STATEMENT OF ENVIRONMENTAL EFFECTS

Proposed Shop Top Housing Development

321 – 331 Condamine Street, Manly Vale

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Statement of Environmental Effects

Proposed Shop Top Housing Development

321 – 331 Condamine Street, Manly Vale

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1 Introduction

This Statement has been prepared in support of a development application proposing the demolition of the existing site structures and the construction of a shop top housing development comprising 4 ground floor retail units, with 33 residential apartments above and 2 levels of basement carparking. The application also proposes the strata subdivision of the completed development.

The project architect has responded to the client brief to design a contextually responsive building of exceptional quality which takes advantage of the sites superior locational attributes whilst providing high levels of amenity for future occupants. In this regard, the scheme has been developed through detailed site and contextual analysis to identify the constraints and opportunities associated with the development of this prominent corner site having regard to the height, scale, proximity and orientation of adjoining commercial developments.

Particular attention has been given to the minutes arising from formal pre-DA discussions with Council (PLM2019/0190) ensuring that the development responds to its immediate built form context and its interface with the adjoining R2 low density zone. This statement will demonstrate that the built form outcome proposed provides for a highly articulated, modulated and visually stimulating building form which will provide diversity in housing choice, whilst ensuring Condamine Street remains activated through the commercial tenancies at ground floor level. The proposal will introduce a building of exceptional design quality into the streetscape without adverse environmental consequences.

In addition to this Statement of Environmental Effects, the application is also accompanied by the following:

- Architectural plans
- Survey
- Landscape plan
- Traffic and Parking Assessment report
- BCA report
- Access Assessment Report
- Geotechnical Assessment
- Stormwater Management Plan
- Acoustic report
- Stage 1 Preliminary Site Investigation
- Waste Management Plan
- QS Report
- SEPP 65 Design Verification Statement

In preparation of this document, consideration has been given to the following:

- Environmental Planning and Assessment Act, 1979;
- Warringah Local Environmental Plan 2011;
- Warringah Development Control Plan 2011;
- State Environmental Planning Policy (Infrastructure) 2007;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy No 55 – Contaminated Lands;
- State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development; and
- The Apartment Design Guide.

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15(1) of the Environmental Planning and Assessment Act, 1979 as amended. It is considered that the application, the subject of this document, is appropriate on merit and is worthy of the granting of development consent for the following reasons:

- The height, form and massing of the development are contextually appropriate and satisfy the relevant Local and State planning controls applicable to the site.
- The proposed development is consistent with the desired future character of the B2 Local Centre zone as it relates to the Condamine Street precinct.
- The proposed development will not give rise to unacceptable natural or built form impacts.
- The site is assessed as suitable for the proposal having regard to the relevant considerations pursuant to the SEPP 65 - Design Quality of Residential Apartment Development and the Apartment Design Guide.
- The proposal will increase the supply and diversity of housing choice on a site ideally suited to increased residential densities.

2 Site Analysis

2.1 Site Description and location

2.1.1 The Site

The subject site consolidates 321, 323-325, 327-329 & 331 Condamine Street, Manly Vale. These sites are known as lots 20, 21, 22 and 25 in DP 11320 and lot 123 in DP 737259. An aerial location shot is provided below.

Figure 1: *Site Location (Source: Google Maps)*

The consolidated allotment is generally square in shape having primary frontage and address to Condamine Street of 36.645m, secondary frontage to Sunshine Street of 31.09m and an area of 1274.4m². The topography of the site slopes gently towards the southeast.

The subject site currently contains various existing 1 and 2 storey structures, metal sheds and a brick garage. These established built from characteristics are depicted on the accompanying survey and existing street view shown below.

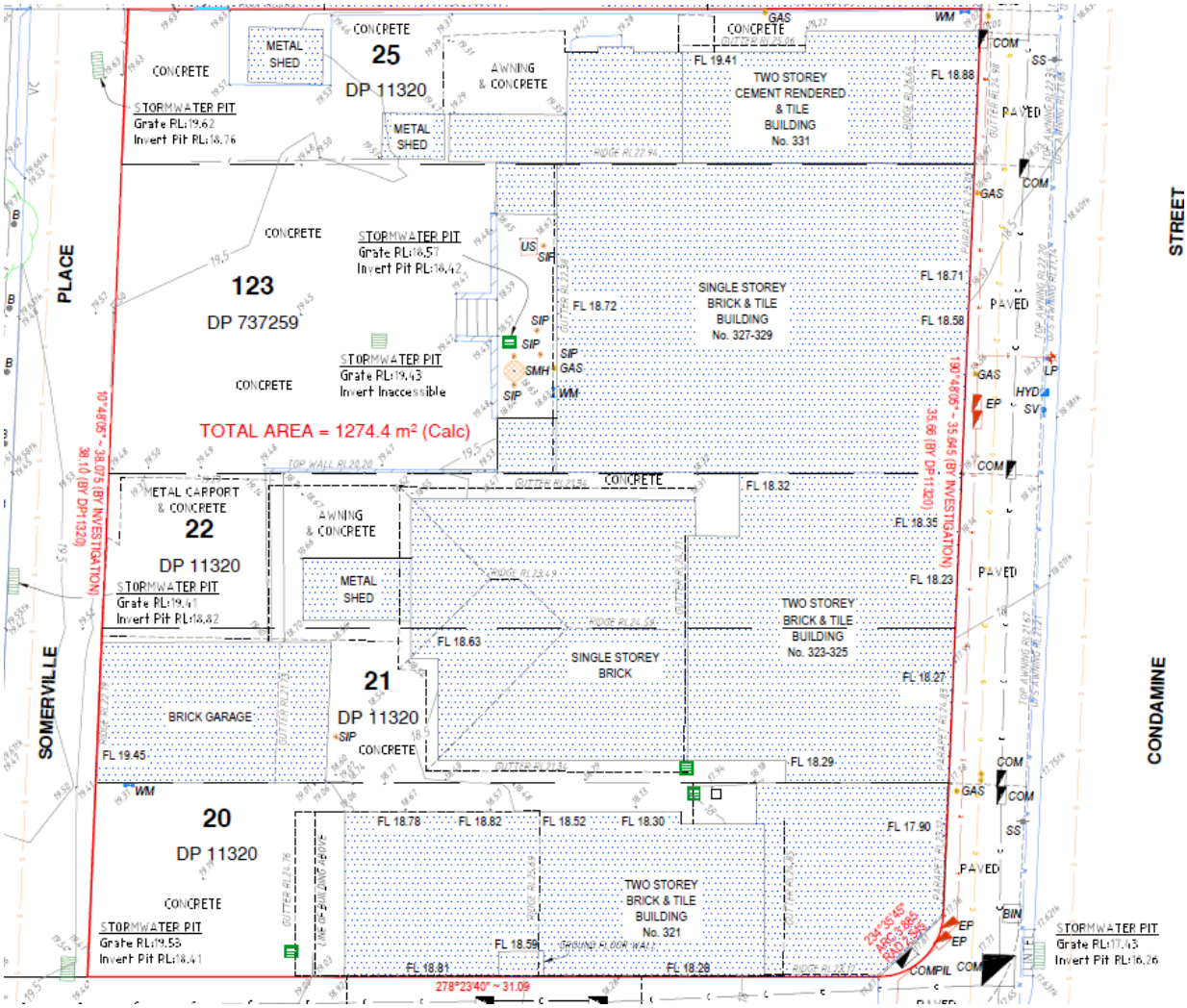


Figure 2: *Survey extract*

Figure 3: *View of the site from Condamine Street*

Figure 4: Sunshine Street View

2.1.2 The Locality

The locality comprises a strip retail/ business precinct orientated to Condamine Street and centred upon relatively narrow frontages and small-scale shops. The site is conveniently located to the B-Line bus stop and associated carpark located diagonally from the site on the eastern side of Condamine Street, areas of open space, Warringah Westfield Shopping Centre and recreational facilities.

Many of the sites located to the north and south of the site along Condamine Street have been recently redeveloped as mixed use, shop top housing developments, with many either recently completed or currently under construction.

2.1.3 Site Analysis

There are no topographical constraints impacting the site relevant to the development as proposed. These details are all included on the site survey submitted with the subject application. The site is also located within Landslip Area A designation and which is addressed by the geotechnical report accompanying the application.

The relationship of the proposed development to the adjacent sites provides for appropriate and anticipated built form separation. The development has no unacceptable impact on the amenity of surrounding developments and is complimentary and compatible in a streetscape context.

The property is a visually prominent corner allotment which demands a building of exceptional design quality which addresses both street frontages in a robust but appropriate manner.

3 Description of Proposed Development

3.1 Details of the proposed development

This application provides for the following components:

- Demolition of the existing site structures;
- Construction of a shop top housing development that includes:
  - 2 levels of basement parking. 36 residential spaces, 7 visitor spaces and 23 retail car spaces
  - 4 ground floor retail tenancies and a service vehicle bay; and
  - 33 residential units within internalised landscaped courtyards.
- Vehicular access to the site is provided by a new driveway access from Somerville Place.
- Residential and Retail waste areas are located at ground level.

The plans provide for 33 self-contained units comprising either 1 or 2 bedrooms with bathrooms, living and kitchen areas. Each residential unit has car parking at the basement level with 2 lift and stair access to/from such parking. All individual units are provided with private open space in the form of terraces. A schedule of external building materials and colours is included on the architectural drawings together with montage images of the development.

The design has been developed to satisfy the requirements of the Warringah LEP 2011 with the ground floor retail tenancies addressing and activating both street frontages. The upper floors are staggered back from the lower floors comparable to other existing and proposed development in the streetscape.

