

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/0824
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<b>Responsible Officer:</b>	Jordan Davies
<b>Land to be developed (Address):</b>	Lot 21 DP 11320, 323 - 325 Condamine Street MANLY VALE NSW 2093 Lot 22 DP 11320, 323 - 325 Condamine Street MANLY VALE NSW 2093 Lot 123 DP 737259, 327 - 329 Condamine Street MANLY VALE NSW 2093 Lot 25 DP 11320, 331 Condamine Street MANLY VALE NSW 2093 Lot 20 DP 11320, 321 Condamine Street MANLY VALE NSW 2093
<b>Proposed Development:</b>	Demolition works and construction of a Shop Top Housing Development and strata subdivision
<b>Zoning:</b>	Warringah LEP2011 - Land zoned B2 Local Centre
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Manly Vale Developments No.2 Pty Ltd
<b>Applicant:</b>	Manly Vale Developments No.2 Pty Ltd

<b>Application Lodged:</b>	24/07/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - New multi unit
<b>Notified:</b>	18/11/2020 to 02/12/2020
<b>Advertised:</b>	18/11/2020
<b>Submissions Received:</b>	16
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 25%
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 11,279,007.00
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### Executive Summary

The proposed development is for the construction of a four (4) storey shop-top housing development at 321-331 Condamine Street consisting of 31 Residential Units and four (4) retail tenancies upon the

ground floor. A total of 70 car parking spaces are provided across two basement levels which service the retail and residential component of the development.

The application was publicly exhibited twice (the second time due to the receipt of amended plans) in accordance with the Northern Beaches Community Consultation Plan and a total of 15 submissions were received (from 13 different properties). The principle issues that were raised were privacy, bulk and scale, building height and functionality of Somerville Place (laneway at the western boundary of the site). The submission issues are discussed in detail later within the report.

The application is referred to the Local Planning Panel for determination as the development is a four storey shop top housing which SEPP 65 - Design Quality of Residential Apartments applies, more than 10 unique submissions have been received and the development involves a building height breach of 25% under Clause 4.3 Warringah LEP.

The application is recommended for refusal to the panel as the position of the building does not allow any future widening of Somerville Place, with the footprint providing a nil setback to the western boundary adjoining the laneway. Council's traffic engineer and development engineer have raised significant traffic and pedestrian safety concerns as a result of the development not allowing for widening of Somerville Place to 6m along the western edge of the site. Therefore given the extent of traffic and pedestrian safety issues which are unresolved, the application is recommended for refusal.

The proposal does not provide sufficient building separation to the R2 Zoned land to the west falling shy of the required 6m building setback in accordance with the Apartment Design Guidelines (ADG). The reduced setback results in an unacceptable visual overlooking impact for the property to the west. The proposed development does not achieve a satisfactory outcome with regard to solar access as required by the ADG as only 35% of units receive compliant solar access in accordance with the ADG. The proposed development does not result in a satisfactory outcome with regards to cross ventilation with only 45% of units achieving compliance, non-compliant with the ADG which requires 60%.

The development presenting to Condamine Street and Sunshine Street is considered to be visually acceptable with regard to the streetscape presentation and the overall bulk and scale as viewed from the public domain. The building facade is well modulated and articulated to present well to the street and limit the overall visual impact, bulk and scale of the development.

However, by virtue of the non-compliances and issues which are discussed within this report, the development is not supported. Of principle concern is that the development does not afford a satisfactory level of residential amenity for the proposed units in accordance with the ADG with regards to solar access and cross ventilation, results in unacceptable visual overlooking for the adjoining property to the west due to insufficient building separation and no opportunity for widening of Somerville Place which results in unresolved traffic and pedestrian safety issues that have not been addressed through the proposal. The application is therefore recommended to the Panel for refusal for the reasons contained within this report.

## **PROPOSED DEVELOPMENT IN DETAIL**

The application proposes the construction of a four (4) storey shop-top housing development with two level basement car park. Specifically, the proposal involves:

- Demolition of the existing site structures;
- Construction of a shop top housing development that includes;

- 2 levels of basement parking with 40 residential spaces, 7 visitor spaces and 23 retail car spaces
- 4 ground floor retail tenancies and a service vehicle bay
- 31 residential units across three levels including 4 x 1 bedroom, 23 x 2 bedroom and 4 x 3 bedroom units.
- two internal 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;
- Consolidation of 321-331 Condamine Street to form the subject site;
- Strata subdivision of the units.

### Amendments to the proposal

In response to issues raised during the assessment and through the assessment by the relevant referral bodies, Council received an amended set of plans. The changes to the plans were as follows:

- Two western facing units were deleted from Level 1 and 2 (reduction from 33 units to 31 units)
- Increase in floor levels and overall building height by 200mm to resolve basement entry clearances and driveway gradient (an amended Clause 4.6 was submitted to address the increase in height)
- Changes to basement level to amend parking layout, services and storage areas.
- Ground floor retail parking area amended of Somerville Place
- Waste storage area and bulky good areas revised.
- Removal of land dedication along Somerville Place which resulted in a reduced the building setback by 1.4m to the residential zoned land to the west.
- Provision of two canopy trees along the western facade by providing building facade indentations.
- Reconfiguration of the internal residential floor plates resulting from the reduced setback to west and removal of two residential units.

It is noted that when the development application was originally submitted, the applicant intended to undertake the dedication of a 1.4m strip of land adjoining Somerville Place to allow for future laneway widening. During the assessment of the application, the applicant was advised that land dedication was required to be undertaken through a Voluntary Planning Agreement (VPA) in accordance with the requirements of the *Northern Beaches Section 7.12 Contributions Plan 2019*. The applicant did not wish to undertake the process of a VPA to enable land dedication along Somerville Place. The land dedication was therefore removed from the application and the applicant amended the building footprint to provide a nil setback to the western property boundary. The amended plans were submitted which reflect this scenario and the assessment of the application is undertaken based on the latest issue of plans.

### **ASSESSMENT INTRODUCTION**

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

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

## SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
 Warringah Local Environmental Plan 2011 - 6.2 Earthworks  
 Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land  
 Warringah Development Control Plan - B2 Number of Storeys  
 Warringah Development Control Plan - B7 Front Boundary Setbacks  
 Warringah Development Control Plan - C2 Traffic, Access and Safety  
 Warringah Development Control Plan - C3 Parking Facilities  
 Warringah Development Control Plan - C4 Stormwater  
 Warringah Development Control Plan - C8 Demolition and Construction  
 Warringah Development Control Plan - D6 Access to Sunlight  
 Warringah Development Control Plan - D8 Privacy  
 Warringah Development Control Plan - F1 Local and Neighbourhood Centres

## SITE DESCRIPTION

<p><b>Property Description:</b></p>	<p>Lot 21 DP 11320 , 323 - 325 Condamine Street MANLY VALE NSW 2093          Lot 22 DP 11320 , 323 - 325 Condamine Street MANLY VALE NSW 2093          Lot 123 DP 737259 , 327 - 329 Condamine Street MANLY VALE NSW 2093          Lot 25 DP 11320 , 331 Condamine Street MANLY VALE NSW 2093          Lot 20 DP 11320 , 321 Condamine Street MANLY VALE NSW 2093</p>
<p><b>Detailed Site Description:</b></p>	<p>The subject site consists of five (5) allotments located on the western side of Condamine Street, the northern side of Sunshine Street and the eastern side of Summerville Place. The subject comprising of five (5) alotments are commonly known as 321, 323-325, 327-329 and 331 Condamine Street and legally described as Lots 20, 21, 22 and 25 DP 11320 and Lot 123 DP 737259.</p>

The site is regular in shape with a total frontage of 35.66m along Condamine Street, a frontage of 31.09m to Sunshine street, a frontage of 38.10 to Sommerville Place and a depth of 33.53mm. The site has a total surveyed area of 1274.4m<sup>2</sup>.

The site is located within the B2 Local Centre zone and accommodates a variety of one and two storey buildings with ground floor retail shops.

The site has a cross fall from the north-western corner to the south-eastern corner with an overall level change of 2m.

The site does not contain any significant vegetation or canopy trees.

#### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by a mixture of development comprising of the continuation of the B2 Zone to the North and South of the site and land zoned R2 Low Density Residential directly to the west of the site. Immediately to the west of the site is a two storey residential dwelling and this site is separated by Sommerville Place which is a 4.56m wide laneway. The laneway is a one-way laneway which is entered via King Street to the north with vehicles travelling in a north to south direction. Immediately to the north of the site is a three storey shop top housing development adjoining the common boundary. Across the road to the south is an older two storey shop top housing development. Further to the south along Condamine Street are a variety of three and four storey shop top housing developments. These sites are not dissimilar in that they front Condamine Street and are separated by Sommerville Place from the R2 Low Density Residential Zone to the west.

Map:



## SITE HISTORY

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

- Pre-lodgement Meeting **PLM2019/0190** was held on 03/10/2019 for Demolition Works and construction of a shop top housing development.

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

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. A Phase 1 Contamination assessment has been submitted for the subject development application and the report concludes the site is suitable for the proposed land use.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning	None applicable.

Section 4.15 Matters for Consideration'	Comments
agreement	
<p>Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&amp;A Regulation 2000)</p>	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to stormwater and basement design, solar access diagrams, design of western facing facade, waste storage areas and response to the issues raised by the Design and Sustainability Review Panel. This information was provided to Council and was considered a part of the assessment.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter could be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter could be addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter could be addressed via a condition of consent.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic</p>

Section 4.15 Matters for Consideration'	Comments
	impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development, consisting of shop-top housing which is permissible within the B2 Zone.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of SEPP 65 - Design Quality of Residential Apartment Developments, the Warringah DCP with regards to traffic, access and safety and visual privacy and therefore will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 18/11/2020 to 02/12/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 16 submission/s from:

Name:	Address:
Tiles By Kate - Classic Tileworld	337 Condamine Street MANLY VALE NSW 2093
Warringah Florist	335 Condamine Street MANLY VALE NSW 2093
Ms Stephanie Mary Dryden	4 / 254 Condamine Street MANLY VALE NSW 2093
Gail Hennessy	333 Condamine Street MANLY VALE NSW 2093
Mrs Roslyn Rose	339 Condamine Street MANLY VALE NSW 2093
Paul James Cleverly	11 Sunshine Street MANLY VALE NSW 2093
Ms Lauren Kelly	8 Sunshine Street MANLY VALE NSW 2093
Mr David John Morgan Ms Katherine Fiona Deves	10 Sunshine Street MANLY VALE NSW 2093
Mrs Christine Barlow	12 Sunshine Street MANLY VALE NSW 2093
Stephanie Jane Quinn	18 Sunshine Street MANLY VALE NSW 2093



Name:	Address:
Mr Grant Anthony Quinn	18 Sunshine Street MANLY VALE NSW 2093
Timothy John Langley Mrs Sarah Jane Langley	5 Sunshine Street MANLY VALE NSW 2093
Mr Elia Francis Chahwan	2 Sunshine Street MANLY VALE NSW 2093
Mrs Mary Geraldine Gambrill	74 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Bret Stephen Gambrill	74 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Dominic Leonard	8 Sunshine Street MANLY VALE NSW 2093

The original application was notified and advertised for a period of 30 Days from 1 August 2020 to 30 August 2020. The application required to undergo a 30 day advertising period due to the requirement to undertake a Voluntary Planning Agreement (VPA) to enable widening of Somerville Place and dedication of this land area to Council. During this notification period, 15 submissions were received.

