

19th August 2019

The General Manager
Northern Beaches Council
PO Box 82
Manly NSW 1655

Attention: Ms Claire Ryan – Principal Planner

Dear Ms Ryan,

**Development Application DA2019/0332
Supplementary Statement of Environmental Effects
Amended plans and associated clause 4.6 variation request – Height of
buildings
Demolition and construction of shop top housing
55 Kalang Road, Elanora Heights**

Reference is made to Council's correspondence of 1st August 2019 pertaining to the above matter and our subsequent meeting of 6th August 2019. In response to the issues raised this submission is accompanied by the following documentation:

- Amended architectural plans DA01(A) to DA06(A) prepared by RFA Architects;
- Views from the sun study videos; and
- Updated clause 4.6 variation in support of the proposed height of buildings variation (Attachment 1).

The amended plans provide for the following changes in response to the issues raised:

- **Deep soil zones** - We have made changes to the landscaped area at the basement level so to achieve 40.5m² of deep soil area, which equates to 7% of the site, thereby meeting the requirements of clause 3E of the Apartment Design Guide (ADG). Refer to drawing DA04A.

- **Solar and daylight access** – View from the sun study videos have been prepared demonstrating that living rooms and private open spaces of at least 70% of apartments receive a min 2hrs direct sunlight between 9am and 3pm on 21st June in accordance with the ADG.
- **Natural Ventilation** - We confirm that the study window to apartment 2 and the kitchen window to apartment 5 are openable windows with automatic fire shutters over, only to be activated in case of fire. Nevertheless, we are of the opinion that apartments 2 and 5 achieve natural ventilation through balcony openings and bedroom openings.
- Apartment 3 and apartment 6 achieve natural ventilation through balcony openings and fire rated ventilation louvres in the study area.
- **Apartment size and layout** - Apartment 2 and apartment 3 demonstrating a minor non-compliance with the maximum room depth of 8m from a window, we request that given the compliant solar access and the minor nature of the non-compliance that strict compliance with clause 4D is relaxed.
- **Height of Buildings** - An updated clause 4.6 has been prepared.
- **Off-street parking requirements** - Modifications to the basement have been made to remove the roller shutter and provide uninhibited access to retail parking spaces.
- **Setbacks to upper levels** - Modifications have been made that further setback units 1 and 4 from the street as discussed and agreed.
- **Traffic/ car stackers** - Design alternatives have been explored that do not rely on the use of car stackers. Given the tight site constraints the only feasible design option is one that incorporates car stackers as proposed. We note that the use of car stackers is now commonly accepted within the Northern Beaches Council LGA on small and/ or constrained sites.
- **Loading bay** - Height clearances of 3m have been provided to the loading bay in line with precedent set by other shop top housing developments incorporating small retail/ business tenancies within the Northern Beaches LGA including but not limited to No's 259 and 261 Condamine Street, Manly Vale (DA2016/1318 and DA2018/0317).

The loading bay has been designed to accommodate a variety of light commercial vehicles such as 'white vans' which are of an appropriate size and scale to service the retail/business tenancy and apartments.

- **Roller doors.** Roller doors have been removed to allow unobstructed access to retail parking spaces.
- **Survey.** As discussed, we request that the boundary survey is made a condition of consent.

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.

Please not hesitate to contact me to discuss any aspect of this submission.