4 Statutory Planning Framework

The following section of the report will assess the proposed development having regard to the statutory planning framework and matters for consideration pursuant to Section 4.15 of the Environmental Planning & Assessment Act, 1979 as amended. Those matters which are required to be addressed are outlined, and any steps to mitigate against any potential adverse environmental impacts are discussed below.

4.1 Warringah Local Environmental Plan 2011

4.1.1 Zoning

The Warringah Local Environmental Plan (LEP) 2011 applies to the subject site and this development proposal. The subject site is located within the B2 Local Centre zone. Shop top housing is permissible in the zone with consent. The stated objectives of the B2 zone are as follows:

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

Shop top housing is defined as one or more dwellings located above ground floor retail premises or business premises.

The development incorporates dwellings located above ground floor retail premises. Accordingly, the proposed design accords with the Land and Environment Court Judgement Sheahan J within Hrsto v Canterbury Council given that the proposed residential units sit entirely above the ceiling height of the ground floor retail tenancies.

The proposed development meets the relevant zone objectives given the provision of ground floor retail tenancies and the appropriate concentration of residential densities within an established Local Centre zone. The height and scale of the development is responsive to context, compatible with that of adjoining development and will not result in unacceptable or jarring residential amenity, streetscape or broader urban design impacts. We rely on the accompanying contextual built form analysis prepared by the project architect in this regard.

It has been determined that the proposal will not give rise to adverse residential amenity or land use conflicts with the future development of the subject site, for either commercial or shop top housing land uses anticipated, through the provision of a highly articulated and modulated façade presentation to the northern adjoining property with opportunity for a combined internalised residential light well/courtyard should a shop top housing form of development be proposed in the future. The proposal does not create any conflict between land uses on adjoining properties or the amenity of residential uses within adjoining zones.

The subject property is ideally suited to increased residential densities given its proximity to the Manly Vale B-Line bus stop with the building design and streetscape enhancement works providing an environment for pedestrians that is safe, comfortable and interesting.

The consent authority can be satisfied that the proposal is consistent with the zone objectives as outlined. Accordingly, there are no statutory zoning or zone objective impediment to the granting of approval to the proposed development.

4.1.2 Height of Buildings

Pursuant to the height of buildings map, the site has a maximum building height limit of 11 metres.

The objectives of this control are as follows:

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

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

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

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

Building height is defined as follows:

> *building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like*

The proposed development has a variable upper parapet height reaching a maximum building height of 13.57m representing a non-compliance of 2.57m or 23.36%. A clause 4.6 request to vary this development standard is provided as an annexure to the report.

4.1.3 Development on Sloping Land

The site is mapped as falling within a Land Slip Risk Area A. A geotechnical report prepared by Crozier Geotechnical Consultants accompanies the application with the report containing a number of recommendations in relation to excavation/ construction methodology to ensure the stability of the site and its surrounds during construction works. No objection is raised to such recommendations forming a condition of development consent.

4.2 Warringah Development Control Plan 2011

The following relevant DCP 2011 controls have been addressed with respect to consideration of the proposed Shop Top Housing Development.

4.2.1 DCP Compliance Table

A table demonstrating compliance with the relevant provisions of the Warringah DCP 2011 is detailed as follows:

Control	Requirement	Proposed	Compliance
Number of Storeys **DCP Control B2**	Mapped as 3 storeys. To ensure development does not visually dominate its surrounds. To minimise the visual impact of development when viewed from adjoining properties, streets, waterways, and land zoned for public recreation purposes. To provide equitable sharing of views to and from public and private properties. To ensure a reasonable level of amenity is provided and maintained to adjoining and nearby properties. To provide sufficient scope for innovative roof pitch and variation in roof design. To complement the height of buildings control in the LEP with a number of storeys control.	The proposed building is 4 storeys in height. The building will appear as 4 storeys with a recessive upper level to Condamine Street which is non-compliant with the number of storeys control. The increase to 4 storeys will not give rise to unacceptable residential amenity or streetscape impacts on adjoining properties. A 4.6 variation to the WLEP building height standard has been addressed previously in this statement.	No Storeys control cannot derogate from the 11 metre Height Standard. Refer to clause 4.6 variation request.

Control	Requirement	Proposed	Compliance
Front Setback **DCP Control B7**	Mapped as Area L. Ground & First Floor align with street front. Second floor and up – 5m	The ground and first floor are compliant with the control and are aligned with the front boundary The second floor balconies are also constructed to the front boundary with a variable setback to the building façade. The corner feature element is again built to the boundary to reinforce the corner with the upper level setback to generally maintain a 4 metre setback. Landscaped planters are introduced at this level to soften the building edge and ensure that this level is recessive in a streetscape context. The setbacks to the secondary street frontage are consistent with those to the Condamine Street frontage noting that a reduced setback is normally applied to secondary street frontages. The setbacks to both frontages provide a contextually appropriate built from relationship to the street with the upper level certainly recessive compared to the levels below as anticipated by the control. The setbacks are appropriate given the design quality of the development and the sites corner location. It is considered the architectural response is appropriate for the site. The front setbacks are compatible in a streetscape context and generally align with other recently approved development along Condamine	No Acceptable on merit

Control	Requirement	Proposed	Compliance
		street. The stated objectives of the control are as follows: • *To create a sense of openness.* • *To maintain the visual continuity and pattern of buildings and landscape elements.* • *To protect and enhance the visual quality of streetscapes and public spaces.* • *To achieve reasonable view sharing.* It is considered that the setbacks proposed are not antipathetic to these objectives given the proposed front setbacks are increased at the upper level providing a visually recessive upper floor presentation in a streetscape context. Such variations succeed pursuant to section 4.15(3A)(b) of the Act which requires Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the objects of DCP standards for dealing with that aspect of the development.	
Merit Assessment of Side and Rear Boundary Setbacks **DCP Controls B6, B8, B10**	Setbacks will be determined on a merit basis and will have regard to: Streetscape; amenity of surrounding properties; and setbacks of neighbouring development	The development proposes a nil setback to the northern side boundary and variable setback of approximately 1.5m to Somerville Place. This is increased to approximately 4m to the façade at the upper level. The setback to Somerville Place is proposed to be dedicated to Council. It is considered that the proposed side setbacks are appropriate in	Yes Acceptable on merit

Control	Requirement	Proposed	Compliance
		this instance and worthy on merit. This setback is also reflective of Council's urban design comments from the pre-lodgement meeting. The setback proposed allow for suitable amenity to the apartments and do not give rise to any significant amenity impacts to neighbouring properties.	
Traffic, Access and Safety **DCP Controls C2**	To minimise: a) traffic hazards; b) vehicles queuing on public roads c) the number of vehicle crossings in a street; d) traffic, pedestrian and cyclist conflict; e) interference with public transport facilities; and f) the loss of "on street" kerbside parking.	Terraffic Pty Limited have prepared a Traffic and Parking Assessment Report. The traffic and parking report demonstrates that the proposed development comfortably satisfies the on-site car parking and bicycle parking requirements. The site is also well serviced by public transport with bus stops within a 200m radius.	Yes
Parking Facilities **DCP Control** **C3**	Application of the DCP Parking Rates yields the following requirements: 9 x 1 bedroom dwellings @ 1.0 space per dwelling = 9 spaces 17 x 2 bedroom dwellings @1.2 spaces per dwelling = 20.4 spaces	The proposed development will be served by a total of 68 parking spaces, which includes 38 residential, 23 retail and 7 visitor car spaces. Parking for motorbikes are also proposed at basement level 1. The total quantum or car spaces proposed exceeds the DCP control.	Yes

Control	Requirement	Proposed	Compliance
	1 x 3 bedroom dwelling @1.5 spaces per dwelling = 1.5 spaces Total = 31 Resident 27 dwellings @ 1 visitor space per 5 dwellings = 6 spaces Total = 37 spaces. **Retail units -** 274sqm @ 6.1 space / 100sqm 16.7 spaces Total 53 Spaces	Please refer to the traffic assessment report provided with the application.	
Bicycle Parking **DCP Control C3A**	Objectives • To help meet the transport needs of the Warringah community • To encourage healthy active lifestyles and help reduce reliance on private motor vehicles • To provide convenience and safety for bicycle users	Bicycle parking can be provided within the basement level car parking area.	Yes
Stormwater **DCP Control C4**	To ensure the appropriate management of stormwater. To minimise the quantity of stormwater run-off. To incorporate Water Sensitive Urban Design techniques and On-Site Stormwater Detention	The application is accompanied by a Concept Stormwater Management report prepared by iStruct Consulting Engineers which details the proposed OSD system.	Yes

Control	Requirement	Proposed	Compliance
	(OSD) Technical Specification into all new developments. To ensure the peak discharge rate of stormwater flow from new development is no greater than the Permitted Site Discharge (PSD).		
Erosion and Sedimentation **DCP Control C5**	•To reduce the potential for soil erosion and adverse sedimentation impacts upon the environment. •To prevent the migration of sediment off the site onto any waterway, drainage systems, public reserves, road reserve, bushland or adjoining private lands. •To prevent any reduction in water quality downstream of the development site.	Please refer to the accompanying erosion and sediment control plan.	Yes
Excavation and Landfill **DCP Control C7**	Excavation and landfill works must not result in any adverse impact on adjoining land.	A geotechnical report prepared by Crozier Geotechnical Consultants accompanies the application and considers that the site is suitable for the proposed development works.	Yes