The application was subsequently amended to remove widening and land dedication along Somerville Place and undertake design changes in response to Council's assessment. The application was re-notified and re-advertised in accordance with the Northern Beaches Council Community Consultation Plan for a period of 14 days from 18 November to 2 December. As there was no land dedication via a VPA the application was only required to be re-notified for a period of 14 days.

During the second notification period, one (1) additional submission was received and one (1) second submission was received from a previous objector.

Therefore, a total of 16 submissions were received and the submissions are addressed below.

The following issues were raised in the submissions and each have been addressed below:

- Somerville Place should be returned to two way and the development allow sufficient width to allow this to occur.
- Request that Somerville Place remain one way only.
- The construction phase of the development will impact functionality of the Somerville Place laneway.
- Increased overshadowing from the development.
- The number of stories, height, bulk and scale of the development is out of character for the locality and causes a visual impact.
- Insufficient car parking and impact upon on-street parking.
- Increase in traffic for the locality.
- Pedestrian safety concerns for Somerville Place for residents walking along Sunshine Street and pedestrians (including school children) using the laneway.
- Privacy impact for the residential properties to the west.
- Noise impact for residential properties to the west and noise from mechanical plant.
- The use of the footpath area along Sunshine Street for construction storage impacts upon pedestrian amenity.
- The proposed development will result in floor levels of a greater height than what what be the result under a development that complies with height.

The matters raised within the submissions are addressed as follows:

- *Somerville Place should be returned to two way and the development allow sufficient width to*

*allow this to occur.*

Comment:

Council's traffic engineer and development engineer seek for the development to provide for a 1.424m strip of land for future laneway widening as part of the development. The increased laneway width is to allow for improved functionality and pedestrian safety within the laneway. The increase in the laneway width to 6m could allow for future reintroduction of two way traffic flow along Somerville Place in order to improve access options to and from signalised intersection at Kind Street/Condamine Street.

- *Request that Somerville Place remain one way only.*

Comment:

The development as proposed would retain a one way only laneway configuration.

- *The construction phase of the development will impact functionality of the Somerville Place laneway.*

Comment:

The submitted construction management plan shows trade parking along Somerville Place partially within the site. However, this could not occur based on the current design given the 1.42m strip of land is to be developed and not left free. At present, Council's Traffic Engineer has concerns regarding the submitted construction management plan which includes the use of Somerville Place for trade parking. Construction traffic management remains an issue unresolved as raised by Council's Traffic Engineer.

- *Increased overshadowing from the development.*

Comment:

The development is not considered to have an unreasonable impact to overshadowing of the adjoining properties. See detailed discussion on solar access later in this report.

- *The number of stories, height, bulk and scale of the development is out of character for the locality and causes a visual impact.*

Comment:

It is acknowledged that there are some four (4) storey developments within the vicinity of the site and along Condamine Street and some in breach of the 11m height limit. Council has considered the proposed development in the context of the site and the applicant has provided detailed information including photomontages and analysis of the development within the context of the site. The proposed development is considered to be well articulated with the facade modulated throughout levels 1 and 2 and the top floor (level 3) sufficiently setback to limit limit the prevalence upper storey. The top floor reading a roof form as viewed from street level and the adjoining residential zoned lane. The assessment of the height breach is detailed under Clause 4.6 of this assessment report and via the applicants submission of a clause 4.6 variation request. The proposed development is overall considered generally acceptable in its context with regard to the visual outcome of the development as viewed from the site surrounds. This is discussed in further detail under Clause B2 and B7 of the assessment report.

- *Insufficient car parking and impact upon on-street parking.*

Comment:

The proposed development provides a compliant rate of car parking in accordance with the Warringah DCP. The proposal is acceptable in this regard and would not be refused for this reason having compliant car parking.

- *Increase in traffic for the locality.*

Comment:

The development does not provide any opportunity for the widening of Somerville Place to provide an improved outcome for traffic flows within the immediate vicinity of the site. See detailed traffic comments later in this report.

- *Pedestrian safety concerns for Somerville Place for residents walking along Sunshine Street and pedestrians (including school children) using the laneway.*

Comment:

The development does not provide any opportunity for the widening of Somerville Place to provide an improved outcome for pedestrian safety within the laneway and vicinity of the site. The development does not provide the desired outcome with regard to pedestrian safety through restricting the ability to increase the laneway width. For this reason, the development is recommended for refusal.

- *Privacy impact for the residential properties to the west.*

Comment:

See detailed discussion regarding privacy later within this report. The proposal is considered to have an unacceptable impact upon privacy due to the inadequate building separation to the residential zoned land to the west.

- *Noise impact for residential properties to the west and noise from mechanical plant.*

Comment:

An acoustic report has been provided with the development application which sets out the measures to be implemented to limit the impact of mechanical plant and provide a reasonable outcome with regard to noise for surrounding properties. Council's environmental health officer has reviewed the submitted acoustic report (and requested further detail where required) and is satisfied that noise can be mitigated and result in an acceptable outcome for adjoining properties, subject to compliance with the recommendations of the report.

The residential component of the development is not considered to give rise to unacceptable acoustic impacts for surrounding properties. Council's environmental health officer is satisfied and has not raised concern in this regard.

- *The use of the footpath area along Sunshine Street for construction storage impacts upon pedestrian amenity.*

Comment:

Council's traffic engineer has raised concern with the construction management plan which includes the use of the Sunshine Street footpath area for construction storage. This remains an outstanding issue that should be addressed by way of an amended construction management plan. This could be included as a condition should consent be granted.

- *The proposed development will result in floor levels of a greater height than what what be the result under a development that complies with height.*

Comment:

The impact upon privacy resulting from the building height is explored under the Clause 4.6 assessment later within this assessment report. The assessment has found that the non-complaint elements of the building do not result in unreasonable privacy impacts, as discussed

later in this report.

## REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	<p>The application was referred to the Design and Sustainability Advisory Panel (DSAP) for comment.</p> <p>The application was presented to the DSAP and the following recommendations were provided for consideration of Council and the applicant. In response to the recommendations by the DSAP the applicant has addressed some issues by way of amended plans and others by way of a written response providing further justification for the design. Comments are provided below each recommendation with how the applicant has responded and Councils response:</p> <p><i>1. The proposal should be redesigned to provide improved solar access and living areas that can open away from the main road towards the north and west, for all units including units facing Sunshine Street</i></p> <p><u>Comment:</u> The applicant provided additional shadow diagrams to demonstrate that 84% of units receive 1.75hrs of solar access on 21 June and a written response advising of the site having no ability to provide living areas facing north due to the adjoining development having a zero setback wall. However, the proposal is still well short of the required amount of solar access in accordance with the ADG with only 35% of units receiving a minimum of 2 hours solar access. In this regard, the proposal has not responded in a way to address this concern to Council's satisfaction.</p> <p><i>2. The interior of non residential uses at ground level should not be lower than the adjoining footpath</i></p> <p><u>Comment:</u> The applicant has provided a written response as follows:</p> <p><i>The retail spaces at ground have been specifically designed slightly below footpath level to allow a low wall and landscaping on the street front boundary to act as a noise and privacy barrier to the busy street, to improve the amenity of these spaces and activate the façade to Condamine Street.</i></p> <p>Council staff agree that the lower retail space and associated outdoor space adjacent to Retail 1 allow protection from the harsh and busy environment along Condamine Street. The use of a sunken area for outdoor dining is preferred to an at-grade area with Condamine Street exposed to high levels of road traffic. Council accepts the applicants justification in this regard.</p> <p><i>3. Exceeding the height limit and number of storeys in some parts may be supported if it can be shown that amenity within the development and in relation to adjoining sites is significantly improved.</i></p>

Internal Referral Body	Comments
	<p><u>Comment:</u> The applicant provided amended plans which deleted two western facing units and provided a recess in the development to provide two canopy trees to further obscure views between properties. However, the amended plans decreased the setback from the western boundary from 6m to 4.6m, resulting in an unsatisfactory outcome with regard to visual overlooking of the western property. The height and form of the building is acceptable for reasons outlined elsewhere within this report. However, the development is not supported as solar access and cross ventilation is well below the requirements of the ADG. The applicant has not resolved the above point to Council's satisfaction.</p> <p><i>4. The previous Council requirement for widening of Somerville Place should be reviewed and possibly re-instated with the aim of improving the amenity of the street and providing a screen to the neighbouring residential properties to the west.</i></p> <p><u>Comment:</u> The current design does not allow any opportunity for widening of Somerville Place. The proposal is not supported in this regard.</p> <p><i>5. Landscape treatment is generally aimed at concealing the top floor roof but consideration of tree planting along Somerville Place should be investigated/integrated with car bays to provide privacy and soften the development to the residential sites to the west.</i></p> <p><u>Comment:</u> Amended plans have been received which incorporate two street trees adjacent to Somerville Place within the development site to soften the built form and provide additional privacy for residential properties to the west. The applicant has addressed this issue to Council's satisfaction.</p>
Building Assessment - Fire and Disability upgrades	<p><b>Recommendation - Supported (subject to conditions)</b></p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Contaminated Lands)	<p><b>Recommendation - Supported (Subject to Conditions)</b></p> <p><b>General Comments</b></p> <p>Demolition of a number of structures (likely) containing hazardous materials such as asbestos and lead-based paints, an environmental report was reviewed. Based on the findings in the report, Environmental health are satisfied that the development works can comply with the State requirements for control of contaminated land and hazardous materials by following the recommendations put forward in the environmental report.</p>

