R2 Low Density Residential zone to the south to offset the visual bulk of the development.

This is included as a reason for refusal.

E1 Preservation of Trees or Bushland Vegetation

Council's Landscape Officer has undertaken a review of the proposed tree removal and replacement planting scheme for the site. Detailed comments from Council's landscape officer are earlier within this report.

The landscape plan presented with the application is unsatisfactory with regard specification of plant species. The comments from the landscape officer has noted this can be addressed by way of an amended plan, however no additional information to address the concerns raised has been provided by the applicant.

F1 Local and Neighbourhood Centres

The site is located within the Freshwater Village and is subject to the provisions of clause F1 of WDCP 2011, which prescribes more general design requirements for development within a local centre. The proposal is inconsistent with a number of general design requirements (emphasis added) as follows:

Requirements

1. *Buildings are to define the streets and public spaces and create environments that are appropriate to the human scale as well as being interesting, safe and comfortable.*
2. *The minimum floor to ceiling height for buildings is to be 3.0 metres for ground floor levels and 2.7 metres for upper storeys.*
3. *The design and arrangement of buildings are to recognise and preserve existing significant public views.*
4. ***Development that adjoins residential land is not to reduce amenity enjoyed by adjoining residents.***
5. ***The built form of development in the local or neighbourhood retail centre is to provide a transition to adjacent residential development, including reasonable setbacks from side and rear boundaries, particularly above ground floor level.***
6. ***Buildings greater than 2 storeys are to be designed so that the massing is substantially reduced on the top floors and stepped back from the street front to reduce bulk and ensure that new development does not dominate existing buildings and public spaces.***
7. *Applicants are to demonstrate how the following significant considerations meet the objectives of this control:*
 - *Scale and proportion of the façade;*
 - *Pattern of openings;*
 - *Ratio of solid walls to voids and windows;*
 - *Parapet and/or building heights and alignments;*
 - *Height of individual floors in relation to adjoining buildings;*
 - *Materials, textures and colours; and*
 - *Architectural style and façade detailing including window and balcony details*
8. *Footpath awnings should be designed to allow for street tree planting.*
9. *Awnings should be consistent in design, materials, scale and overhang with adjacent retail developments.*
10. *Awnings should have an adequate clearance from the kerb.*

Comment:

The proposal has unreasonable impacts on neighbouring amenity in terms of loss of privacy and is therefore contrary to part 4. The eastern elevation has a zero setback on all levels and the excessive height, bulk and scale of the building fails to transition to the adjacent single storey residential development contrary to part 5 and 6 of the control. The architectural treatment of the eastern elevation with the vertical screens adds to the visual bulk of the development.

The proposal is assessed against the objective of the control as detailed below:

- *To encourage good design and innovative architecture.*

Comment:

The proposed development is not considered to provide an appropriate transition to the low density development at the rear. The setbacks proposed are not considered to provide appropriate spatial

separation to maintain suitable visual privacy to neighbouring development to the south. The ADG prescribes 9m to lower density sites to ensure an appropriate transition.

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

Comment:

The proposal provides a safe and comfortable environment for pedestrians.

- *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:

The proposal provides opportunities for small scale shops and business that would add to the amenity of the Neighbourhood Centre. However, further consideration needs to be given to addressing the density of the residential component of the development to ensure that the scale, height and bulk of the development is contextually appropriate.

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

Comment:

The site is located within the E1 Local Centre Zone, there is no established pattern of development in the zone. The existing building has 100% site coverage.

- *To enhance the public domain.*

Comment:

The proposal has the potential to enhance the public domain.

- *To increase adaptability, environmental performance and amenity of buildings.*

Comment:

The proposal is supported with a BASIX certificate.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

2. Number of storeys

Part G5.3 (number of storeys) of the WDCP 2011 allows for a maximum of 3 storeys for the subject site. While it is acknowledged the compliance with this control is compromised by Division 1 of the SEPP (Housing) 2021 which allows for bonus building height, provided a portion of development is dedicated to affordable housing, the application fails to comply with objective 1 of this provisions which requires "O1. To ensure a reasonable level of amenity and solar access is provided and maintained to adjoining and nearby properties". The top storey fails to allow for suitable visual privacy to be maintained to the

adjoining residential development to the south of the subject site as discussed within this report.

5. Access and loading

The objectives and requirements of Part G5.5 (Access and Loading) of the WDCP read as follows:

Objectives	Requirements
O1. To improve amenity and safety for pedestrians	R1. Service and loading areas should improve the amenity of the streetscape and reduce any potential for vehicle / pedestrian conflict
O2. To minimise the impact of service vehicles and loading	R2. Locate all underground car park entries, service and loading as well as <u>garbage</u> collection areas away from the primary street frontage
O3. To relocate loading and servicing away from Lawrence and Albert Streets	R3. No additional vehicle or loading access is to be provided from Lawrence or Albert Streets R4. Rear or underground loading, <u>garbage</u> collection and access for vehicles is to be provided as part of any new development for lots fronting Lawrence and Albert Streets wherever possible via new connected laneways or through negotiation with Council for access via existing surface carparking areas

As discussed in detail within the Traffic Engineering referral section of this report, the proposed loading zone on the Dowling Street road reserve cannot be supported. Based on the significant scale of development, i.e. 1379m² of retail/commercial floorspace, it is essential to provide off-street loading capable of accommodating a Medium Rigid Vehicle (MRV).