Control	Requirement	Proposed	Compliance
Demolition & Construction **DCP Control** **C8**	A demolition and waste management plan must be satisfactorily completed and submitted.	A demolition and waste management plan accompanies the application.	Yes
Waste Management **DCP Control C9**	Each development must include, or have access to Waste/Recycling Storage Rooms and Areas. a) where the number of dwellings/units is 29 or less, the Waste/Recycling Storage Rooms or Areas must be located at the front of the development within 6.5 metres walking distance to the front boundary adjacent to the roadway. If a Waste/Recycling Storage Room or Area is to be provided at another suitable location within the building, a complementary Waste/Recycling Storage Room or Area must be provided within 6.5 metres walking distance to the front boundary adjacent to the roadway; or b) where the number of dwellings/units is 30 or more, the Waste/Recycling Storage Rooms or Areas must be located within 6.5 metres walking distance of the service area.	A waste management plan accompanies the application. The development provides appropriately for commercial and residential waste storage and collection. Waste storage areas for both commercial and residential are located at ground level.	Yes

Control	Requirement	Proposed	Compliance
Private Open Space **DCP Control** **D2**	Multi dwelling housing (not located at ground level) residential flat buildings and shop top housing, to provide 10sqm of private open space with a minimum dimension of 2.5 metres. Private open space is to be directly accessible from a living area of a dwelling and be capable of serving as an extension of the dwelling for relaxation, dining, entertainment, recreation and children's play. Private open space is to be located and designed to ensure privacy of the occupants of adjacent buildings and occupants of the proposed development. Private open space shall not be located in the primary front building setback. Private open space is to be located to maximise solar access.	As demonstrated on the proposed floor plans prepared by Gartner Trovato Architects each residential unit is afforded with a balcony have an area exceeding the minimum dimensional requirements and accessed directly from the living room areas to each individual unit. Each of the balconies have been positioned to maximise solar access and privacy between apartments. All private open space areas are accessed directly from the living rooms and are appropriately sized and dimensioned.	Yes
Access to Sunlight **DCP Control D6**	Pursuant to these provisions, development is not to unreasonably reduce sunlight to surrounding properties. In the case of housing: • Development should avoid	Refer to the shadow diagrams prepared by Gartner Trovato Architects which demonstrate that some minor additional overshadowing of the northern elevation of the adjoining residential property to the south at 9am.	Yes

Control	Requirement	Proposed	Compliance
	unreasonable overshadowing any public open space. • At least 50% of the required area of private open space of each dwelling and 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 meets the solar access requirements of the control.	
Views **DCP Control** **D7**	Development is to allow for the reasonable sharing of views, encourage innovative design solutions and ensure existing canopy trees have priority over views.	Having inspected the site and its surrounds to identify available view corridors across the site, we have formed the considered opinion that there will be no adverse public or private view affectation with a view sharing scenario maintained in accordance with the principles established by the Land and Environment Court in the matter of Tenacity Consulting v Warringah [2004] NSWLEC 140.	Yes
Privacy **DCP Control D8**	Ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.	The development has been designed through detailed site analysis to ensure that appropriate privacy is maintained between adjoining development through building design and orientation, the appropriate use	Yes

Control	Requirement	Proposed	Compliance
		and placement of fenestration and the inclusion of fixed privacy screen treatments where necessary. In this regard, appropriate privacy and security will be maintained between adjoining development. Particular attention has been given to the western elevation due to its proximity to the neighbouring residential dwelling. Privacy screens to terraces and windows, as well as landscaping treatments, will assist with mitigating any significant privacy concerns.	
Building Bulk **DCP Control D9**	Encourage good design and innovative architecture to improve the urban environment. Minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.	The development has been designed through detailed site context analysis to provide through a contextually responsive building form maintaining appropriate amenity to adjoining properties and a high level of amenity to future occupants. The upper level has been recessed to ensure the building presents as 3 storeys to each frontage. The development has regard to the scale, proportion and line of visible facades with the highly articulated and modulated building form providing appropriate facade treatment and visual interest to the streetscape. The floor levels proposed are consistent with those established by adjoining properties providing an appropriate built form relationship.	Yes

Control	Requirement	Proposed	Compliance
		The scale and footprint of the development are entirely in keeping with the established built form character along Condamine Street.	
Building Colours and Materials **DCP Control D10**	Ensure the colours and materials of new or altered buildings and structures are sympathetic to the surrounding natural and built environment.	The proposed materials and finishes are indicated on the plans prepared by Gartner Trovato Architects. The materials and finishes are considered to be sympathetic to the existing dwelling and in the style of the surrounding development and complementary to natural environment.	Yes
Roofs **DCP Policy D11**	Roofs are to be designed to complement the local skyline.	The development incorporates flat roofing which is consistent with other mixed use development along this section of Condamine Street.	Yes
Glare and Reflection **DCP Policy D12**	Ensure that development will not result in overspill or glare from artificial illumination or sun reflection.	The proposed window glazing and roof finishes will not give rise to any unacceptable glare or reflection.	Yes
Accessibility **DCP Policy D18**	To ensure convenient, comfortable and safe access for all people including older people, people with prams and strollers and people with a disability.	The proposed development has been designed to ensure a convenient, comfortable and safe access for all people including wheelchair and pram accessibility as detailed in the accompanying report prepared by BCA Logic.	Yes

Control	Requirement	Proposed	Compliance
Safety and Security	Buildings are to overlook streets as well as public and communal places to allow casual surveillance. 2. Service areas and access ways are to be either secured or designed to allow casual surveillance. 3. There is to be adequate lighting of entrances and pedestrian areas. 4. After hours land use activities are to be given priority along primary pedestrian routes to increase safety. 5. Entrances to buildings are to be from public streets wherever possible. 6. For larger developments, a site management plan and formal risk assessment, including the consideration of the 'Crime Prevention through Environmental Design' principles may be required. This is relevant where, in Council's opinion, the proposed development would present a crime, safety or security risk. See Crime Prevention and Assessment of Development Applications – Guidelines under Section 79C of the Environmental Planning and Assessment Act 1979 prepared by the	The design of the development enables casual observation (from inside the apartments) of the street frontage. The residential lobby at the ground level and apartment entries are well located, so that they are easily identifiable, providing a sense of address to each unit and passive surveillance. The basement car parking area and common circulation spaces will be appropriately lit at night with no objection raised to the imposition of a condition in this regard.	Yes

Control	Requirement	Proposed	Compliance
	Department of Urban Affairs and Planning (now Department of Planning).		
Waterways and Riparian Lands E8	1. The applicant shall submit a Waterway Impact Statement. 2. Development in Waterways and on the Riparian Land of Group A and Group B creeks (see DCP Map for Catchment Groupings) (Creek Management Study 2004) is required to have impervious surfaces offset by stormwater management controls so there is no net change in peak loads or pollutant loads in accordance with Councils On Site Stormwater Detention Technical Specification, Councils Water Sensitive Urban Design Policy STR-PL820 and Landcom's Managing Urban Stormwater (MUS): Soils and Construction (commonly referred to as the Blue Book). 3. Infrastructure such as roads, drainage, stormwater structures, services, etc. should be located outside land identified as Waterways and Riparian Land.	N/A	N/A

Control	Requirement	Proposed	Compliance
	4. The Asset Protection Zone must not extend into land identified as Waterways and Riparian Land. Refer to NSW Rural Fire Service for site assessment methodology.		
Landslip Risk DCP Policy E10	The site is identified as falling within Landslip Risk Area A. The applicant must demonstrate that: • The proposed development is justified in terms of geotechnical stability; and • The proposed development will be carried out in accordance with good engineering practice.	A Geotechnical Report prepared by Crozier Geotechnical Engineers accompanies the DA and demonstrates that the proposed works are suitable for the site and no geotechnical hazards will be created by the completion of the proposed development provided it is carried out in accordance with the recommendations within the geotechnical report.	Yes
Local and Neighbourhood Centres **DCP Policy F1**	See Discussion in 4.2.2 below	See Discussion in 4.2.2 below	Yes *See discussion in 4.2.2 below

4.2.2 Local and Neighbourhood Centres

The requirements of Policy F1 of the DCP are as follows:

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 3.3 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.*

With respects to the above requirements the development is considered to be appropriate for the following reasons:

- The building is highly articulated and modulated in both the vertical and horizontal planes so that the apparent bulk and scale of the development is reduced. The building will appear as 3 storeys in the streetscape with a recessed upper level and includes a modern contemporary design with an appropriate bulk and scale and visual interest.

- The scale of the building in terms of its three-dimensional size will not be perceived as jarring or antipathetic in a streetscape and urban design context as detailed on the

contextual built form analysis plans DA-15 to DA-28 prepared by the project Architect and as detailed in the accompanying clause 4.6 variation request. In this regard, the scale of the development is considered to be appropriate.

- The proposed built form has been designed through detailed site analysis to provide a complimentary and compatible streetscape presentation whilst maintaining appropriate amenity to adjoining commercial development.
- Whilst an appropriate contextual building "fit" has resulted in variations to the building height control such outcome does not result in any unacceptable impacts on the amenity of the adjoining residential apartments or the streetscape character of this section of Condamine Street.
- The appropriate distribution of floor space across the site in response to context and the built form and spatial characteristics of adjoining development will ensure that the visual massing of the development is minimised when viewed from adjoining properties and the public domain generally.
- The built form responds to the site context and appropriately mitigates amenity impacts to adjoining properties as detailed throughout this report.
- The floor to ceiling heights of 2.7m for residential units are compliant with the above requirements. The ground floor commercial units represent a minor noncompliance to the 3.3 control. However, the commercial ceiling heights are comparable with those approved at No's 261, 263 and 267 Condamine Street and are in response to minimising building height where possible.