Internal Referral Body	Comments
Environmental Health (Industrial)	<p><b>Recommendation - Supported (subject to conditions)</b></p> <p><b>General Comments</b></p> <p>Environmental health analysis of a proposal for 'shop top housing'. Combination of rooftop exhausts with 33 air conditioning units adjacent existing residential dwellings -consideration of potential noise impacts.</p> <p>Based on the Noise Policy for Industry recommendations and the lowest background measurements in the acoustic report, an industrial interface, RBL/intrusive noise trigger level (Urban, night time) is set at 45 dB(A).</p> <p>The applicant has provided calculations for distance and parapet attenuation (dampening), and a cumulative noise level for rooftop mechanical plant as 44 dB (A). This sits within the allowable noise-creating provisions and will likely only be discernible on the quietest nights when all mechanical plant are operating.</p> <p>Rock breaking of low-medium strength bedrock will have to occur during excavation, therefore surrounding residences will need to be notified of those activities (at least) one week prior.</p> <p>We have not recommended restrictions on operating hours for commercial/retail operations as this can be done if/when a DA is submitted for the use of each space.</p>
Environmental Health (Food Premises, Skin Pen.)	<p><b>Recommendation - Supported (Subject to Conditions)</b></p> <p><b>General Comments</b></p> <p>Retail spaces are identified in the plans as food business spaces. Standard food business conditions to be recommended.</p>
NECC (Development Engineering)	<p><b>Recommendation - Not supported</b></p> <p><b>Amended Comments for Revised Plans submitted 16/11/20 and 23/11/20</b></p> <p>The revised plans have deleted the road dedication in Sommerville Lane. This deletion is not supported due to safety issues that have been raised by Council's Traffic Engineer.</p> <p>It is considered that the plans must be amended to suit the required road dedication. The points previously raised must be addressed in the revised plans for the proposal. It is noted that to ensure no overland flows enter the basement from the lane, a crest in the driveway will be required a minimum 200mm above the invert level of the new kerb and gutter that must be provided along the lane frontage of the site.</p>

Internal Referral Body	Comments
	<p>Development Engineers cannot support the application due to insufficient information to address clauses C2 and C4 of Council's DCP.</p> <p><b>Original Assessment Comments 2/10/20</b></p> <p>The proposed development includes the dedication of a strip of land to widen the pavement of Sommerville Place to the west of the site. The submitted architectural and drainage plans appear to create a low point in the pavement design at the proposed entry to the carpark. A review of the survey plans indicates that the existing pavement level at the boundary to the north of the site in the lane is RL 19.62. The proposed level for the driveway adjacent to this point is RL 19.342 which is considerable lower. In this regard, the existing pavement levels in the lane are to remain along the boundary to the north of the site, and the fall of the new pavement is to continue down the lane towards the intersection with Sunshine Street. The applicant must provide a detailed design for the lane extension between the existing pavement and the new boundary to the site. The design is to include a layback along the proposed driveway and parking spaces and kerb and gutter for the remainder up to the boundary with Sunshine Street. At this point the kerb is to be deleted and a driveway profile provided up to the road pavement in Sunshine Street. These works will require the provision of a grated inlet pit and lintel to capture the stormwater from the widened pavement with a piped connection to Council's existing drainage system. Details including long sections and cross sections of the pavement and stormwater design must be provided for assessment. The revised design will impact upon the internal driveway grades which will need to be modified to suit. Council's Traffic Engineer has also provided comments in this regard.</p> <p>The proposed works in the footpath are to be assessed by Council's Landscaping Officer.</p> <p>The proposed drainage design will need to be amended to suit the above comments. The proposed OSD system is satisfactory.</p> <p>Development Engineers cannot support the application due to insufficient information to address clauses C2 and C4 of Council's DCP.</p>
Strategic and Place Planning (Urban Design)	<p><b>Recommendation - Generally supported, however two below items unresolved</b></p> <p>The proposal can be supported if the following issues are addressed:</p> <ol style="list-style-type: none"> <li>1. Increase the floor to ceiling clear height to 2.7m minimum at the residential lobby facing Sunshine Street and Retail 4 area.</li> <li>2. Ensure that all street awnings cantilevering over public footpaths are 2.7m clear height minimum and clearly dimensioned on the drawings.</li> </ol> <p><b>Previous Urban Design Comments:</b> The proposal is for 33 residential units shop-top housing in a four storey configuration. The proposal should address the following:</p>

Internal Referral Body	Comments
	<p>1. Floor to ceiling height to the residential lobby (facing Sunshine Street) and retail 4 is too low (2.8m fl to fl proposed). Apartment Design Guide recommends 3.3m floor to ceiling height minimum for retail at ground floor.</p> <p>2. The sunken retail facade along Sunshine Street does not promote footpath activation.</p> <p>The proposal has not addressed all the issues identified previously in the Pre-Lodgement Meeting:</p> <p>1. The building height control of 11m has been breached in multiple areas by up to about 3 metres. The proposed breach comprises the whole top floor comprising of 10 apartments. The proposal has self-imposed building setbacks on the west boundary to create a 6m wide laneway and on the Condamine Street boundary to allow for the change in level of the two building blocks. Nevertheless, the resultant top floor units terrace setback should be increased to 4m to allow for the top floor to be more recessed and not be visible from the street views as they are already breaching the building height control substantially. The proposed roof light structure should not be prominent and top-heavy with the big roof overhangs. Essentially the street view should read like a three storey building with a recessed roof form. Response: The top floor units are not setbackted adequately to be not visible from the street level.</p> <p>2. The west elevation of balconies faces a neighbouring free-standing house with a pool courtyard. The proponent should review the number of units facing this orientation to minimise visual and acoustic privacy issues. Privacy screens introduced will only work to a limited capacity. The proponent suggested to study the option of reducing the number of units overlooking the pool courtyard. A more diverse unit mix with bigger units will also reduce the number of balcony spaces on this facade. Option of maisonette units can provide double volume balconies/ courtyard spaces allowing bigger landscape plants to be incorporated. Response; The number of balconies facing the west has not been reduced and privacy issues to the house and garden space across the laneway have not been resolved.</p> <p>3. The proposed light wells should have a blank wall effect facing the bedroom windows to qualify for the 6m separation (ADG pg. 62). Obscured glass block walls with adequate noise attenuation might be appropriate to get some daylight into the end units 10, 22 and 32. Bedrooms separation between units 25 and 34 needs to be 12m. Use of translucent glass windows to achieve the effect of blank wall is not a robust solution as they can easily be modified or tampered with. Coordination with the next door apartment block light well on the common boundary will need to be demonstrated. Response: Glass blocks has been proposed on one side of the 6m wide lightwells.</p> <p>4. Artwork on facades should not look like advertising panels. They should be integrated into the façade concept and perhaps used to highlight entrances to apartment lobbies or a prominent corner to create an identity for the development. They should be constructed from a robust material to minimise maintenance.</p>



Internal Referral Body	Comments
	<p>Response: The proposed facades have been designed appropriately</p> <p>5. Footpath and awnings – Generally shopfronts should have zero setback and be on the same level with public footpaths to activate public domain spaces. Areas designated for alfresco dining should be purpose full, adequately sized and located in a desirable location.</p> <p>Awnings should generally be set backed 1m from the kerb. If there are street trees required, 1.5m setback from kerb will be required. Awning cut outs/ holes for trees are not desired.</p> <p>Response: The shopfronts have been set-backed from the footpath and are not on the same level as the footpath. The awning clearance height over the footpath should be 2.7m minimum</p>
Traffic Engineer	<p><b>Recommendation - Not supported</b></p> <p><b>Comments on amended plans:</b></p> <p>The amended plans have deleted the dedication of a 1.434m strip of land on the Somerville Place frontage of the site from the plans. This road widening dedication is considered necessary for the safety of vehicular and particularly pedestrian traffic using the lane. While the development does not result in increased traffic generation most of the traffic activity associated with the development and much of the generated pedestrian and bicycle activity will be into and out of Somerville Place and the road widening would result in a much safer outcome for pedestrians, cyclists and vehicular traffic.</p> <p>It is noted that other properties that have redeveloped along Somerville Lane have dedicated a strip of land for future road widening and a similar dedication of land is considered warranted along the Somerville Place frontage of this development to:</p> <ul style="list-style-type: none"> <li>- Facilitate safer pedestrian access along the lane, noting that St..Kierans Catholic School is sited on King St at the northern end of Somerville Place and the lane is well used by pedestrians including children walking to and from the school. Recent pedestrian data found high numbers of pedestrians using the lane with a peak of 61 pedestrians between 8am and 9am including 25 between 8:30am and 8:45am.</li> <li>- Facilitate safer servicing of premises requiring rear lane garbage collection and/or deliveries. An exemption to the existing One Way Traffic Flow in Somerville Place was recently imposed as garbage trucks were unable to safely traverse the lane from its northern end in accordance with the southbound One Way traffic flow. This arrangement is far from ideal and lane widening here and at other properties would allow the exemption to be lifted.</li> <li>- potentially allow for the reintroduction of two way traffic flow along Somerville Place in order to improve access options and facilitate access to and from the signalised intersection at Kings St/Condamine St</li> </ul>

Internal Referral Body	Comments
	<p>- help overcome an existing traffic choke point at the junction of No.s 331 &amp; 333 Condamine Street where road width is significantly constrained and sight lines poor.</p> <p>The developer proposes that retail deliveries will be accommodated via a loading bay on the ground floor the traffic report notes that this loading bay is 6.75m x 4.5m in size however these dimensions are not noted on the plans. The plans do note that the clearance at the rear of the loading bay is only 2.38m which is well under the 3.5m clearance required by AS 2890.2 for a loading bay used by a small rigid vehicle and this appears to be too low to be accessed by some courier vans and certainly by delivery trucks. There also appears to be no ramped offstreet access from the loading bay to the retail tenancies which is not conducive to the space being used for deliveries. All the above means that most of the loading activity for the retail shops and any activity by removalist vans or the like will take place from on-street. This is considered unacceptable intensifies demand for on-street parking.</p> <p>The Traffic and Parking Assessment Report was prepared to support the superseded plans and although the parking and traffic generation rates are only slightly different a revised traffic and parking report should be prepared to reflect the amended plans and in addition to discussing parking rates and traffic generation should also discuss and demonstrate with swept path plots where appropriate:</p> <ul style="list-style-type: none"> <li>- How delivery vehicles and removalist vans will access the site noting the constrained conditions on Somerville Place and its One Way traffic flow and the undersized loading bay</li> <li>- How the largest delivery vehicle servicing the site will enter and egress the site</li> <li>- How service vehicles and delivery vehicles using Somerville Place will be able to safely proceed through the tight bend at the rear of No.333 Condamine Street and past the site</li> <li>- how vehicles will be able to enter and egress retail spaces one and two without impacting upon fences or bollards on the western side of Somerville Place and how such vehicles will sight vehicles approaching from the north.</li> <li>- demonstrate that sight lines triangles consistent with AS2890.1 section 3.2.4 are provided at the proposed basement carpark driveway</li> <li>- demonstrate that adequate visibility to pedestrians and vehicles will be available on Sunshine Street given the location of the stairs and planters on the south west corner of the site.</li> <li>- Outlining why the road widening indicated on the superseded plans has not been provided and how the amended plans address the pedestrian safety and vehicular access issues outlined in the above comments.</li> </ul> <p>The Construction Management Plan shown on page 37 of the amended plans is unacceptable. It shows construction fencing erected on the Sunshine Street road pavement and across the footpath. This will not be approved. Any fencing must be sited on the property boundaries. It shows trade vehicles accessing the site contrary to the One Way Traffic Flow on Somerville Place again, unacceptable and it shows site amenities and shed sited on the footpath area of Sunshine Street, also unacceptable unless such facilities were sited on the roof of a C class hoarding. A Construction Traffic Management Plan prepared by an appropriately experienced and authorised traffic control contractor or consultant is required.</p>