The proposed loading zone on Dowling Street cannot be supported for the following reasons:

- The proposed loading zone would inhibit traffic flow, given the location of the bus zone to the western side of Dowling Road resulting in access and safety risks for drivers and pedestrians.
- The road reserve is for public use, intended for public access and landscaping.

Council's Traffic Engineer is of the opinion that the loading zone should be located entirely within the subject site.

For these reasons, the development does not satisfy the objectives of Part G5.5 (Access and Loading) of the WDCP. This matter forms a recommended reason for refusal.

10. Front setback

Part 10 of the Freshwater Village DCP prescribes that new buildings may be built to the boundary at the ground and second storey, with a 5m minimum setback at the third storey. The control is silent with respect to setbacks for secondary street frontages and does not include any expressed variations.

The third storey setbacks range between Nil - 5m along the Lawrence Street facade and nil - 1.1m to the

Dowling Street facade. Despite non-compliance with the 5m minimum setback requirement for the upper levels of these \ street facades, the proposal is consistent with the objectives of the upper level setback control, as follows:

- *To create a sense of openness*

Comment: The setbacks are appropriate with regard to the character and nature of Lawrence Street, being a regional road with higher traffic levels. The lack of the necessary setbacks at the upper level is offset by the breaks along the Lawrence Street facade.

The sense of openness achieved in the proposed development is appropriate in light of the E1 zoning of the site and the scale of development anticipated on the site.

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

Comment: The proposed development is a high quality architectural solution that will be a positive contribution to the Freshwater Village. Further, the proposal includes upgrades to the public domain to improve the streetscape and enhance the visual quality of the public domain.

11. Side and rear setbacks

See discussion within the assessment of SEPP (Housing) 2021 and the ADG.

18. Development in the vicinity of heritage items

The application was referred to Council's Heritage advisor who stated the following:

"It is considered that an increased setback (e.g. from 1860mm to 2860mm at the north-west corner of the third level) from Dowling Street boundary would further reduce the bulk and scale of the development and improve the streetscape presentation. Similarly, the proposed Rooftop Plant is also required to be set further back from Dowling Street to minimise its visibility."

The application cannot be supported by Council's Heritage advisor as currently proposed, and as such is included as a reason for refusal.

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 2024

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2024.

A monetary contribution of \$345,233 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$34,523,329.

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

Council is not satisfied that the Applicant's written request under Clause 4.6 of the Warringah Local Environment Plan 2011 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

This proposal, for demolition works and construction of shop top housing including strata subdivision has been referred to the Sydney North Planning Panel due to the development having an estimated cost of more than \$30 million, being \$34,523,329.

The Development Application is lodged pursuant to Chapter 2 (Affordable housing), clause 18 of State Environmental Planning Policy (**SEPP**) Housing 2021 which allows for additional building height of up to 30%,

in this circumstance a 22.32% (13.45m) proposed uplift in height would be allowable based on the proposed 11.16% of total GFA being identified for affordable housing. The proposal seeks consent for a maximum building height of 16.35m which exceeds the bonus contained in the SEPP based on calculations for the proposed affordable housing GFA.

The proposal includes significant built form non-compliances with respect to the ADG, WLEP and WDCP 2011. The proposed variation to the Height of Building development standard of the WLEP 2011 have been considered in relation to the provisions of Clause 4.6 of the Warringah LEP 2011 and deemed to not to be supportable. Further, the setbacks proposed are inconsistent with the numeric requirements of the ADG for development adjoining the R2 Low Density Residential zone, and as a result lead to unreasonable visual privacy impacts to adjoining dwelling houses.

Council concurs with the conclusions drawn by the Design & Sustainability Advisory Panel (DSAP) and the recommended reasons for refusal generally align with the concerns raised with the DSAP.

Furthermore, there are issues that have been raised by Council's internal referral staff with regard to the loading zone, landscape design, heritage and stormwater management are agreed with an form additional reasons for refusal.

Overall, the development has numerous issues including visual impacts as well as impacts on adjoining nearby properties that are indicative of the overdevelopment of the site.

The proposal has therefore been recommended for **refusal**.

The proposal is subject to Class 1 proceedings in the Land and Environment Court, therefore the reasons for refusal will form the basis for the contentions before the court.