The proposed development is considered to meet the requirements of this Clause and represents a considered and contextually appropriate design response.

4.3 State Environmental Planning Policy No.55 – Remediation of Land

State Environmental Planning Policy No. 55 – Remediation of Land applies to all land and aims to provide for a state-wide planning approach to the remediation of contaminated land.

Clause 7 of SEPP 55 requires Council to consider whether land is contaminated prior to granting consent to carrying out of any development on that land. In this regard, the likelihood of encountering contaminated soils on the subject site is extremely low given the site (and neighbouring sites) is currently and historically remained in retail use and the surrounding context is residential.

The application is accompanied by a Stage 1 Preliminary Site Investigation prepared by eiaustralia. The report concludes that the site can be made suitable for the proposed commercial and residential land use, subject to the implementation of recommendations of the report.

No objection is raised to these recommendations forming a condition of development consent with the Stage 2 DSI being dealt with by way of an appropriately worded deferred commencement condition.

4.4 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies to the residential component of the development and aims to encourage sustainable residential development.

A BASIX Assessment accompanies the development application and demonstrates that the proposal achieves compliance with the BASIX water, energy and thermal efficiency targets.

4.5 State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Development

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) aims to improve the design quality of residential flat developments to provide sustainable housing in social and environmental terms that is a long-term asset to the community and presents a better built form within the streetscape.

It also aims to better provide for a range of residents, provide safety, amenity and satisfy ecologically sustainable development principles. In order to satisfy these aims the plan sets design principles in relation to context, scale, built form, density, resources, energy and water efficiency, landscaping, amenity, safety and security, social dimensions and aesthetics to improve the design quality of residential flat building in the State.

SEPP 65 applies to new residential flat buildings, the substantial redevelopment/refurbishment of existing residential flat buildings and conversion of an existing building to a residential flat building.

Clause 3 of SEPP 65 defines a residential flat building as follows:

> *"Residential flat building means a building that comprises or includes:*
>
> *a) 3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and*
>
> *b) 4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops), but does not include a Class 1a building or a Class 1b building under the Building Code of Australia."*

The proposed development is for the erection of a 4 storey building, as defined, containing 33 dwellings and 4 retail premises. As per the definition of a 'Residential Flat Building' and the provisions of Clause 4 outlining the application of the Policy, the provisions of SEPP 65 are applicable to the proposed development.

Clause 28(2)(b) SEPP 65 requires any development application for residential flat development to be assessed against the 9 design quality principles contained in Schedule 1. The proposal's

compliance with the design quality principles is detailed in the Design Verification Statement at ANNEXURE 1.

Pursuant to clause 28(2)(c) of SEPP 65 in determining a development application for consent to carry out residential flat development the consent authority is required to take into consideration the Apartment Design Guide. In this regard an Apartment Design Guide compliance table is attached at ANNEXURE 2

4.6 State Environmental Planning Policy (Infrastructure) 2007

Clause 102 of the policy applies to development for any of the following purposes that is on land in or adjacent to the road corridor for a freeway, a tollway or a transitway or any other road with an annual average daily traffic volume of more than 40,000 vehicles (based on the traffic volume data published on the website of the RTA) and that the consent authority considers it likely to be adversely affected by road noise or vibration:

(a) a building for residential use,

(b) place of public worship,

(c) a hospital,

(d) an educational establishment or child care centre.

If the development is for the purposes of a building for residential use, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

(a) in any bedroom in the building — 35 dBA at any time between 10 pm and 7 am,

(b) anywhere else in the building (other than a garage, kitchen, bathroom or hallway) — 40 dBA at any time.

Compliance with these requirements is detailed acoustic report prepared by Wilkinson Murray with no objection raised to a condition requiring compliance with the recommendations contained therein.

4.7 Matters for Consideration pursuant to section 4.15(1) of the Environmental Planning and Assessment Act 1979 as amended

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15(1) of the Environmental Planning and Assessment Act 1979 (as amended). Guidelines (in *italic*) to help identify the issues to be considered have been prepared by the Department of Planning and Environment. The relevant issues are:

(i) The provision of any Planning Instrument

The proposed alterations and additions are permissible and consistent with the intent of the Warringah Councils Local Environmental Plan and Development Control Plan as they are reasonably applied to the proposed works given the constraints imposed by the sites location, environmental and topographical constraints.

(ii) Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

N/A

(iii) Any development control plan

Warringah DCP applies

(iiia) Any Planning Agreement that has been entered into under section 7.4 or any draft planning agreement that a developer has offered to enter into under Section 7.4, and

N/A

(iv) The Regulations (to the extent that they prescribe matters for the purposes of this paragraph), and

N/A

(v) Any Coastal Zone Management Plan (within the meaning of the Coastal Protection Act 1979)

N/A

(b) The likely impacts of that development, including environmental impacts on both the natural and built environments and social and economic impacts in the locality,

Context and Setting

i. What is the relationship to the region and local context in terms of:

- *The scenic qualities and features of the landscape*
- *The character and amenity of the locality and streetscape*

- *The scale, bulk, height, mass, form, character, density and design of development in the locality*
- *The previous and existing land uses and activities in the locality*

These matters have been discussed in the body of this report.

ii. What are the potential impacts on adjacent properties in terms of:

- *Relationship and compatibility of adjacent land uses?*
- *sunlight access (overshadowing)*
- *visual and acoustic privacy*
- *views and vistas*
- *edge conditions such as boundary treatments and fencing*

These matters have been discussed in detail earlier in this report. The potential impacts are considered to be acceptable with regard to SEPP 65 and the ADG.

Access, transport and traffic:

Would the development provide accessibility and transport management measures for vehicles, pedestrians, bicycles and the disabled within the development and locality, and what impacts would occur on:

- *Travel Demand*
- *dependency on motor vehicles*
- *traffic generation and the capacity of the local and arterial road network*
- *public transport availability and use (including freight rail where relevant)*
- *conflicts within and between transport modes*
- *Traffic management schemes*
- *Vehicular parking spaces*

These issues have been discussed in detail in the report. The development provides adequate carparking facilities in conformity with the policy controls.

Public Domain

The proposed development will have no adverse impact on the public domain.

Utilities

This matter has been discussed in detail in the body of this report.

Flora and Fauna

The proposal does not require the removal of any flora or fauna.

Waste Collection

The site will introduce areas of landscaping. The planting and landscaping treatments will enhance the landscape quality of the street frontages.

Natural hazards

The site is located within a land slip risk area. A Geotechnical Assessment accompanies the application.

Economic Impact in the locality

The proposed development will generate temporary employment during construction. On-going employment will be provided by the business that occupies the non-residential tenancy and through the employment of building and strata managers for the building.

Site Design and Internal Design

i) Is the development design sensitive to environmental considerations and site attributes including:

- *size, shape and design of allotments*
- *The proportion of site covered by buildings*
- *the position of buildings*
- *the size (bulk, height, mass), form, appearance and design of buildings*
- *the amount, location, design, use and management of private and communal open space*
- *Landscaping*

These matters have been discussed in detail earlier in this report. The potential impacts are considered to be minimal and within the scope of the general principles, desired future character and built form controls.

ii) How would the development affect the health and safety of the occupants in terms of:

- *lighting, ventilation and insulation*
- *building fire risk – prevention and suppression*
- *building materials and finishes*
- *a common wall structure and design*
- *access and facilities for the disabled*
- *likely compliance with the Building Code of Australia*

The proposed development will comply with the provisions of the Building Code of Australia as detailed in the report prepared by BCA Logic. The proposal complies with the relevant standards pertaining to health and safety and will not have any detrimental effect on the occupants.

Construction

i) What would be the impacts of construction activities in terms of:

- *The environmental planning issues listed above*
- *Site safety*

Normal site safety measures and procedures will ensure that no safety or environmental impacts will arise during construction.

(c) The suitability of the site for the development

- *Does the proposal fit in the locality*
- *Are the constraints posed by adjacent development prohibitive*
- *Would development lead to unmanageable transport demands and are there adequate transport facilities in the area*
- *Are utilities and services available to the site adequate for the development*
- *Are the site attributes conducive to development*

The adjacent development does not impose any unusual or impossible development constraints. The site is well located with regards to public transport and utility services. The development will not cause excessive or unmanageable levels of transport demand.

The development responds to the topography of the site, is of adequate area, and has no special physical or engineering constraints is suitable for the proposed development

(d) Any submissions received in accordance with this act or regulations

It is envisaged that Council will appropriately consider any submissions received during the notification period.

(e) The public interest

The proposed works are permissible and consistent with the intent of the LEP and DCP controls as they are reasonably applied to the proposed alterations and additions. The development would not be contrary to the public interest.

5 Conclusion

The proposal is permissible and in conformity with the intent of the development standards contained within Warringah Local Environmental Plan 2011 as they reasonably relate to this form of development on this particular site and the built form guidelines contained within Warringah Development Control Plan 2011 as they relate to the proposed shop top housing development within the B2 Local Centre zone. The proposal satisfies the design quality principles contained within SEPP 65 and the design guidance within the Apartment Design Guide.

The project architect has responded to the client brief to design a contextually responsive building of exceptional quality which takes advantage of the sites superior locational attributes whilst providing high levels of amenity for future occupants. In this regard the scheme has been developed through detailed site and contextual analysis to identify the constraints and opportunities associated with the development of this prominent corner site having regard to the height, scale, proximity and orientation of recently approved commercial and mixed use developments.