Internal Referral Body	Comments
	<p>Given the above concerns the amended plans are not supported.</p> <p><b>Initial comments on superseded plans</b></p> <p>The existing site development comprises 4 mixed use buildings with a combined retail floor space of approximately 600m<sup>2</sup> and approximately 4 residential dwellings. As shown in the aerial photograph below, the buildings are served by at-grade carparks that gain direct access from Somerville Place</p> <p>The development proposal involves the demolition of the existing building and construction of a new mixed use building comprising 4 small retail shops with a combined floor area of 370.37m<sup>2</sup>, 33 residential apartments, including 38 resident spaces, 7 visitor and 23 retail spaces.</p> <p>Vehicular access to the proposed development is off Somerville Place via a two-way combined entry/exit driveway located adjacent to the northern site boundary.</p> <p><b>Parking:</b></p> <p>Residential -</p> <ul style="list-style-type: none"> <li>10 x 1 bedroom units @ 1.0 space per dwelling = 10.0 spaces</li> <li>23 x 2 bedroom dwellings @ 1.2 spaces per dwelling = 27.6 spaces</li> <li>33 dwellings @ 1 visitor space per 5 dwellings = 6.6 spaces (rounded to 7 spaces)</li> </ul> <p>Total - resident parking 37.6 spaces (rounded to 38 spaces)</p> <p>Retail -</p> <ul style="list-style-type: none"> <li>370.37m<sup>2</sup> @ 6.1 spaces per 100m<sup>2</sup> = 22.6 spaces (rounded to 23 spaces)</li> </ul> <p>Total - 44.2 spaces (rounded to 45 spaces)</p> <p>Total 66.8 spaces (rounded to 68 spaces)</p> <p>The proposed development satisfies the DCP requirement with the provision of 68 parking spaces: 38 resident spaces, 7 visitor and 23 retail spaces.</p> <p><b>On-site loading facilities:</b></p> <p>The proposed development is served by a 6.75m x 4.5m loading bay on the ground level, accommodating a typical courier van similar in size to the B99 vehicle specified in the Standard AS/NZS2890.1:2004. The B99 vehicle is similar to the Ford Transit Medium Duty and measures 5.2m x 1.94m. This vehicle will adequately serve the 4 small retail shops.</p> <p><b>Traffic:</b></p> <p>Application of the RMS's traffic generation rates to the existing retail floor space yields a traffic generation potential in the order of 34vtph during the weekday peak periods.</p> <p>The applicant's application of the RMS's traffic generation rates to the proposed development yields a traffic generation potential in the order of 31vtph during the weekday peak periods, calculated as follows:</p> <ul style="list-style-type: none"> <li>370m<sup>2</sup> retail @ 5.6vtph per 100m<sup>2</sup> = 21vtph</li> <li>33 units @ 0.29vtph per unit = 10vtph</li> </ul> <p>Total = 31vtph</p>

Internal Referral Body	Comments
	<p>Based on the fact the site is a maximum of 4 storeys, the site would fall under the RMS Medium Density classification for the residential units. As such, the following rates would apply:</p> <p style="padding-left: 40px;">370m<sup>2</sup> retail @ 5.6vtph per 100m<sup>2</sup> = 21vtph  33 units @ 0.5vtph per unit = 17vtph  Total = 38vtph</p> <p>Irrespective, the net increase of 4 vehicles trips in comparison to the existing site use is deemed negligible on the local road network.</p> <p><b>Car Park Layout:</b>  The entry ramp to the basement appears to be steep and not complaint with the requirements of AS2890.1 requiring the first 6.0m within the boundary to be no greater than 1:20.</p> <p>Given the narrow nature of the laneway, and the fact St Kieran's Catholic school is less than 200m north of the site, the laneway is deemed to accommodate pedestrian movements. As such, safety of pedestrians and maintaining sight lines to oncoming vehicles requires a compliant grade. The applicant should address the design requirement accordingly.</p> <p>Further, the end aisle spaces are not deemed complaint as it would appear the minimum 1.0m clearance is not provided at the blind aisle.</p> <p>Additionally, on Basement B2 plan. the space in the lower right hand corner appears to have some overlap with the perpendicular space. Swept paths should be provided demonstrating there is no impact on access to the and from the space.</p> <p>Finally, the positioning of the bicycle parking on Basement B1 Plan, adjacent to the accessible space appears to impede on the shared zone. The shared zone should have clear access to and from the space to ensure wheelchairs and the like are able to maneuver appropriately.</p> <p><b>Recommendation:</b>  Based on the Car Park Layout concerns, the application cannot be supported in its current form.</p>
Waste Officer	<p><b>Recommendation - Supported (Subject to conditions)</b></p> <p>Waste Management Assessment - Amended Plans (18/11/2020)  Recommendation - approval subject to conditions.</p> <p>The waste storage facilities proposed comply with Council requirements.  Ray Creer  Waste Services Officer</p>

Internal Referral Body	Comments
	<p>Waste Management Assessment Recommendation - The proposal is unacceptable.</p> <p>Specifically:</p> <p>1) There is no bulky goods storage room shown on the plans. A bulky goods storage room will need to be provided that complies with Council requirements. That being 4 cu metres for each 10 residential units.</p> <p>2) The service (external) door to the residential bin room must be able to be latched in the open position and be 1200mm wide. <i>Please advise how door will be latched open.</i> <i>Please have applicant provide internal dimensions of bin room including width of service door.</i></p> <p>Other comments: It is suggested that the service (external) door to the residential binroom be provided with a timer lock to prevent access by tenants of the retail units. It is suggested that the resident access (internal) door to the residential binroom be provided with a lock to prevent access by tenants of the retail units.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
NSW Roads and Maritime Services (Traffic Generating Development)	The application was referred to Transport for New South Wales as the proposed development adjoins a classified road. Transport for NSW has responded to the referral and raised no objections to the development subject to conditions of consent. The conditions will be included in any consent issued.

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

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

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

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

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

## **SEPP 55 - Remediation of Land**

Clause 7(1)(a) of SEPP 55 requires the consent authority to consider whether land is contaminated.

In response to the above requirements of the SEPP, the applicant has submitted a Preliminary Environmental Site Investigation dated 31 March 2020 and prepared by EI Australia. In its conclusion, the investigation states that the site is suitable for the proposed commercial and residential land use and the site presents only low likelihood of contamination based on the previous history of land uses on the site. The report makes recommendations detailed in section 6 of the report, which includes monitoring for unexpected finds (among others) during construction of the development.

The Preliminary Environmental Site Investigation did not result in the requirement for a detailed Phase 2 Environmental Site Assessment based on the analysis of the site with regards to contamination. Therefore, Council can be satisfied that the site is suitable for the intended use with regards to contamination and achieves the requirements of SEPP 55.

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

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

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

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

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

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

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

As previously outlined the proposed development is for the erection of a four storey residential flat 'housing' development plus basement car parking for the provisions of 33 self-contained dwellings.

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

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

Clause 28 of SEPP 65 requires:

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

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

## **DESIGN REVIEW PANEL**

Northern Beaches Council does not have an appointed Design Review Panel.

## **DESIGN QUALITY PRINCIPLES**

### **Principle 1: Context and Neighbourhood Character**

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

#### Comment:

The subject site is within an established B2 Local Centre which consist of three and four storey shop top housing developments. The development is of a scale and form that is not inconsistent with the surrounding developments along Condamine Street and represents a well articulated architectural design to contribute to the locality with regard to the visual outcome of the development.

### **Principle 2: Built Form and Scale**

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

#### Comment:

The development is representative of bulk and scale of existing and recently approved developments along Condamine Street which consist of a three and four storey built form, with the upper floor recessed to limit to presence of the top floor as viewed from the street.

### **Principle 3: Density**

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

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

#### Comment:

The development provides 31 Residential Units which assists in achieving the housing targets for the growing population of the Northern Beaches. The development provides a mix of one, two and three

bedroom units to meet the various needs of future residents. The development is along the B-Line bus route and public transport is easily accessible from the site, therefore the density of the development is appropriate in the context.

#### **Principle 4: Sustainability**

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

##### Comment:

The proposed development does not achieve the requirements of the SEPP with regard to solar access and cross ventilation. As the proposal falls short of the targets set by the SEPP by a considerable amount the development is not considered to result in a satisfactory outcome with regards to amenity for future residents. The proposal is inconsistent with this principle.

#### **Principle 5: Landscape**

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

##### Comment:

Given the context of the site (B2 zone - shop top housing) deep soil planting is not required within the site. The development provides for enhancement of the street trees along each street frontage to provide a better outcome for the street. Planter boxes are used along the edge of level 3 to soften the edge of the development and provide additional privacy for the residential properties to the west.

#### **Principle 6: Amenity**

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

##### Comment:

The proposed development has an interface with R2 Zoned land to the west. The proposed development has provided design measures to mitigate direct overlooking, however, the building has not provided adequate building separation to the R2 Zoned land and for this reason, the proposal is not supported (discussed further below in this report) Adjoining properties will retain the required amount of solar access in accordance with the Warringah DCP.



### **Principle 7: Safety**

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

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

#### Comment:

The ground floor retail facade provide an activated street frontage which will provide for passive surveillance along Condamine Street and Sunshine Street. Balconies are provided along the street frontage which encourage passive surveillance.

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

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

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

#### Comment:

The proposed development contains a mix of one, two and three bedroom units which will encourage a variety of residents to live in the development. The development does not provide communal open space as the site has good access to open space networks in the vicinity of the site. The application is accompanied by an access report which demonstrates the required amount of units are accessible in accordance with the SEPP.

### **Principle 9: Aesthetics**

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

#### Comment:

The proposed development provides a well articulated facade throughout, with varied setbacks through level one and two. Along Condamine Street and Somerville Lane, the proposed development does not rely on a uniform setback across the each level, rather, it is stepped and articulated vertically across each floors breaking up the bulk and scale to ensure this facade does not present as a flat monolithic wall to the street. The third level is sufficiently setback to obscure the top floor as viewed from the street and present as a roof above only. The development is overall visually acceptable as viewed from the street.

## **APARTMENT DESIGN GUIDE**

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

SEPP 65.