Yours faithfully

Boston Blyth Fleming Town Planners



Greg Boston

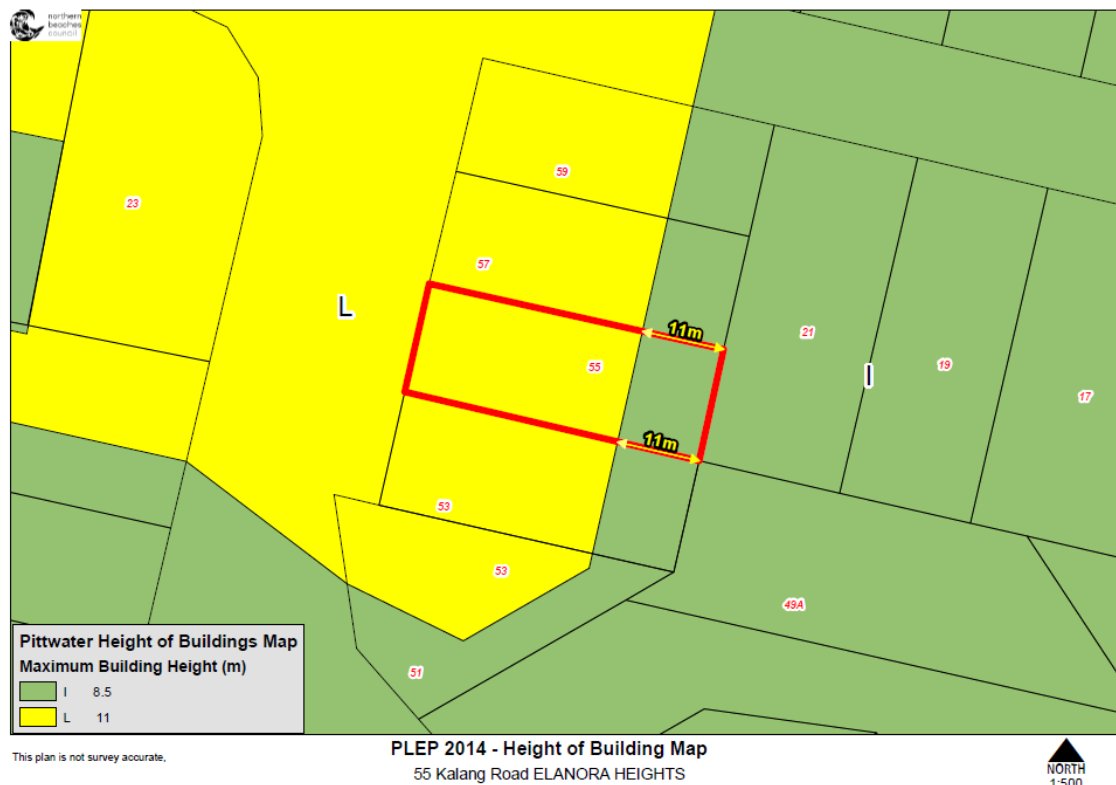
B Urb & Reg Plan (UNE) MPIA
B Env Hlth (UWS)
Director

Attachments

1. Updated clause 4.6 variation request – Height of buildings

Amended clause 4.6 variation request – Height of buildings Demolition and construction of shop top housing 55 Kalang Road, Elanora Heights

Pursuant to clause 4.3 of the Pittwater Local Environmental Plan 2014 (PLEP) and the associated height of buildings map, the rear 11 metres of the of the subject property is subject to an 8.5 metre maximum building height with the front portion of the site subject to an 11 metre height limit as depicted in the map extract provided by Northern Beaches Council at Figure 1 below.



Source: Northern Beaches Council

Figure 1 – Map extract showing maximum height of buildings on the site

In relation to the portion of the development located within the 8.5 metre height subzone we confirm that the blade walls/ louvered privacy screens at either end of the Level 1 rear facing Apartments 2 and 3 balconies have a maximum height of 9.5 metres representing a non-compliance of 1 metre or 11.7%. We also confirm that whilst the Level 2 glazed façade alignment is located within the 11 metre height subzone that the Apartment 6 vertical balcony framing extends into the 8.5 metre height subzone resulting in a building element height of 12 metres representing a small partial non-compliant facade element intrusion of 3.5 metres or 41%.

In relation to the portion of the development located within the 11 metre height subzone we confirm that the rear portion of the development breaches the standard by a maximum of 1.2 metres or 10.9%. The extent of variation is depicted on plan DA06A an extracts of which are at Figure 2 below.