Particular attention has been given to the minutes arising from formal pre-DA discussions with Council and ensuring that the development responds to its immediate built form context and the form of development anticipated within the Condamine Street, Manly Vale Local Centre precinct which is currently undergoing significant regeneration. This statement will demonstrate that the built form outcome proposed provides for a highly articulated, modulated and visually stimulating building form which will provide diversity in housing choice, whilst ensuring Condamine Street remains activated through the commercial tenancies at ground floor level. The proposal will introduce a building of exceptional design quality into the streetscape without adverse environmental consequences.

Whilst the proposal requires the consent authority to give favourable consideration to a variation to the building height standard strict compliance has been found to be unreasonable and unnecessary having regard to the particular circumstances of the case including the attainment of an appropriate contextual fit and general paucity of streetscape impacts. Sufficient environmental planning grounds existing to support the variation proposed with the accompanying clause 4.6 variation request well founded.

The identified non-compliances with the storeys and front setback control have been acknowledged and appropriately justified having regard to the associated objectives. Such variations succeed pursuant to section 4.15(3A)(b) of the Act which requires Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the objects of DCP standards for dealing with that aspect of the development.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment.

Having given due consideration to the matters pursuant to Section 4.15(1) of the Environmental Planning and assessment Act, 1979 as amended, it is considered that there are no matters which would prevent Council from granting consent to this proposal in this instance.

Boston Blyth Fleming Pty Limited

Greg Boston

Director

ANNEXURE 1

CLAUSE 4.6 VARIATIONI REQUEST – HEIGHT OF BUILDINGS

Clause 4.6 variation request

Height of Buildings

1.0 Introduction

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe)* at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney [2019]* NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

2.0 Warringah Local Environmental Plan 2011 (WLEP)

2.1 Clause 4.3 - Height of buildings

Pursuant to Clause 4.3 of Warringah Local Environmental Plan 2011 (WLEP) the height of a building on the subject land is not to exceed 11 metres in height. The objectives of this control are as follows:

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

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

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

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

Building height is defined as follows:

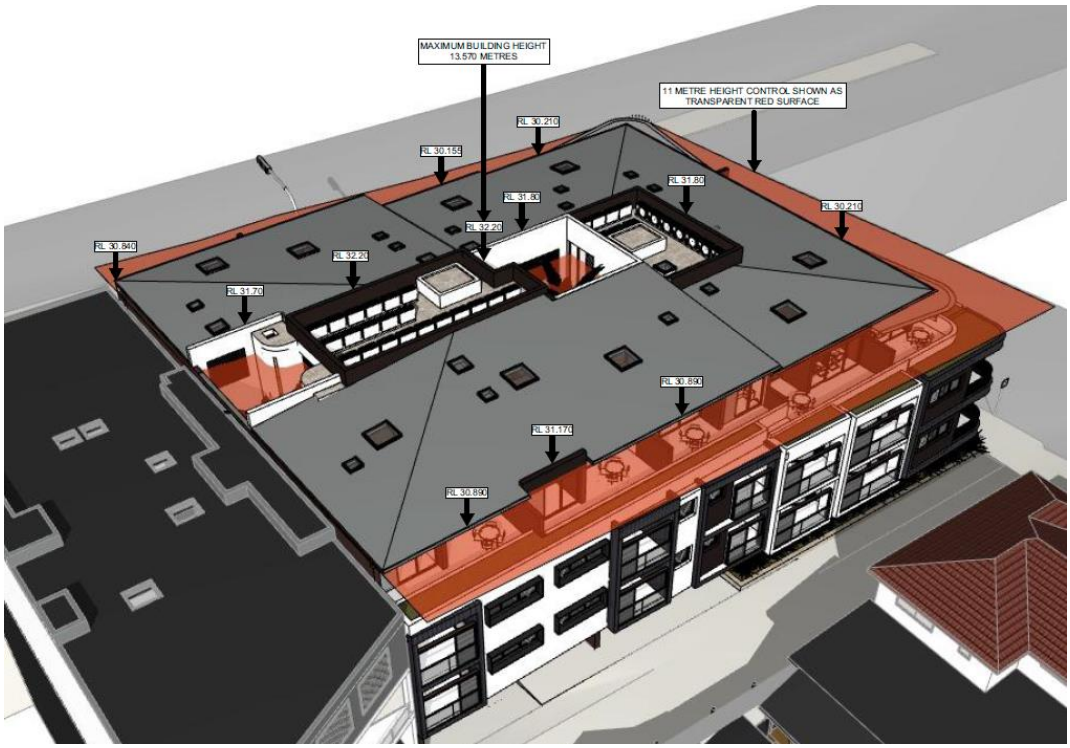
Building height is defined as follows:

> ***building height*** *(or* ***height of building****) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like*

Ground level existing is defined as follows:

ground level (existing) means the existing level of a site at any point.

The proposed development has a variable upper roof height as measured along its Condamine Street frontage of between 11.45 and 12.9 metres representing a non-compliance of between 450mm (4%) and 1.9 metres (17.2%). The western edge of the roof form, as it presents to Somerville Place, exceeds the 11 metre height standard by between 250mm (2.2%) and 750mm (6.8%). The roof pitches up towards a centrally located circulation/ lift core a parapeted roof mounted plant enclosure which has a maximum height of 13.570 metres representing a non-compliance of 2.57 metres or 23%. The extent of non-compliance is depicted on the height plane drawings DA-40 through to DA-43 as reproduced at combined Figure 1 below and over page.




MAXIMUM BUILDING HEIGHT
13.570 METRES
321


MAXIMUM BUILDING HEIGHT
13.570 METRES
11 METRE HEIGHT CONTROL SHOWN AS
TRANSPARENT RED SURFACE
321

Figure 1: *Height Plane Compliance Drawings*

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of WLEP provides:

(1) The objectives of this clause are:

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

The decision of Chief Justice Preston in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 ("Initial Action") provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal *in RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner. At [90] of *Initial Action* the Court held that:

> *"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."*

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of WLEP provides:

(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.

This clause applies to the clause 4.3 WLEP Height of Buildings Development Standard.

Clause 4.6(3) of WLEP provides:

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

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

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

The proposed development does not comply with the height of buildings provision at 4.3 of WLEP which specifies a maximum building height however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of WLEP provides:

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

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

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

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

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation* 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of WLEP provides:

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

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

As these proceedings are the subject of an appeal to the Land & Environment Court, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of WLEP from the operation of clause 4.6.

3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

17. The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].

18. A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].

19. A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].

20. A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].

21. A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

22. These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.3 of MLEP a development standard?

2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:

   (a) compliance is unreasonable or unnecessary; and

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

3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the zone?

4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of WLEP?

4.0 Request for variation

4.1 Is clause 4.3 of WLEP a development standard?

We are of the opinion that this provision is a development standard to which clause 4.6 applies.

4.2 Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in Wehbe v Pittwater Council [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the height of buildings standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

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

Comment: Development within the site's visual catchment, and within the 11 metre height precinct, is eclectic in nature and currently in transition with a number of older one and two storey commercial and mixed use buildings being replaced with more contemporary 4/ 5 level stepped shop top housing building forms. A predominant 4 storey building presentation has been established by recently approved and constructed shop top housing development along Condamine Street including the buildings having frontage to secondary streets including Kenneth Road and King Street.

We note that the non-compliant building height only relates to the upper portion of the upper level floor plate and roof form and centrally located circulation core and screened plant area which are appropriate setback to all 3 street frontages. Such setbacks will ensure that the breaching elements are recessive in a streetscape context with the building displaying a height and scale compatible with that of other recently approved and constructed 4 storey shop top housing development both within this street block and more broadly along this section of Condamine Street between Burnt Bridge Creek and King Street. That said, these upper level breaching elements maintain significant setbacks from all boundaries of the property with such setbacks extensively landscaped through the provision of integrated planter boxes.

Such setback and landscape characteristics ensure that this upper level breaching elements will not be readily discernible as viewed from Condamine Street or Sunshine Street nor will it contribute, to any unacceptable or jarring extent, to the perceived bulk and sale of the development as viewed form the neighbouring properties or in a broader streetscape context.

The building and design are entirely appropriate for this prominent corner site as it reinforces the building as a strong, robust and defining element within the street block it being noted that a majority of properties have now been approved/ constructed with a 4 storey building form to Condamine Street. In this regard, we have formed the considered opinion that the height, bulk and scale of the development including its 4 storey form are compatible with the height and scale of surrounding and nearby development.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development by virtue of its height offensive, jarring or unsympathetic in a streetscape and urban context. In this regard, it can be reasonably concluded that the development is compatible with surrounding and nearby development and accordingly the proposal achieves this objective.

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

Comment: Having undertaken a detailed site and context analysis and identified available view lines over the site I have formed the considered opinion that the height of the development, and in particular the non-compliant height components, will not give rise to any visual, view, privacy or solar access impacts with appropriate spatial separation maintained to adjoining properties.

The proposal achieves this objective.

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

Comment: The non-compliant building height elements will not be discernible as viewed from any coastal or bushland environments. This objective is achieved.

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

Comment: The non-compliant building height will not be visually prominent as viewed from the street or any public area. Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development, in particular the non-compliant portions of the building, offensive, jarring or unsympathetic in a streetscape context.

Having regard to the above, the non-compliant component of the building will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the building height standard. Given the developments consistency with the objectives of the height of buildings standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

Consistency with zone objectives

The subject property is zoned B2 Local Centre pursuant to WLEP 2011. The developments consistency with the stated objectives of the B2 zone are as follows:

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

Response: The proposed mixed use development provides ground floor retail tenancies which activate the Whistler Street frontage and which are able to accommodate a rage of retail uses that serve the needs of people who live in, work in and visit the local area. The proposal achieves this objective

- *To encourage employment opportunities in accessible locations.*

Response: The proposed mixed use development provides ground floor retail tenancies which will provide employment opportunities in an accessible location being within immediate proximity of the B Line bus service. The proposal will also encourage employment in terms of strata management and property maintenance. The proposal achieves this objective.