Development Control	Criteria / Guideline	Comments
<b>Part 3 Siting the Development</b>		
<b>Site Analysis</b>	Does the development relate well to its context and is it sited appropriately?	The adjoining sites fronting Condamine Street consist of shop top housing development of varied scale. The proposal for a shop top housing development is consistent with this existing context.
<b>Orientation</b>	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	<p>The development has units facing east and west taking advantage of the available aspects and prevailing wind and solar patterns. The northern boundary of the site abuts an adjoining shop top housing which prevents direct solar access from this aspect. The development does not achieve the required amount of solar access in accordance with the SEPP, therefore, the development is not considered to have optimised solar access for the units within the development through orientation.</p> <p>Shadow diagrams provided demonstrate the single dwelling to the west will not have an unreasonable impact and retain solar access from 12pm onwards retaining the minimum 3hrs on 21 June.</p>
<b>Public Domain Interface</b>	<p>Does the development transition well between the private and public domain without compromising safety and security?</p> <p>Is the amenity of the public domain retained and enhanced?</p>	The amenity of the public domain is enhanced in this particular scenario with an improved pedestrian interface along Condamine Street and Sunshine Street. Passive surveillance is maintained between the retail shop fronts and the street.

<p><b>Communal and Public Open Space</b></p>	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> <li>1. Communal open space has a minimum area equal to 25% of the site</li> <li>2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)</li> </ol>	<p>No communal open space has been provided as the site. However, it has been demonstrated that there is good proximity to public open space. This is consistent with other developments approved in the vicinity of the site with no communal open space. There is an extensive network of public open space a minimum of 370m to the north of the site to service the development which provides amenity.</p>															
<p><b>Deep Soil Zones</b></p>	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1" data-bbox="440 943 1062 1487"> <thead> <tr> <th>Site area</th> <th>Minimum dimensions</th> <th>Deep soil zone (% of site area)</th> </tr> </thead> <tbody> <tr> <td>Less than 650m<sup>2</sup></td> <td>-</td> <td>7%</td> </tr> <tr> <td>650m<sup>2</sup> – 1,500m<sup>2</sup></td> <td>3m</td> <td></td> </tr> <tr> <td>Greater than 1,500m<sup>2</sup></td> <td>6m</td> <td></td> </tr> <tr> <td>Greater than 1,500m<sup>2</sup> with significant existing tree cover</td> <td>6m</td> <td></td> </tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m <sup>2</sup>	-	7%	650m <sup>2</sup> – 1,500m <sup>2</sup>	3m		Greater than 1,500m <sup>2</sup>	6m		Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m		<p>The location and surrounding building typology (B2 Zone) result in limited space for deep soil planting. Retail is provided on the ground floor which is consistent with the surrounding site context and it is not envisaged deep soil would be provided in the context of the site. In this regard, the provision of no deep soil zones is acceptable.</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)															
Less than 650m <sup>2</sup>	-	7%															
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<p><b>Visual Privacy</b></p>	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1" data-bbox="440 1671 1062 2029"> <thead> <tr> <th>Building height</th> <th>Habitable rooms and balconies</th> <th>Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>Up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> <tr> <td>Over 25m (9+ storeys)</td> <td>12m</td> <td>6m</td> </tr> </tbody> </table> <p><b>Note:</b> Separation distances between buildings on the same site should combine required building</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>The building has a street frontage to Condamine Street and Sunshine Street, therefore setback does not apply.</p> <p>The building has a zero setback to the northern side boundary which is consistent with the adjoining shop-top development to the north and no window openings are on this elevation.</p> <p>Separation to the adjoining residential zone boundary</p>			
Building height	Habitable rooms and balconies	Non-habitable rooms															
Up to 12m (4 storeys)	6m	3m															
Up to 25m (5-8 storeys)	9m	4.5m															
Over 25m (9+ storeys)	12m	6m															

	<p><i>separations depending on the type of rooms.</i></p> <p><i>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</i></p>	<p>to the west as follows:</p> <p>Ground - Ground floor retail and blank wall - No impact  Level 1 - 4.56m to windows and balconies  Level 2 - 4.56m to windows and balconies  Level 3 - 5.9m to balcony and 7.2m to windows.</p> <p>The building setback to the western residential boundary is non-compliant with the ADG.</p> <p>In addition, the ADG requires that at the boundary between a change is zone to a lower density area, the building setback is to be increased by 3m. The development does not provide any increase in setback in response to this control, nor does the proposal meet the minimum requirement of 6m. The development is therefore inconsistent with the minimum required building separation to the Western boundary.</p>
<p><b>Pedestrian Access and entries</b></p>	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p>Residential building entrance provided on Condamine Street and Sunshine Street which is clear.</p>
<p><b>Vehicle Access</b></p>	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p>The provision of rear laneway access is the preferred method in ADG. The vehicle entrance does not detract from the main facade on Condamine or Sunshine Streets.</p> <p>However, Council's Traffic Engineers have raised safety concerns with the</p>

		<p>access arrangement via the existing 4.56m wide laneway. To achieve a better outcome with regard to vehicle safety and minimise traffic conflicts, the development should provide opportunity for widening of the laneway to 6m along Somerville Place.</p> <p>As the proposed development does not allow opportunity for laneway widening, the proposal is recommended for refusal.</p>
<p><b>Bicycle and Car Parking</b></p>	<p>For development in the following locations:</p> <ul style="list-style-type: none"> <li>On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</li> </ul> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p><u>WDCP Appendix 1</u> 1 space for 1 bedroom dwelling, 1.2 spaces per 2 bedroom dwelling. 1 visitor space per 5 dwellings Shops require 1 space per 16.4sqm GLFA</p> <p>4 x 1 bedroom dwelling = 4 spaces 23 x 2 bedroom dwellings = 28 spaces 4 x 3 bedroom dwellings = 6 spaces Visitor requirement = 7 spaces 370.37sqm retail floor area= 23 spaces</p> <p>Total required = 68 spaces</p> <p>A total of 70 spaces are provided and allocated in accordance with the above requirements.</p>
<p><b>Part 4 Designing the Building</b></p>		
<p><b>Amenity</b></p>		
<p><b>Solar and Daylight Access</b></p>	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> <li>Living rooms and private open spaces of at least 70% of apartments in a building</li> </ul>	<p>11/31 (35%) units receive a minimum 2 hours solar access on 21 June to living area and private open space.</p>

	<p>are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.</p>	<p>The applicant submits that 26/31 (84%) units receiving 1.75 hours of solar access to living room and private open space is a sufficient outcome given the site orientation.</p> <p>However, it is considered only 35% of units achieving a minimum of 2 hours is not a satisfactory outcome with regards to solar access an amenity. Given the large shortfall, this is an unacceptable outcome with regard to solar access and the application is recommended for refusal in this regard.</p>
	<ul style="list-style-type: none"> <li>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.</li> </ul>	<p>2 units / 6% face direct south with no solar access - Acceptable</p>
<p><b>Natural Ventilation</b></p>	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"> <li>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</li> </ul>	<p>14 / 31 units naturally cross ventilated which is 45%.</p> <p>A number of units face internally into the light well, however, the window to the lightwell consist of glass blocks which are not openable, therefore not providing cross ventilation for these units.</p> <p>The proposal is non-compliant with the ADG in this regard.</p> <p>The proposal does not provide an acceptable outcome with regards to cross ventilation which would result in a poor amenity outcome for future residents. Many of the units which are not cross ventilated only have access to openable windows to Condmaine Street, which is a</p>

		particularly busy road, providing a pool amenity outcome for the development.												
	<ul style="list-style-type: none"> <li>Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</li> </ul>	Does not exceed 18m.												
<b>Ceiling Heights</b>	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table border="1"> <thead> <tr> <th colspan="2">Minimum ceiling height</th> </tr> </thead> <tbody> <tr> <td>Habitable rooms</td> <td>2.7m</td> </tr> <tr> <td>Non-habitable</td> <td>2.4m</td> </tr> <tr> <td>For 2 storey apartments</td> <td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td> </tr> <tr> <td>Attic spaces</td> <td>1.8m at edge of room with a 30 degree minimum ceiling slope</td> </tr> <tr> <td>If located in mixed used areas</td> <td>3.3m for ground and first floor to promote future flexibility of use areas</td> </tr> </tbody> </table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use areas	<p>Retail 1 - 3.9m Retail 2 - 3m Retail 3 - 2.7m Retail 4 - 2.7m</p> <p>Residential Habitable = 2.7m Residential Non-habitable areas 2.4m</p> <p>Retail tenancies 2, 3 and 4 have ceiling heights below the ADG requirement.</p> <p>The applicant submits that given the small size of the retail tenancies the minimum floor to ceiling heights are acceptable. However, the minimum floor heights for retail space 3 and 4 are not acceptable falling well short of the 3.3m requirement. The application is recommended for refusal in this regard.</p>
Minimum ceiling height														
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<b>Apartment Size and Layout</b>	<p>Apartments are required to have the following minimum internal areas:</p> <table border="1"> <thead> <tr> <th>Apartment type</th> <th>Minimum internal area</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>35m<sup>2</sup></td> </tr> <tr> <td>1 bedroom</td> <td>50m<sup>2</sup></td> </tr> <tr> <td>2 bedroom</td> <td>70m<sup>2</sup></td> </tr> <tr> <td>3 bedroom</td> <td>90m<sup>2</sup></td> </tr> </tbody> </table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p>	Apartment type	Minimum internal area	Studio	35m <sup>2</sup>	1 bedroom	50m <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>	Apartments have compliant floor area.		
Apartment type	Minimum internal area													
Studio	35m <sup>2</sup>													
1 bedroom	50m <sup>2</sup>													
2 bedroom	70m <sup>2</sup>													
3 bedroom	90m <sup>2</sup>													

	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.	Compliant, two top floor bedroom have skylight only, however acceptable.															
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Bedrooms do not exceed this depth.															
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Compliant															
	Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space).	Compliant															
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	Compliant															
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> <li>• 3.6m for studio and 1 bedroom apartments</li> <li>• 4m for 2 and 3 bedroom apartments</li> </ul>	Compliant - living room widths achieve 3.6m minimum width.															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	N/A - No cross over or cross through apartments.															
<b>Private Open Space and Balconies</b>	All apartments are required to have primary balconies as follows: <table border="1" data-bbox="438 1321 1061 1579"> <thead> <tr> <th>Dwelling Type</th> <th>Minimum Area</th> <th>Minimum Depth</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m<sup>2</sup></td> <td>-</td> </tr> <tr> <td>1 bedroom apartments</td> <td>8m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>2 bedroom apartments</td> <td>10m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>12m<sup>2</sup></td> <td>2.4m</td> </tr> </tbody> </table>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m <sup>2</sup>	-	1 bedroom apartments	8m <sup>2</sup>	2m	2 bedroom apartments	10m <sup>2</sup>	2m	3+ bedroom apartments	12m <sup>2</sup>	2.4m	Each apartment provides compliant balcony size.
	Dwelling Type	Minimum Area	Minimum Depth														
	Studio apartments	4m <sup>2</sup>	-														
1 bedroom apartments	8m <sup>2</sup>	2m															
2 bedroom apartments	10m <sup>2</sup>	2m															
3+ bedroom apartments	12m <sup>2</sup>	2.4m															
The minimum balcony depth to be counted as contributing to the balcony area is 1m																	
For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m <sup>2</sup> and a minimum depth of 3m.	N/A																
<b>Common Circulation and Spaces</b>	The maximum number of apartments off a circulation core on a single level is eight.	Two lift cores provided to service each level.															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A															
<b>Storage</b>	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	The proposal provided a compliant amount of															