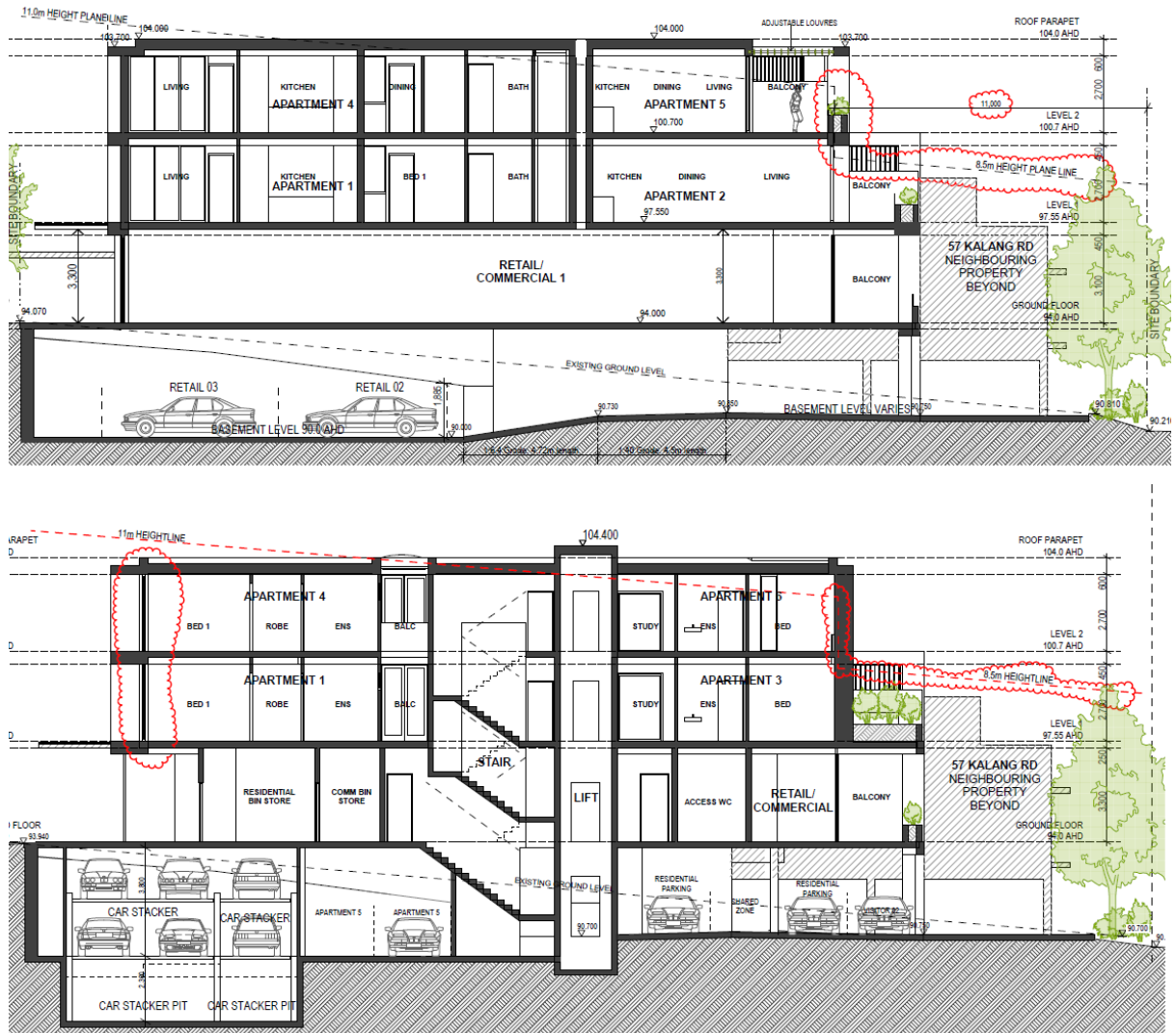


Figure 2 – Cross section extracts from Plan DA06(A) showing extent of building height breaches

Clause 4.6 of PLEP provides a mechanism by which a development standard can be varied. 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.*

Pursuant to clause 4.6(2) 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 Height of Buildings Development Standard.

Clause 4.6(3) states that 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.*

Clause 4.6(4) states 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.*

Clause 4.6(5) states that 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.*

Zone and Zone Objectives

The subject property is zoned B2 Local Centre with shop top housing permissible with consent in the zone. The consistency of the development when assessed against the objectives of the zone is 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 shop top housing development incorporates a ground level retail tenancy which satisfies this objective. The proposal is consistent with this objective.

- *To encourage employment opportunities in accessible locations.*

Response: The proposed shop top housing development incorporates a ground level retail tenancy on a site which is within short walking distance of regular bus services. The proposal is consistent with this objective.

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

Response: The subject site is within short walking distance of regular bus services. The proposal is consistent with this objective.

- *To provide healthy, attractive, vibrant and safe local centres.*

Response: The proposal does not defeat this objective.

- *To strengthen the role of centres as places of employment.*

Response: The proposed shop top housing development incorporates a ground level retail tenancy which satisfies this objective. The proposal is consistent with this objective.

- *To provide an active day and evening economy.*

Response: The proposed shop top housing development incorporates a ground level retail tenancy which is available for both day and evening uses. The proposal is consistent with this objective.