REASON FOR DETERMINATION

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Sydney North Planning Panel, as the consent authority REFUSE Development Consent to Development Application No DA2025/0077 for the Demolition works and construction of shop top housing including strata subdivision on land at Lot 1 DP 900061, 28 Lawrence Street, FRESHWATER, Lot 1 DP 100563, 22 Lawrence Street, FRESHWATER, Lot 1 DP 578401, 20 Lawrence Street, FRESHWATER, Lot 45 DP 974653, 16 Lawrence Street, FRESHWATER, Lot 1 DP 595422, 10 Lawrence Street, FRESHWATER, for the reasons outlined in Attachment 1.

ATTACHMENT 1

1. Pursuant to Section 4.15(1)(a)(iv) of the of the Environmental Planning and Assessment Act 1979, the application has not been accompanied by the required information for a Development Application.

Particulars:

- i. The development application proposes a loading zone on Council land along the Dowling Street.
 - ii. As such, the development application does not contain all the information and documents required by Clause 24(1)(b) of the Environmental Planning and Assessment Regulation 2021 and the development application has not been made with the owners consent from Council, as required by Clause 23(1)(b) Environmental Planning and Assessment Regulation 2021.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy (Housing) 2021 and the Apartment Design Guide.

Particulars:

- i. Due to inadequate setbacks and landscaping, the proposal fails to achieve compatibility with the desired elements of the character of the locality, contrary to Section 20 Design Requirements of SEPP Housing.
 - ii. Due to the various non-compliances with the objectives of the ADG, the proposal fails to achieve the following Design Quality Principles at Schedule 9 SEPP Housing:
 - 1: Context and Neighbourhood Character
 - 2: Built Form and Scale
 - 5: Landscape
 - 6: Amenity
 - 9: Aesthetics
 - iii. The proposal is inconsistent with the following requirements and objectives of the ADG:
 - 2F Building Separation
 - 2H Side and Rear Setbacks
 - 3A Site Analysis
 - 3B Orientation
 - 3D Communal and Public Open Space
 - 3E Deep soil zones
 - 3F Visual privacy
 - 4A Solar and daylight access
 - 4O Landscape Design
 - 4P Planting on structures
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.

Particulars:

The development comprising of both residential and non residential floorspace does not protect the amenity of adjoining low density residential development, nor is compatible with neighbouring development in terms of bulk and scale in relation to sub clause 2.(d) and (e)

4. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone E1 Local Centre of the Warringah Local Environmental Plan 2011.

Particulars:

The bulk and scale and character of the building remain is inconsistent with desired character of the area and is it is not of appropriate built form to maintain suitable amenity to adjoining residential development in the R2 Low Density Residential zone to the rear of the property.

5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Section 18 of SEPP Housing, Clause 4.3 Height of Buildings and Clause 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011.

Particulars:

- i. The proposed additional building height does not correspond to the proposed proportion of gross floor area to be used for affordable housing as required by Section 18 of SEPP Housing.
- ii. The consent authority is not satisfied that the applicant's variation request under Clause 4.6 of WLEP 2011 seeking to justify a contravention of Clause 4.3 Height of buildings has adequately demonstrated that:
 - i) compliance with the standard is unreasonable or unnecessary,
 - ii) there are sufficient environmental planning grounds to justify the contravention,

6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 197 the proposal has not demonstrated that a safe loading zone can be accommodated on site. The proposal is inconsistent with the requirements and objectives of part C2 (Traffic, Access and Safety) and G5.5 (Access and Loading) of WDCP 2011.

Particulars

Insufficient information has been submitted to satisfy Council that a safe and adequate loading zone on site can be provided.

7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Part C4 Stormwater of the Warringah Development Control Plan.

Particulars:

The application has not demonstrated a suitable stormwater management solution for the site, resulting in inconsistency with the requirements and objectives of C4 (Stormwater) of WDCP 2011. The proposal does not provide sufficient information in relation to the below matters which are required to demonstrate compliance with Council's Stormwater Policy:

- A stormwater management plan

Connection to the existing Council pipeline.

8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Part D6 Access to Sunlight of the Warringah Development Control Plan.

Particulars

i. The development applications fails to provide at a minimum of 3 hours of sunlight between 9am and 3pm on June 21 to the adjoining dwelling houses to the south of the subject site.

9. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Parts (E1 Preservation of Trees or Bushland Vegetation, and G5 Freshwater Village 11. Side and rear setbacks) of the Warringah Development Control Plan.*

Particulars

- i. Insufficient information has been provided to determine the proposed plant species locations and quantities for the subject site.*
ii. The Arboricultural report does not reflect the proposed development plans and is outdated.

10. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of part G5.18 (Development in the vicinity of heritage items) of the Warringah Development Control Plan.*

Particulars

Insufficient setbacks front setback are proposed to Dowling Street frontage to minimise the visual impact of the development on the following heritage items within vicinity of the subject site.

- Item I71 - Building known as 'Harbord Literary Institute' - Corner Lawrence and Oliver Street*
 - Item I72 - Building known as 'Early Childhood Health Centre' - 29 Lawrence Street, Freshwater*
11. *Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.*