	<table border="1"> <thead> <tr> <th>Dwelling Type</th> <th>Storage size volume</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m<sup>2</sup></td> </tr> <tr> <td>1 bedroom apartments</td> <td>6m<sup>2</sup></td> </tr> <tr> <td>2 bedroom apartments</td> <td>8m<sup>2</sup></td> </tr> <tr> <td>3+ bedroom apartments</td> <td>10m<sup>2</sup></td> </tr> </tbody> </table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling Type	Storage size volume	Studio apartments	4m <sup>2</sup>	1 bedroom apartments	6m <sup>2</sup>	2 bedroom apartments	8m <sup>2</sup>	3+ bedroom apartments	10m <sup>2</sup>	storage split between the unit and basement.
Dwelling Type	Storage size volume											
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<b>Acoustic Privacy</b>	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	No communal open space, mechanical equipment, plant rooms, driveways or garage doors within 3m of bedroom.										
<b>Noise and Pollution</b>	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	The application is accompanied by an acoustic report which demonstrates the internal noise levels are achieved in accordance with the SEPP (Infrastructure) requirements for development adjoining a classified road. The layout of the units are suitable to mitigate noise transmission between units.										
<b>Configuration</b>												
<b>Apartment Mix</b>	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Variety of apartments provided with 1, 2 and 3 bedroom mix provided.										
<b>Ground Floor Apartments</b>	Do the ground floor apartments deliver amenity and safety for their residents?	N/A										
<b>Facades</b>	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	The facade provides sufficient building articulation along the street frontages.										
<b>Roof Design</b>	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	Roof design does not provide any common open space area or sustainability measures. The roof pitch has been limited to minimise overall building height.										

<b>Landscape Design</b>	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Landscape plan has been submitted for planter boxes and street trees.																																			
<b>Planting on Structures</b>	<p>When planting on structures the following are recommended as minimum standards for a range of plant sizes:</p> <table border="1" data-bbox="424 524 1074 1473"> <thead> <tr> <th>Plant type</th> <th>Definition</th> <th>Soil Volume</th> <th>Soil Depth</th> <th>Soil Area</th> </tr> </thead> <tbody> <tr> <td>Large Trees</td> <td>12-18m high, up to 16m crown spread at maturity</td> <td>150m<sup>3</sup></td> <td>1,200mm</td> <td>10m x 10m or equivalent</td> </tr> <tr> <td>Medium Trees</td> <td>8-12m high, up to 8m crown spread at maturity</td> <td>35m<sup>3</sup></td> <td>1,000mm</td> <td>6m x 6m or equivalent</td> </tr> <tr> <td>Small trees</td> <td>6-8m high, up to 4m crown spread at maturity</td> <td>9m<sup>3</sup></td> <td>800mm</td> <td>3.5m x 3.5m or equivalent</td> </tr> <tr> <td>Shrubs</td> <td></td> <td></td> <td>500-600mm</td> <td></td> </tr> <tr> <td>Ground Cover</td> <td></td> <td></td> <td>300-450mm</td> <td></td> </tr> <tr> <td>Turf</td> <td></td> <td></td> <td>200mm</td> <td></td> </tr> </tbody> </table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m <sup>3</sup>	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m <sup>3</sup>	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m <sup>3</sup>	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		<p>The proposed development provides an internal planter box for the courtyard for a medium height tree of 1m soil depth.</p> <p>The planter boxes have a soil depth of 500mm.</p>
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Turf			200mm																																		
<b>Universal Design</b>	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features	The application is accompanied by a Access Report which demonstrates the development incorporates the Livable Housing Guideline's silver level universal design features as required by the control.																																			
<b>Adaptable Reuse</b>	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	Not applicable.																																			
<b>Mixed Use</b>	Can the development be accessed through public transport and does it positively contribute to the public domain?	The ground floor retail interface provides a positive contribution to the public domain. Retail is																																			

	Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	provided at the ground floor with no residential at the ground floor being shop-top housing.
<b>Awnings and Signage</b>	<p>Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.</p> <p>Signage must respond to the existing streetscape character and context.</p>	Awnings are provided to compliment the existing streetscape and provide opportunity for outdoor dining within the site boundaries. However, the applicant has not provided sufficient detail with regard to awning height along the street frontage. The application is recommended for refusal in this regard.
<b>Performance</b>		
<b>Energy Efficiency</b>	Have the requirements in the BASIX certificate been shown in the submitted plans?	Yes, BASIX certificate has been provided and plans show BASIX commitments where required.
<b>Water Management and Conservation</b>	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Council's development engineer has reviewed the proposal and raised concerns regarding details of the stormwater drainage for the development. These concerns remain unresolved through the amended design. See detailed comments elsewhere within this report.
<b>Waste Management</b>	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	An appropriate waste management plan has been submitted for the development.
<b>Building Maintenance</b>	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Yes, the building materials and finishes are suitable to ensure longevity.

## STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

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

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

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

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

Comment: The application is not recommended for refusal for any of the above reasons.

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

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

(3) To remove doubt:

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

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

Comment: The proposal does not achieve cross ventilation or solar access in accordance with the ADG guidelines. In this regard, the proposal fails the relevant design criteria for solar access and cross ventilation and is recommended for refusal based on this reason.

## **SEPP (Infrastructure) 2007**

### Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid. Ausgrid has advised there is not objections to the development application subject to the standard conditions of consent requiring minimum clearances to assets and work to be undertaken in accordance with the Ausgrid Network Standards and Safework NSW Codes of Practice.

#### Roads and Maritime Service (RMS)

#### **Clause 101 - Development with frontage to classified road states:**

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

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

#### Comment:

The development has been referred to Transport for NSW for comment and TfNSW has raised no objections to the development subject to the conditions outlined within their referral response. TfNSW has not raised concern regarding the safety and operation of the classified road. The land does not gain vehicular access from Condamine Street (classified road) and provides across from Summerville Place at the rear.

#### **Clause 102 - Impact of road noise or vibration on non-road development states:**

- (2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.*
- (3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—*
  - (a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,*
  - (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

#### Comment:

The application is accompanied by an acoustic report which demonstrates the proposed development will achieve the minimum noise criteria in accordance with Clause 102. Council's environmental health officer has reviewed the submitted acoustic report and is satisfied that the development will achieve the required noise criteria subject to compliance with the requirements of the acoustic report.

**Clause 104 and Schedule 3 of the SEPP** requires that the following development(s) are referred to the RMS as Traffic Generating Development:

<b>Purpose of Development</b>	<b>Size or Capacity</b> (Site with access to any road)	<b>Size of Capacity</b> (Site with access to classified road or to a road that connects to classified road if access is within 90m of connection, measured along alignment of connecting road)	<b>Applicable/ Not Applicable</b>
Apartment or residential flat building	300 or more dwellings	75 or more dwellings	Not applicable
Parking	200 or more motor vehicles	50 or more motor vehicles	Applicable, the development has 70 car spaces
Shops	2,000m <sup>2</sup>	500m <sup>2</sup>	Not applicable, 377sqm GFA

**Note:** Under Clause 104(2) of the SEPP, 'relevant size of capacity' is defined as meaning:

*“(2) (a) in relation to development on a site that has direct vehicular or pedestrian access to any road - the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3, or*

*(b) in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection - the size or capacity specified opposite that development in Column 3 of the Table to Schedule 3.”*

Comment:

The subject development gains vehicular access within 90m of a Classified Road and contains a car park with 70 car spaces. The application was therefore referred to the RMS who did not raise any objection to the proposal subject to their conditions.

**Warringah Local Environmental Plan 2011**

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

Principal Development Standards

<b>Standard</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation</b>	<b>Complies</b>

Height of Buildings:	11m	13.57m	23%	No
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### Compliance Assessment

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

### Detailed Assessment

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

##### Description of non-compliance:

Development standard:	Height of buildings
Requirement:	11m
Proposed:	13.77m
Percentage variation to requirement:	25%

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

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

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

(1) The objectives of this clause are as follows:  
 (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,  
 (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

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

##### Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

(b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'



s 1.3 of the EPA Act reads as follows:

### 1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

*The 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 scale of the development as viewed from 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. In this regard, I rely on the shadow diagrams at Attachment 1.  
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 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 unreasonable and unnecessary.*

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

*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.*

#### **Council's Comment on Applicant's Reasons**

Council has considered the written request put forward by the applicant and generally agree with the assertions put forward in the written request, in particular that the bulk and scale of the development not being inconsistent with developments within the B2 Local Centre Zone along Condamine Street and the proposal represents an appropriate visual outcome for the site, highly articulated as viewed from the surrounding land which will not result in a built form that is jarring or out of character in the Manly Vale Locality. The building height breach in itself is not considered to result in an unreasonable overlooking impact for the adjoining properties and the proposed development should improve visual overlooking to the western properties by way of increased building separation to the western boundary and not necessarily reduction in building height.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

A review of the site context and surrounding developments within the B2 Zoned Land along Condamine Street reveal that the proposed development is compatible with the height and scale of buildings within the vicinity of the site. When comparing the development to the northern adjoining building facing Condamine Street, the top of the parapet of the second floor is below the roof form of the building on 333 Condamine Street, with the third floor sufficiently setback to present as a recessed roof form as viewed from the street. When viewed from Somerville Place, the top of the parapet for the second floor is equal to the top of the roof of 333 Condamine Street, with the top floor recessed back between 2.5-4m providing sufficient visual relief resulting in the proposed development not being overly dominant when compared to the immediately adjoining building.

The development is considered to be compatible with the immediate adjoining property by virtue of the upper floor setbacks and compatible with other recent developments along Condamine Street, in particular recent developments to the south of the site which comprise of four storey buildings which is not uncommon in the context of Manly Vale. The highest point of the building is the centralised lift core which is not visible from the street level with the leading edge of the top floor roof obscuring views to the centre of the development. Although the leading edge of the roof form is non-compliant with building height, this portion of the development is sufficiently setback to mitigate bulk and scale and result in an outcome that is not visually jarring as viewed from the

public domain or residential properties.