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

Response: The development provides appropriately for vehicle and bicycle parking to achieve this objective.

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

Response: The development provides for covered outdoor seating and pedestrian circulation space providing an environment for pedestrians that is safe, comfortable and interesting.

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

Response: The proposal building scale and landscape treatments proposed provide for an urban and landscape form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment. This objective is achieved.

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

Response: The property adjoins the R2 Low Density Residential zone to the south of the site with particular attention given to ensuring the maintenance of appropriate amenity to the properties within this adjoining zone in relation to privacy and solar access. The design response adopted minimises conflict between land uses in the zone and adjoining zones and ensure amenity of any adjoining or nearby residential land uses. This objective is achieved.

The proposed development, notwithstanding the height breaching elements, achieve the objectives of the zone.

The non-compliant component of the development, as it relates to building height, demonstrates consistency with objectives of the zone and the height of building standard objectives. Adopting the first option in *Wehbe* strict compliance with the height of buildings standard has been demonstrated to be is unreasonable and unnecessary.

4.3 Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. 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.

24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

> *The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

In our opinion, there are sufficient environmental planning grounds to justify the variation. The additional height proposed facilitates a complimentary and compatible 4 storey form on this site consistent with the heights and form of recently approved and constructed shop top housing development along this section of Condamine Street.

It can also be argued that the 11 metre height standard has been effectively abandoned along this particular section of Condamine Street in favour of a consistent and cohesive streetscape and urban design outcome.

Strict compliance would require the deletion of the entire upper floor of the development and result in a 3 storey form that would not appropriately respond to the sites prominent corner location and which would appear inconsistent with the height and cohesive streetscape established by recently approved and constructed shop top housing development along this section of Condamine Street. The building is of exception design quality with the variation facilitating a height and floor space that provides for contextual built form compatibility and the orderly and economic use and development of the land consistent with objectives 1.3(c) and (g) of the Act.

It is noted that in *Initial Action,* the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

> *87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test.*

The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

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

4.4 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the B2 Local Centre zone

The consent authority needs to be satisfied that the propose development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

"The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii)."

As demonstrated in this request, the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the propose development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

4.5 Secretary's concurrence

By Planning Circular dated 21st February 2018, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a nonnumerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

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

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

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

Boston Blyth Fleming Pty Limited

Greg Boston
B Urb & Reg Plan (UNE) MPIA

Director

ANNEXURE 2

APARTMENT DESIGN GUIDE COMPLIANCE TABLE

APARTMENT DESIGN GUIDE COMPLIANCE TABLE				
	OBJECTIVE & DESIGN CRITERIA	**DESIGN CRITERIA**	**PROPOSED**	**COMMENT**
Part 3, Siting the Development				
Site Analysis	**Objective 3A-1** Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationships to the surrounding context		Complies	Refer to Site Analysis Plan. Orientation to maximize solar access, north east sea breezes and outlook to the north/ north east.
Orientation	**Objective 3B-1** Building types and layouts respond to the streetscape and site while optimising solar access within the development		Complies	Building appropriately addresses both street frontages whilst optimising solar access.
	Objective 3B-2 Overshadowing of neighbouring properties is minimised during mid winter		Complies	Refer accompanying shadow diagrams. No non-compliant overshadowing impacts.
Public Domain Interface	**Objective 3C-1** Transition between private and public domain is achieved without compromising safety and security		Complies	Building entrances clearly marked and public/ private domain interface appropriately defined.
	Objective 3C-2 Amenity of the public domain is retained and enhanced		Complies	Significant streetscape and landscaping improvements.

Communal and Public Open Space	**Objective 3D-1** An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping		None provided	As discussed and agreed with Council no communal open space is considered necessary given the proximity of the site to a plethora of open space recreational areas.
	Objective 3D-2 Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting		Complies	-
	Objective 3D-3 Communal open space is designed to maximise safety		Complies	-
	Objective 3D-4 Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood		Complies	-
Deep Soil Zones	**Objective 3E-1** Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality	7% site area deep soil zone minimum dimension 3 metres.	N/A	No deep soil zones required in B2 Local Centre zone
Privacy	**Objective 3F-1** Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal privacy.	Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear are as follows: Up to 12m (4 storeys):Habitable Rooms and Balconies: 6m	Objective compliant setbacks maintained with good levels of privacy achieved.	Yes

		Non-habitable rooms: 3m		
	Objective 3F-2 Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space.		Complies	-
Pedestrian Access and Entries	**Objective 3G-1** Building entries and pedestrian access connects to and addresses the public domain		Complies	The residential and retail entry to the development is from both street frontages. All entries address the public domain and provide clearly identifiable and separate access points for the residential and retail components of the development.
	Objective 3G-2 Access, entries and pathways are accessible and easy to identify		Complies	Refer to BCA/ Access Report and Landscape Plan
	Objective 3G-3 Large sites provide pedestrian links for access to streets and connection to destinations		N/A	-
Vehicle Access	**Objective 3H-1** Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.		Complies	Driveway access to the basement provided from Somerville Place. Refer to Traffic Impact Statement for its acceptability.

Bicycle and Car Parking	**Objective 3J-1** Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas	For development in the following locations: • on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or • on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre 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 The car parking needs for a development must be provided off street.	Compliant resident, visitor and retail parking provided	Yes
	Objective 3J-2 Parking and facilities are provided for other modes of transport		Complies	Bicycle parking is provided throughout the basement areas.
	Objective 3J-3 Car parking design and access is safe and secure		Complies	Refer to Traffic Impact Statement. Both entry and egress in a forward direction.
	Objective 3J-4 Visual and environmental impacts of underground car parking are minimised		Complies	Yes

	Objective 3J-5 Visual and environmental impacts of on-grade car parking are minimised		N/A	-
	Objective 3J-6 Visual and environmental impacts of above ground enclosed car parking are minimized		N/A	-
Part 4, Designing the Building				
Solar and Daylight Access	**Objective 4A-1** To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space	**1.** Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas **2.** In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter **3.** A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter	24 of the 33 (73%) apartments receive 2 hours of solar access between 9am and 3pm -	Yes
	Objective 4A-2 Daylight access is maximised where sunlight is limited		Complies	Yes

	Objective 4A-3 Design incorporates shading and glare control, particularly for warmer months		Complies	Yes
Natural Ventilation	**Objective 4B-1** All habitable rooms are naturally ventilated		Complies	-
	Objective 4B-2 The layout and design of single aspect apartments maximises natural ventilation		N/A	-
	Objective 4B-3 The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents	**1.** 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 **2.** Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line	23 of 33 (70%) of apartments are naturally cross-ventilated	Yes
Ceiling Heights	**Objective 4C-1** Ceiling height achieves sufficient natural ventilation and daylight access	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: Habitable rooms: 2.7m Non-habitable: 2.4m	Complies	Yes

		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 use areas: 3.3m for ground and first floor to promote future flexibility of use	2.7m proposed to retail	No. Acceptable on merit given small area of tenancies proposed
	Objective 4C-2 Ceiling height increases the sense of space in apartments and provides for well proportioned rooms		Complies	Yes
	Objective 4C-3 Ceiling heights contribute to the flexibility of building use over the life of the building		Noted	
Apartment Size and Layout	**Objective 4D-1** The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity	**1.** Apartments are required to have the following minimum internal areas: Studio – 35m2 1 bedroom – 50m2 2 bedroom – 70m2 3 bedroom – 90m2 The minimum internal areas include only one bathroom. Additional	Complies	Yes

		bathrooms increase the minimum internal area by 5m2 each **2.** 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	Some 1 bed/ studio apartment have bedrooms borrowing sunlight from living room. Acceptable given size, geometry and orientation of apartments. Acceptable on merit	Yes
	Objective 4D-1 Environmental performance of the apartment is maximised	**1.** Habitable room depths are limited to a maximum of 2.5 x the ceiling height **2.** In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	Complies Complies	Yes
	Objective 4D-3 Apartment layouts are designed to accommodate a variety of household activities and needs	**1.** Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space) **2.** Bedrooms have a minimum dimension of 3m (excluding wardrobe space) **3.** . Living rooms or combined living/dining rooms have a minimum width of:	Complies Complies Complies	Yes

		• 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments **4.** The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	N/A	
Private Open Space and Balconies	**Objective 4E-1** Apartments provide appropriately sized private open space and balconies to enhance residential amenity	**1.** All apartments are required to have primary balconies as follows: Studio - min. area, 4m2 / depth - 1 Bed. - min. area, 8m2 / depth, 2m 2 Bed - min. area, 10m2 / depth, 2m 3 Bed - min. area, 12m2 / depth, 2.4m **2.** 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	Some minor non-compliances to level 1 and 2 apartments. N/A	Majority of dwellings comply with some minorly undersized terraces in regard to area.
	Objective 4E-2 Primary private open space and balconies are appropriately located to enhance liveability for residents		Complies	All private open space is accessed directly from the principle habitable room.