- *To provide for residential uses above street level where they are compatible with the characteristics and uses of the site and its surroundings.*

Response: The proposed shop top housing development incorporates above street level residential uses with such uses compatible with the characteristics and uses of the site and its surroundings.

In this regard, 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 form or residential uses, offensive, jarring or unsympathetic having regard to the surrounding established land uses and the built form characteristics of development within the sites visual catchment. The proposal is consistent with this objective.

The proposed development, notwithstanding the building height variations sought, is consistent with the relevant zone objectives given it provides for a shop top housing use which provides retail/commercial opportunities and above street residential uses. There are no statutory or zone objective impediments to the granting of approval to the proposed development and associated height of buildings variation.

Building Height Objectives

Pursuant to clause 4.3 of the PLEP the objectives are as follows:

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) to minimise any overshadowing of neighbouring properties,*
- (d) to allow for the reasonable sharing of views,*
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

Having regard to these objectives, it is considered strict compliance with the development standard is both unreasonable and unnecessary in this instance for the following reasons:

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*

Response: The height of the development with its 3 storey shop top housing presentation to Kalang Road and generous rear setback is consistent with the desired future character of the locality as applied to this form of development.

The resultant building height is entirely consistent with that of adjoining development and mixed-use development generally within the Kalang Road neighbourhood precinct. The proposal is consistent with this objective.

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

Response: The resultant building height is consistent with that of adjoining development and mixed-use development generally within the Kalang Road neighbourhood precinct.

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 having regard to the built form characteristics of development within the sites visual catchment. The proposal is compatible with its surrounds with surrounding and nearby development able to co-exist in harmony. The proposal, notwithstanding the breaching height elements, is consistent with this objective.

(c) to minimise any overshadowing of neighbouring properties,

Response: The rear setbacks required by P21DCP provide for a generous rear setback to the adjoining residential zone boundary interface with such setbacks in excess of those required by the ADG. The accompanying shadow diagrams demonstrate that compliant solar access is maintained to all adjoining residential properties/ apartments between 9am and 3pm on 21st June. It is within this context that we consider the proposal is consistent with this objective to minimise overshadowing of neighbouring properties.

(d) to allow for the reasonable sharing of views,

Response: having inspected the site and its immediate surrounds to determine view corridors over and across the site we have formed the considered opinion that the proposed building height breaching elements will not give rise to any adverse public or private view affectation. The proposal is consistent with this objective.

(e) to encourage buildings that are designed to respond sensitively to the natural topography,

Response: The topography of the land slopes down towards the rear of the site which lowers the natural ground level and makes compliance with the standard difficult to achieve whilst realising the orderly and economic use and development of land. The development appropriately responds to the natural topography with excavation limited to that required to accommodate the required carparking.

If it were not for the definition of shop top housing, which requires the residential component of the development to be located wholly above the level of ground floor retail/ business uses, the residential slabs could be dropped at the rear of the site to achieve a greater level of compliance with the height control. The proposal is consistent with this objective.

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

Response: The building height breaching elements will not give rise to any adverse heritage conservation or natural environmental impacts. The proposal is consistent with this objective.

Pursuant to Clause 4.6(3)(b) there are sufficient environmental planning grounds to justify the variation it being noted that the non-compliance can be directly attributed to the topography of the land which slopes down towards the rear of the site making compliance with the standard difficult to achieve whilst realising the orderly and economic use and development of land.

If it were not for the definition of shop top housing, which requires the residential component of the development to be located wholly above the level of ground floor retail/ business uses, the residential slabs could be dropped at the rear of the site to achieve a greater level of compliance with the height control. We also note that the breaching vertical façade elements create visual interest without adverse streetscape or residential amenity consequences. Such outcomes are consistent with objectives 1.3(c) and (g) of the Act.

Conclusions

Having regard to the clause 4.6 variation provisions of the PLEP, we have formed the opinion:

- a) That the contextually responsive development is consistent with the zone objectives, and
- b) that the contextually responsive development is consistent with the objectives of the height of buildings standard, and

- c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and
- e) that given the developments compliance with the zone and building height standard objectives that approval would not be antipathetic to the public interest, and
- f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning. As such we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a floor space ratio variation in this instance.

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

Yours faithfully

Boston Blyth Fleming Pty Ltd



Greg Boston

B Urb & Reg Plan (UNE) MPIA
B Env Hlth (UWS)
Director