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

Comment:

The development is well articulated across all floors to break up the form and scale of the building when viewed from the public domain with the top floor sufficiently setback to the residential zoned land to the west to mitigate bulk and scale, with the remainder of the development well articulated throughout to break up the vertical mass of the building as viewed from adjoining properties. The form and scale of the development is reasonable within the site context given the compatibility with recently constructed developments along Condamine Street which include four storey buildings. In this regard, the development has been designed to minimise visual impacts. As viewed from Somerville Place, the height non-compliance is between 0.25m and 1.2m along the leading edge of the roof form, with the south-western corner of the building compliant with height. The top floor of this building is well articulated along this frontage and the largest exceedence of the building height being centrally located within the site not readily visible from Somerville Place or the immediately adjoining property.

The development does not result in a view impact for surrounding properties and compliant solar access is maintained for adjoining properties in accordance with the Warringah DCP.

The proposal has incorporated design elements that assist in the reasonable retention of privacy including highlight windows, sliding screens upon balconies, planter boxes to limit direct downward views and landscaping. The building by virtue of its height does not directly result in an unreasonable privacy impact and the non-complying element of the building (Level 3) along Somerville Place has height breach between 0.25m and 1.2m and this element is setback more than 6m in accordance with the ADG. As a side, the building separation for levels 1 and 2 should be increased to 6m from the residential boundary to afford a better outcome with regards to visual overlooking. However, level 1 and 2 are compliant with regards to building height and the increase in building separation to these elements is considered a separate matter to the maximum building height, addressed through the Apartment Design Guidelines requirements. Notwithstanding this, the actual height of the development is acceptable with regards to visual impact and privacy.

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

Comment:

The site is not located in a particularly sensitive area with regards to the scenic bushland or coastal environments. The proposal is satisfactory in this regard.

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

Comment:

As discussed in detail throughout this report, the proposed development is well articulated and the highest point of the building centralised within the site around the lift core and will not be visible from the road frontages. The top floor roof is appropriately setback to limit the overall bulk and scale of the development as viewed from the road and public places. The development is of similar size and scale to a number of four storey developments along Comdamine Street and is

considered contextually appropriate in the B2 Local Centre Zone. There are not parks, reserves or community facilities within the vicinity of the site which would be impacted by the development.

### Zone objectives

The underlying objectives of the B2 Local Centre zone are:

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

Comment: The development is a shop top housing development which provides opportunity for retail upon the ground floor to service the needs of the community. These retail spaces are capable of various uses from cafes, retail and office spaces and provide opportunity for local business uses.

- *To encourage employment opportunities in accessible locations.*

Comment: The site is well serviced by public transport including the B-Line and provides ground floor retail spaces which can be used for a variety of purposes into the future.

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

Comment: The proposed development is within walking distance to the Manly Vale B-line bus service. The development improves the pedestrian interface along Condamine Street and Sunshine Street by activating the retail frontage which will encourage walking and cycling to the site.

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

Comment: The retail component of the development provides an activated street frontage which incorporate outdoor seating areas to attract customers to the site through the various retail uses permissible at the site. The pedestrian entries to the site are well defined and the presentation to the corner of Condamine Street/Sunshine Street provides an attractive and interesting space by virtue of the architectural form.

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

Comment: The development is considered to be of a scale and form that relates to the neighbouring sites within the B2 Zone. Levels 1 and 2 of the development provide a consistent presentation with the three storey built form on 333 Condamine Street with the top floor of the development sufficiently setback to Condamine Street. Similarly, the development has provided the same upper floor setbacks to the western boundary to relate favorably to the R2 zoned land. There is no distinct landscape character along Condamine Street/Sunshine Street that is to be replicated through the development. However, the proposal provides street trees at each road frontage to soft the built form and provide landscape treatment to the public domain.

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

Comment: The proposed building has included design features such as highlight windows, screening to balconies and landscape treatment to minimise visual overlooking for the adjoining property to the west. The building by virtue of its height does not directly result in an unreasonable privacy impact, however the building separation to the western boundary should be increased to afford a better outcome with

regards to visual overlooking. Notwithstanding this, the actual height of the development is acceptable with regards to visual overlooking and privacy. The development has demonstrated solar access is retained in accordance with the DCP controls for the adjoining residential zoned land. The development does not result in a unreasonable view impact for any properties.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

**6.2 Earthworks**

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

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

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

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

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

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

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

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

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

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

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during

excavation/construction.

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

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

*(f) the likelihood of disturbing relics*

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

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

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

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of this particular control.

#### **6.4 Development on sloping land**

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

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

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective and therefore, Council is satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

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

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective.

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

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of this particular control.

#### **Warringah Development Control Plan**

##### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
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B2 Number of storeys	3	4	33%	No
B5 Side Boundary Setbacks	Merit - North	0m	N/A	Yes
B7 Front Boundary Setbacks	<u>Condamine Street</u>			No
	Ground Floor 0m	0m	N/A	
	First Floor 0m	0m	N/A	
	Second floor 5m	0m	100%	
	Third Floor 5m	3.4m - 4m	32%	
	<u>Sunshine Street</u>			
	Ground Floor 0m	0m	N/A	
	First Floor 0m	0m	N/A	
	Second floor 5m	0m	100%	
	Third Floor 5m	2.5m-4m	50%	
	<u>Somerville Place</u>			
	Ground Floor 0m	0m	N/A	
	First Floor 0m	0m	N/A	
Second floor 5m	0m	100%		
Third Floor 5m	2.5m-4m	50%		
B10 Rear Boundary Setbacks	Merit	No Rear setback	N/A	N/A

**\*Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example:  $38/40 \times 100 = 95$  then  $100 - 95 = 5\%$  variation)

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B2 Number of Storeys	No	Yes
B6 Merit Assessment of Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	Yes	Yes
C4 Stormwater	No	No
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	No	No
C9 Waste Management	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
D23 Signs	Yes	Yes
E10 Landslip Risk	Yes	Yes
F1 Local and Neighbourhood Centres	Yes	Yes

### Detailed Assessment

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

##### Description of non-compliance

The DCP requires that development upon the site is three (3) stories. The proposed development consists of a four storey shop top housing development which is inconsistent with the maximum number of stories as per the DCP. A review of the surrounding context finds there are number of existing and recently approved four storey shop top housing developments along Condamine Street and in the Manly Vale Locality, in particular to the south of the subject site. Therefore, the proposal is reflective of the dominant height and scale of the Condamine B2 zoned area. A detailed assessment of the overall building height is undertaken under Clause 4.6 earlier within this report.

##### Merit consideration:

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

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

##### Comment:

A detailed review has been undertaken regarding the surrounding development along Condamine Street in respect to shop top housing within the B2 Zone. The proposed building is not inconsistent with other four storey development and will largely present as a three storey development with a roof form above and the fourth level stepped in. Council is satisfied that the fourth floor has been recessed a sufficient amount to result in a building form that is not inconsistent with the surrounding developments in the vicinity of the site and will not visually dominate the surrounding buildings.

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

Comment:

The fourth level has been stepped in a sufficient amount to largely present as a three storey built form with roof above as viewed from the street level at Condamine Street, Sunshine Street, Sommerville Place and the adjoining residential property to the west. The development provides a high level of building articulation with a variety of building materials, facade finishes, projecting and recessing features to mitigate bulk and scale. The western facade provides dark facade finishes and is stepped in to allow opportunity for the establishment of two street trees to soften the built form in the centre of the site.

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

Comment:

The proposed development does not result in a view impact for surrounding properties or public places.

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

Comment:

As discussed in detail under Clause D8 Privacy later within this report, the building integrated design features to result in a reasonable level of privacy to be maintained for the adjoining residential properties. However, the building separation to the western boundary should be increased to result in a satisfactory outcome.

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

Comment:

The development provides a low pitched roof to limit the overall building height and scale. The vast majority of the roof will not be visible from the public domain, with the only element of the roof being visible is the overhang for the upper floor balconies.

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

Comment:

The proposed development breaches the 11m Building Height under the LEP. This is discussed in detail under Clause 4.6 within this assessment report. The applicant submits that there is sufficient environmental planning grounds to warrant a building height in excess of 11m and therefore permit a fourth storey. It is noted portions of the fourth level walls are within the maximum building height and some portions encroaching a minor amount. The centralised portion of the roof is the element presenting the greatest breach of the building height caused by the fourth however this central portion of roof is not visible from the public domain. The Clause 4.6 variation request is considered well founded to allow a breach of the 11m height limit (for reasons outlined under the assessment of the Clause 4.6 variation in this report) and therefore a fourth storey development is acceptable in this particular circumstance.

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

with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that a variation to the control is suitable in this particular circumstance.

## **B7 Front Boundary Setbacks**

### Description of non-compliance

The DCP allows a zero setback for the ground floor and first floor of the development fronting Condamine Street, Sunshine Street and Somerville Place. The proposal is compliant in this regard providing a zero setback.

The DCP requires the second floor to be setback 5m fronting Condamine Street, Sunshine Street and Somerville Place. The development provides a setback to 0m-1.2m Condamine Street and 0m Sunshine Street for the second floor. The setback to Somerville Place on the second floor is between 0m-1.5m.

The DCP requires the third floor is setback 5m fronting Condamine Street, Sunshine Street and Somerville Place. The development provides a setback of 3.4m-4m to Condamine Street and 2.5m-4m to Sunshine Street and Somerville place.

As discussed in detail elsewhere within this report, the overall development should provide an increased building separation to the R2 Zoned Land to the west to allow for the widening of Somerville Lane and assist in mitigated visual overlooking for the residential property to the west. The remainder of the setbacks to Condermine Street and Sunshine Street are acceptable as discussed below.

A review of recently approved and some recently constructed shop top housing developments along Condamine Street show that a zero setback to the second floor has been acceptable in the Manly Vale Locality, along with a reduced third floor setback. Therefore the proposed development is not inconsistent with development within the context of Manly Vale and Condamine Street, in particular recent developments to the south.

Rather than adopting a consistent setback across Levels 1 and 2, the facade along Condamine Street and Somerville Lane adopt varied setbacks to the across both levels which provides a building form that is well articulated and actively breaks down the scale and horizontal massing of the building as viewed from the public domain.

The third level setback has been designed to be obscured from the street view with the bulk of the facade setback a sufficient amount to be read as a roof form as viewed from the street. The proposed development has been articulated a sufficient amount and provides a high level of architectural interest to the street facades, is not inconsistent with the setbacks of nearby developments on Condamine Street and does not result in any direct unreasonable amenity impacts.

The development achieves the outcomes of the control as discussed below.

### Merit consideration:

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

- *To create a sense of openness.*

Comment:

This objective is not particularly relevant to the context of the site, with the ground floor and first floor of the building permitted at a zero setback, therefore removing any sense of openness at street level. The top floor is stepped in a sufficient amount to mitigate visual bulk and scale and is considered appropriate for the context of the site.

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

Comment:

The front building alignment along Condamine is consistent with the ground and first floor setback to the adjoining site to the north, with the third level sitting slightly below the zero setback concrete roof form of the building on 333 Condamine Street. The building is well articulated with varied setbacks throughout the facade along the Condamine Street frontage to result in an outcome that is visually interesting with projecting elements and a variety of building materials to break up the form and massing of the building.