	Objective 4E-3 Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building		Complies	Balconies and terraces contribute to the overall building design and form.
	Objective 4E-4 Private open space and balcony design maximises safety		Complies	-
Common Circulation Spaces	**Objective 4F-1** Common circulation spaces achieve good amenity and properly service the number of apartments	**1.** The maximum number of apartments off a circulation core on a single level is eight **2.** For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40	Complies N/A	2 Circulation cores are proposed to service the 12 units at levels 1 and 2, and the 9 units at level 3.
	Objective 4F-2 Common circulation spaces promote safety and provide for social interaction between residents		Complies	Yes
Storage	**Objective 4G-1** Adequate, well designed storage is provided in each apartment	**1.** In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: Studio - 4m3 storage volume 1 Bed. - 6m3 storage volume 2 Bed - 8m3 storage volume	Complies Ample storage is available in each apartment as they are well over the minimum required internal sizes. Additional dedicated secure storage is	Yes

		3+ Bed - 10m3 storage volume At least 50% of the required storage is to be located within the apartment	provided for each unit in the parking area.	
	Objective 4G-2 Additional storage is conveniently located, accessible and nominated for individual apartments		Complies	-
Acoustic Privacy	**Objective 4H-1** Noise transfer is minimised through the siting of buildings and building layout		Complies	Yes
	Objective 4H-2 Noise impacts are mitigated within apartments through layout and acoustic treatments		Complies	Yes
Noise and Pollution	**Objective 4J-1** In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings		Complies	Yes
	Objective 4J-2 Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission		Complies	Yes

Apartment Mix	**Objective 4K-1** A range of apartment types and sizes is provided to cater for different household types now and into the future		Complies	An appropriate mix is proposed to meet market demand
	Objective 4K-2 The apartment mix is distributed to suitable locations within the building		Complies	-
Ground Floor Apartments	**Objective 4L-1** Street frontage activity is maximised where ground floor apartments are located		N/A	-
	Objective 4L-2 Design of ground floor apartments delivers amenity and safety for residents		N/A	-
Facades	**Objective 4M-1** Building facades provide visual interest along the street while respecting the character of the local area		Complies	Yes - Refer to Architectural Design Statement
	Objective 4M-2 Building functions are expressed by the facade		Complies	As above
Roof Design	**Objective 4N-1** Roof treatments are integrated into the building design and positively respond to the street		Complies	Yes
	Objective 4N-2 Opportunities to use roof space for residential accommodation and open space are maximised		N/A	N/A

	Objective 4N-3 Roof design incorporates sustainability features		Complies	Yes
Landscape Design	**Objective 4O-1** Landscape design is viable and sustainable		Complies	Indigenous, low water use plant species proposed. Refer to Landscape Plan and BASIX submitted with the Application.
	Objective 4O-2 Landscape design contributes to the streetscape and amenity		Complies	Refer to montages and Landscape Plan submitted with the Application.
Planting on Structures	**Objective 4P-1** Appropriate soil profiles are provided		Complies	Refer to Landscape Plan submitted with the Application.
	Objective 4P-2 Plant growth is optimised with appropriate selection and maintenance		Complies	Refer to Landscape Plan submitted with the Application.
	Objective 4P-3 Planting on structures contributes to the quality and amenity of communal and public open spaces		Complies	-
Universal Design	**Objective 4Q-1** Universal design features are included in apartment design to promote flexible housing for all community members		Complies	Refer to BCA/ Access Report submitted with the Application.
	Objective 4Q-2 A variety of apartments with adaptable designs are provided		Complies	Refer to BCA/ Access Report submitted with the Application.

	Objective 4Q-3 Apartment layouts are flexible and accommodate a range of lifestyle needs		Complies	Refer to BCA/ Access Report submitted with the Application.
Adaptive Reuse	**Objective 4R-1** New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place		N/A	-
	Objective 4R-2 Adapted buildings provide residential amenity while not precluding future adaptive reuse		N/A	-
Mixed Use	**Objective 4S-1** Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement		Complies	Yes
	Objective 4S-2 Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents		Complies	Yes
Awnings and Signage	**Objective 4T-1** Awnings are well located and complement and integrate with the building design		Complies	Yes
	Objective 4T-2 Signage responds to the context and desired streetscape character		N/A	Separate approval required
Energy Efficiency	**Objective 4U-1** Development incorporates passive environmental design		Complies	All habitable rooms receive adequate natural light. Balconies can provide for clothes drying areas, highly

				efficient appliances are to be provided to all units, solid concrete floors and masonry wall construction provide thermal mass, overhanging roofs shade the units and cross ventilation to all units adjacent to sea breezes will minimise reliance on air conditioning.
	Objective 4U-2 Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer		Complies	Refer to BASIX Report submitted with the Application
	Objective 4U-3 Adequate natural ventilation minimises the need for mechanical ventilation		Complies	All apartments receive adequate natural ventilation.
Water Management and Conservation	**Objective 4V-1** Potable water use is minimised		Complies	-
	Objective 4V-2 Urban stormwater is treated on site before being discharged to receiving waters		Complies	Refer to Stormwater Plans
	Objective 4V-3 Flood management systems are integrated into site design		N/A	

Waste Management	**Objective 4W-1** Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents		Complies	A large and easily accessible bin store is for general waste and recycling.
	Objective 4W-2 Domestic waste is minimised by providing safe and convenient source separation and recycling		Complies	Consolidated bin areas at ground level provided.
Building Maintenance	**Objective 4X-1** Building design detail provides protection from weathering		Complies	Yes
	Objective 4X-2 Systems and access enable ease of maintenance		Complies	Yes
	Objective 4X-3 Material selection reduces ongoing maintenance costs		Complies	Yes

ANNEXURE 3

Architect SEPP 65/Design Verification Statement

STATE ENVIRONMENTAL PLANNING POLICY NO. 65

DEMOLITION OF EXISTING SHOP-TOP HOUSING & CONSTRUCTION OF NEW SHOP-TOP HOUSING DEVELOPMENT

@

321 – 331 CONDAMINE STREET
MANLY VALE NSW 2093

PREPARED FOR: MANLY VALE DEVELOPMENTS No 2 P/L

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PROJECT No.	1511
DATE	JUNE 2020
ISSUE	B

1.0 INTRODUCTION

The location of the proposal is 321-331 Condamine Street Manly Vale NSW 2093.

The site is designated on Northern Beaches Council Maps as B2 zoning, Local Centre.

The proposal is consistent with the zoning and Desired Future character of the area.

This application seeks development consent for:

- The demolition of the existing one and two storey shop-top housing on the site.
- The construction of a new four (4) storey development with ground level retail and 3 floors of residential apartments containing:
  - Four (4) retail units at ground level
  - Thirty three (33) residential units above ground floor
  - Thirty six (36) car parking spaces for residential units
  - Seven (7) car parking spaces for residential visitors
  - Twenty three (23) car parking spaces for retail
  - Car parking in a secure car park with two basement levels with dual lane access via Somerville Place.

The project has been designed by Gartner Trovato Architects and is illustrated in the architectural drawing submission, drawings DA-00 – DA-28.

2.0 SEPP 65 ANALYSIS

SEPP 65 – Design Quality of Residential Flat Development

The proposal being for a four-storey residential flat building is subject to assessment under *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.

In accordance with this SEPP, the following design verification is provided.

*I, Sean Gartner am a **qualified designer,** being a registered Architect by the Board of Architects in NSW (Registration No. 6072) and do hereby verify the following:*

(a) that I designed the residential flat development, and

(b) that the design quality principles set out in Schedule 1 of State Environmental Planning Policy No 65—Design Quality of Residential Flat Development are achieved for the residential flat development.

Signed _____

As further required by the SEPP, the following detailed responses are provided:

(a) an explanation of the design in terms of the design quality principles set out in Schedule 1 of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*,

1-Context and neighbourhood character

The context of the immediate locality is characterised by a range of land uses, including the shop top housing developments along Condamine Street, parks, tennis courts, bowling greens, golf courses, and low and medium density residential development.

In the surrounding area, the site is within close proximity to the following lands and uses:

- David Thomas Reserve
- Millers Reserve
- Manly Vale Skate Park
- Voyager Tennis Academy
- Warringah Golf Club
- Andrew "Boy" Charlton Swim Centre
- Manly and Freshwater Beaches
- Manly Reservoir
- Manly commercial area
- Warringah Mall
- Buses
- Manly Ferries

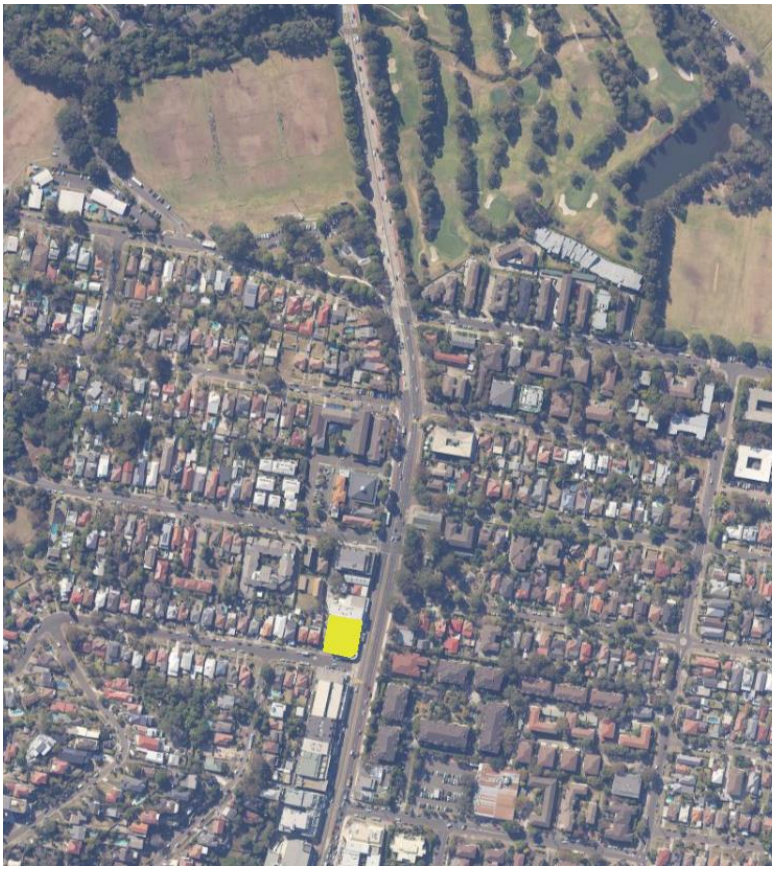

Figure 1: Aerial View of the Manly Vale context. The site is indicated in yellow highlight.