The development proposes street tree planting along Condamine Street and Sunshine Street. There is no particular landscape element at present along Condamine Street which is to be replicated and the proposed development providing for street trees improves the current situation.

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

Comment:

The development of the subject site is considered to enhance the streetscape along Condamine Street and Sunshine Street which at present is a relatively dilapidated set of shops. The development will allow opportunity for new activated retail shops at the ground floor and provide for a well articulated built form along the streetscape which is consistent with the character of the surrounding B2 Zoned Land.

- *To achieve reasonable view sharing.*

Comment:

The development does not result in a view impact from public or private places.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of this particular control. Accordingly, this assessment finds that a variation to the control is suitable in this particular circumstance.

## **C2 Traffic, Access and Safety**

Council's traffic team and engineering team have reviewed the proposal with regard to the ability to enable the widening of Somerville Place. Detailed comments are provided within the traffic and engineering referral response earlier within this report. The proposal is not supported due to the unresolved traffic and pedestrian safety issues resulting from the development not providing any opportunity for widening of Somerville Lane as requested by Council.

### C3 Parking Facilities

The development provides the following on-site car parking which is compliant with the DCP

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Retail	1 space per 16.4sqm of GFA	23	23	0
Residential				
4 x 1 bedroom	1 space per unit	4		
23 x 2 bedroom	1.2 space per unit	28		
3 x 3 bedroom	1.5 space per unit	6		
= 31 total units		Total = 38		+2
Visitor		7	Total = 40	0
	1 space per 5 units		7	
<b>Total</b>		<b>68</b>	<b>70</b>	<b>2 surplus</b>

### C4 Stormwater

Council's engineers reviewed the original proposed development with regards to stormwater. Council's development engineers were not satisfied with the submitted stormwater plans and requested that additional information be provided to address the issues outlined in their referral response (see development engineering comments earlier in this report).

In response, the applicant submitted revised stormwater plans with the amended architectural plans. However, the revised stormwater plans and architectural plans included the removal of land dedication and laneway widening of Somerville Plaec and the stormwater plans accounted for this new configuration.

Council's development engineers are not satisfied with the amended stormwater plans submitted and are not satisfied with the removal of the laneway widening for the proposal. Therefore, Council's engineers do not have a stormwater plan and additional details that addresses the original issues raised and the current stormwater plans reflect the reduced laneway which is not supported. Therefore, Council's engineers cannot support the application with regards to stormwater. The application is recommended for refusal in this regard.

### C8 Demolition and Construction

Council's traffic engineer has raised issues with the plans demonstrating waste storage and construction storage within the road reserve along Sunshine Street. See detailed comments in the traffic referral section of this report. It is considered that if consent was granted, this issue could be resolved by way of a condition requiring the submission of a construction management plan and construction traffic management plan to Council's satisfaction prior to the issue of a construction certificate.

## **D6 Access to Sunlight**

Solar access for the individual units within the development are considered against the requirements of the SEPP (Affordable Rental Housing) 2009 earlier within this report.

The impact to the adjoining residential property to the west is considered against the requirements of the DCP which requires 50% of the private open space receiving a minimum of 3 hours solar access on 21 June. The application has been submitted with shadow diagrams showing the relationship between the proposed development and adjoining residential property to the west. The proposal demonstrates that a minimum of 3 hours to 50% of the private open space will be received on the 21 June. This is received during the afternoon period with the proposed development having an impact at 9am with access to sunlight improving throughout the day due to the site orientation.

## **D8 Privacy**

The proposed development has been assessed with regards to the impact upon the privacy for the residential dwellings to the west of the site.

The present built form on 321-331 Condamine Street is single storey where directly adjoining the private open space of the western adjoining property and has a generous setback resulting in a current situation that presents minimal opportunity for overlooking.

The proposed development will introduce three levels of residential units with a western facing aspect that require windows for light and ventilation and balconies to provide private open space. Whilst opportunity for visual overlooking has increased from the existing situation this is not unexpected given the B2 Zoning permits shop top housing on this site and is not dissimilar to the style of development approved along the western side of Condamine Street, all of which are separated by Somerville place to R2 Zoned Land to the west.

To mitigate direct visual overlooking, the following measures have been applied to the western facade of the development:

- All windows where facing directly to the adjoining property's building facade or rear yard are provided with a 1.5m sill height to mitigate direct downward views whilst allowing adequate light and ventilation into the units.
- All balconies upon level 1 and 2 are provided with external sliding screens for the full height of the balcony, with the first 1/3 of the screen fixed and the remainder sliding to provide opportunity for privacy between dwellings.
- The balconies upon the central units 2, 3, 13 and 14 upon Level 1 and 2 facing the rear yard of 2 Sunshine Street are indented from the property boundary 1.5m to allow the establishment of a canopy tree to obscure views as a further privacy measure into the future.
- The balconies of Unit 1, 4, 12 and 15 upon Level 1 and 2 look over the dwelling roof and garage roof of 2 Sunshine Street and are not directly orientated towards the private open space.
- The western facade of the building upon level 3 is provided with an additional setback to prevent direct downward views and planter boxes are used as a way to prevent occupants standing on the edge of the balcony (preventing downward views) and also allow for the establishment of landscape screening.

Whilst the above measures are considered to assist in visual overlooking and privacy, the building has a 4.6m separation to the Western Boundary of the R2 Zoned land for Level 1 and 2. As discussed elsewhere within this report, Council require that the development provide opportunity for the widening

of Somerville Place by way of setting the development back a minimum of 6m from 2 Sunshine Street. Should the development be setback a minimum of 6m to provide opportunity for widening of the laneway, this will also provide an increased building separation to the R2 Zoned land and achieve an improved outcome with regard to visual overlooking and privacy. The requirement for 6m of building separation is also consistent with the Apartment Design Guidelines and this should be achieved for the development.

Therefore, the building separation of 4.6m to level 1 and 2 to the Western Boundary does not result in a satisfactory outcome with regard to visual overlooking and privacy. The development should provide an increased building separation in accordance with the Apartment Design Guidelines. The proposal is not supported in the current form and is recommended for refusal in this regard.

### **F1 Local and Neighbourhood Centres**

The proposal is assessed against the controls contained within F1 Local and Neighbourhood centres 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.*

Comment: The building provides a high level of architectural interest at the street frontage that is inviting for the public. The proposal is compliant in this regard.

*2. The minimum floor to ceiling height for buildings is to be 3.0 metres for ground floor levels and 2.7 metres for upper storeys.*

Comment: Retail tenancies 3 and 4 do not achieve this requirement, with a floor to ceiling height of 2.7m provided only.

*3. The design and arrangement of buildings are to recognise and preserve existing significant public views.*

Comment: The proposal does not impact significant public views.

*4. Development that adjoins residential land is not to reduce amenity enjoyed by adjoining residents.*

Comment: The development at present provides a 4.7m setback to the western boundary which does not result in a satisfactory outcome with regards to visual overlooking and privacy. The proposal is unacceptable due to this reduced setback.

*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.*

Comment: The development is generally well articulated with the top floor setback a sufficient amount to provide a transition to the surrounding lands. However, the setback to the western boundary is required to be increased to provide a better transition to the adjoining residential zoned land and increase visual privacy.

*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.*



Comment: This is discussed in detail elsewhere within the report. The building is considered to overall be designed with articulated facades that reduce bulk and scale.

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

Comment: The details provided with the application demonstrate how the above features are incorporated into the plans.

8. Footpath awnings should be designed to allow for street tree planting.

Comment: Sufficient space has been provided for the awnings to allow street tree planting.

9. Awnings should be consistent in design, materials, scale and overhang with adjacent retail developments.

Comment: The awnings are generally acceptable, however the applicant has not provided clear information of the minimum required 2.7m clearance. The proposal is insufficient in this regard.

10. Awnings should have an adequate clearance from the kerb.

Comment: The development has been referred to Transport for NSW for comment who have not raised any concerns with the awning clearance from Condamine Street. The awning is sufficiently setback from the kerb along Sunshine street to not interfere with operation of the road.

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

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

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **Development Contributions**

Development contributions are applicable to the subject development in accordance with the Northern Beaches Section 7.12 Contributions Plan. Development contributions totaling \$112,790.07 are applicable to the subject development (1% cost of works). Should consent be granted, a condition is to be imposed requiring contributions with the required amount in accordance with the Northern Beaches Section 7.12 Contributions Plan.

## **CONCLUSION**

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

Council is satisfied that:

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

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

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

In summary, a detailed assessment has been required for the following specific issues:

- The requirement for the proposed development to allow for the widening of Somerville Place, which the proposed development does not allow for creating a traffic and safety concern.
- Compliance against the ADG with regards to solar access and cross ventilation, which the proposed development does not achieve compliance as discussed in this report.
- The non-compliance with the ADG regarding building separation to the R2 Zoned land to the west. The reduced building separation resulting in an unsatisfactory outcome regards visual overlooking to the west.
- The floor to ceiling heights for retail space 4 and the residential lobby facing Sunshine Street.
- The assessment of the building height as required by Clause 4.6 Warringah LEP, the number of stories and front building setbacks as specified by the Warringah DCP.

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



## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2020/0824 for the Demolition works and construction of a Shop Top Housing Development and strata subdivision on land at Lot 21 DP 11320,323 - 325 Condamine Street, MANLY VALE, Lot 22 DP 11320,323 - 325 Condamine Street, MANLY VALE, Lot 123 DP 737259,327 - 329 Condamine Street, MANLY VALE, Lot 25 DP 11320,331 Condamine Street, MANLY VALE, Lot 20 DP 11320,321 Condamine Street, MANLY VALE, for the reasons outlined as follows:

1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy 65 - Design Quality of Residential Flat Development.

The development does not provide a sufficient level of solar access and cross ventilation to the residential units within the development as required by SEPP 65.

The development provides inadequate building separation to the residential zoned land to the west as required by SEPP 65.

The development does not provide adequate floor to ceiling heights for the retail tenancies 3 and 4 and the residential lobby accessed from Sunshine Street as required by SEPP 65.

2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C2 Traffic, Access and Safety of the Warringah Development Control Plan. The development does not provide opportunity for the widening of Somerville Place due to the location of the building. The development does not result in a satisfactory outcome with regards to pedestrian and vehicle safety along Somerville Place as there is no opportunity provided for laneway widening.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C4 Stormwater of the Warringah Development Control Plan.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D8 Privacy of the Warringah Development Control Plan. In this regard, the level 1 and 2 apartments are not sufficiently setback from the R2 Zoned Land to the west of the site to limit direct overlooking of the residential property to the west.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause F1 local and Neighbourhood Centres of the Warringah Development Control Plan.