The proposal is consistent with the uses in the surrounding development.
The design responds to the LEP by proposing a high-quality shop-top housing development in the Manly Vale Local Centre zone.

2-Built form and scale

The proposed development presents a 3 storey built-form that relates to the existing adjacent shop top development at 333 Condamine Street. The building steps by 700 mm at the midpoint to relate to the terrain and to reduce the over-all building height.

Level 3 (the 4th floor) is set-back generally 4.0 metres from the east, west and south boundaries and is largely concealed behind planter-boxes and screen plantings.

The roof is composed of 2 hipped gables, stepped at the mid-point. The eaves are set at a height of 2.4 metres to reduce the overall height of the roof and to screen it behind the planter-boxes. Awnings on the south east and south west corners of Level 3 are established at a height of 2.1 metres to further reduce the bulk and scale.

Street awnings reduce the apparent height of the 3-storey street façade, creating a retail base with a 2-storey residential component above.

Façade indentations and projections establish a scale hierarchy of large, medium and small façade features, which creates visual interest, produces a harmonious whole and reduces the apparent bulk and scale of the proposed development.

A rich palette of materials, colours and textures is used to highlight the scale relationships between the various façade elements.

Two (2) courtyards are located within the middle of the built-form to provide natural light, ventilation and outlook from the internally facing apartment bedrooms.

Figure 2: View from Condamine Street looking south.

Figure 3: View from Condamine Street looking north.

Figure 4: View from Sunshine Street looking north.

Figure 5: View from Sunshine Street looking north-east.

Figure 6: View from Sunshine Street looking north along Somerville Lane.

Figure 7: View from Somerville Lane looking north.

Figure 8: View from Somerville Lane looking south.

Figure 9: View from rear yard of 2 Sunshine Street looking towards the proposed development.

3-Density

The proposed density of the building is in response to the social dimension of the precinct and the environmental quality of the development.

The total floor space of the proposed development is related to consideration of the setback and height controls, combined with complying solar access and cross ventilation.

The density is in response to the market demand for a mix of one and two-bedroom apartments in the area. The density is appropriate for the location of the site in the Manly Vale local centre, and walking distance to shopping, recreation facilities and transport.

The density of 33 apartments and 4 retail shops is appropriate for the Manly Vale local centre and the desired future character of increased residential density.

4-Sustainability

The development proposed and the existing buildings on the site are not suited for any re-use of existing structures, and as such, the design seeks to maximise the use of new building technology to minimise resources used in the construction process and in ongoing use. Some of these methods include

- Landscaped internal courtyards to provide light and air into the centre of the building for ventilation and cooling.
- Passive solar design with large eaves, external screens and balcony overhangs to control summer sun.
- BASIX certificate specifications of low water use taps and fittings.
- Low energy light fittings for minimisation of power consumption.
- Large areas of glazing to maximise natural light and minimise the need for artificial lighting in daylight hours.
- 10,000 litre rainwater tank for landscape irrigation.

Figure 10: View of west facing units, showing external blinds and balcony overhangs for shading.

5-Landscape

Two internal courtyards are proposed to provide daylight, natural ventilation and a landscaped outlook from the apartments. The courtyards are densely planted with Kentia Palms to create a sub-tropical garden.

Figure 11: View of the main internal courtyard from a bedroom, showing the Kentia Palms.

Planter boxes are provided along the edges of the Level 3 parapet to soften the development from the public domain, to add fine scale and texture to the facades, and to provide outlook and amenity for the Level 3 apartments. Importantly the planter-boxes screen the roof and Level 3 from view from the public domain.

Figure 12: View from Sunshine Street looking north, showing the Level 3 planter-box screening Level 3 and the roof.

Four (4) Brush Box street trees are proposed along the Condamine Street footpath and two (2) Brush Box trees are proposed along the Sunshine Street footpath to soften the building from the public domain, to provide and to provide amenity to pedestrians. The street trees are positioned to define key façade elements such as entrance porticos and balcony projections. The street trees also provide screening to bedroom windows.

Figure 13: Image above showing view of east façade, with balcony projections flanked by Brush Box street trees.

Figure 14: Image above showing a view of the south entry flanked by Brush Box street trees.

6-Amenity

The design creates apartments of excellent amenity. The room sizes are generous, with excess amounts of natural light, ventilation, outlook and views from the upper units that take advantage of the site's locality and orientation.

The design of the internal and external living areas provides a clear flow and connection between the two to allow them to act as one, maximising the amenity of these areas. Open plan kitchens within the main living area add to the quality and size of living spaces.

Visual and acoustic privacy within the development is of high standard.

The apartments feature large areas of glazing to maximise the amount of daylight. Upper level apartments feature skylights to supplement solar access and daylighting.

Figure 15: View from interior of Apartment 23, showing internal layout and extent of glazing.

24 of the 33 apartments (73%) receive a minimum of 2 hours solar access to living rooms and private open spaces between 8.00 am and 4.00 pm on 21 June. 23 of the 33 apartments (70%) are naturally ventilated.

All apartments have generous storage space, located in both the apartment interior and within secure storage cages in the basement car park.

7-Safety

Safety and Security in the proposed development are well considered. The definitions of public and private space are clear in the delineation of facade elements.

The terraces provide excellent overlooking of the public domain from private spaces to further enhance safety and security to Condamine Street, Sunshine Street and Somerville Lane.

Secure access is provided to the pedestrian and vehicular entrances. Video intercoms and lighting are provided at entry points.

Retail and residential entrances are clearly defined and secured, with clear lines of site between security doors and the main street addresses. 2 residential lobbies are provided to allow access to the 2 lift lobbies within the development. A shared retail entrance is provided with the south residential entry via Sunshine Street, allowing for movement of retail shoppers and employees between the car park and the

retail tenancies. The residential carparking area is separated from the retail car parking area by a security shutter.

Figure 16: View of secure vehicular entry from Somerville Lane.

Figure 17: View of secure east residential entry from Condamine Street.

Figure 18: View of shared retail and south residential entry from Sunshine Street.

8-Housing diversity and social interaction

The design has researched local estate agents to understand the demand for the apartment size and types in this location. There is a strong market demand by young singles, couples as well as young families. The apartment mix of 1 and 2-bedroom units of varying sizes aims to satisfy these demands. The mixed demographic of younger and older residents will contribute to a sustainable community.

Social interaction is encouraged through the proximity off the proposed retail shops, the shared retail and residential entrance to the north, and the communal seating area within both residential lobbies, allowing for a variety of social and visual interactions.

Figure 19: View from Condamine Street showing alfresco dining, shop fronts, awnings, signage and residential entry.

Figure 17: View of shared retail and residential entry accessed from Sunshine Street.

9-Aesthetics

The aesthetics of the proposal respond to the site's environment and the social dimension. The prominent site in the Manly Vale local centre demands high quality finishes and contemporary design.

The proposal makes use of changes in the size of the façade elements, colours and textures to reduce the bulk and scale of the development, to create contrasts, overlays and a sense of depth, and to relate the proposal to the surrounding residential context.

A variety of materials and colours are used on the exterior facades, including corten standing seam cladding for the residential entry portico and main corner balconies, dark grey standing seam cladding for balcony projections and feature wall panels, dark brown painted weatherboard cladding for recessive elements, and a variety of external screens. A vertical louvre screen finished in timber effect powdercoat assumes the curve of the main corner and creates the dramatic centre piece of the composition.

Windows are located in walls to provide outlook and daylight yet also provide privacy, both from within and without.

Figure 18: View of corten standing seam cladding on south residential entry portico.

Figure 19: View of Dark grey standing seam cladding on balcony projections.

Figure 20: View of operable screens and slatted balustrade on west façade.

Figure 21: View of vertical louvre screen and curved awning on main street corner.

(b) drawings of the proposed development in the context of surrounding development, including the streetscape,

The streetscape is represented in perspective and the 3D electronic model / movie.

(c) development compliance with building heights, building height planes, setbacks and building envelope controls (if applicable) marked on plans, sections and elevations,

The LEP requirements are referenced on drawings, and are generally complied with.

(d) drawings of the proposed landscape area, including species selected and materials to be used, presented in the context of the proposed building or buildings, and the surrounding development and its context,
A landscape architectural plan is provided.

(e) if the proposed development is within an area in which the built form is changing, statements of the existing and likely future contexts,
The development responds to both the existing and future character.

(f) photomontages of the proposed development in the context of surrounding development,
Montages of the proposed development in relation to the existing surrounds are modeled in 3-dimensional computer perspectives from surveyor's measurements.

(g) a sample board of the proposed materials and colours of the facade,
A Schedule of Colours and Materials is included as part of the application.

(h) detailed sections of proposed facades,
Detailed perspectives representing the proposal are included in the architectural drawings.

(i) if appropriate, a model that includes the context.
A movie derived from a 3D digital model of the development is provided exhibiting a high degree of resolution and showing the proposal in its context.