

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0114
---------------------	-------------

Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot A DP 39108, 267 Condamine Street MANLY VALE NSW 2093 Lot B DP 39108, 267 Condamine Street MANLY VALE NSW 2093
Proposed Development:	Demolition of the existing building and construction of a shop top housing development, comprising 27 dwellings, 4 retail tenancies and carparking
Zoning:	Warringah LEP2011 - Land zoned B2 Local Centre Warringah LEP2011 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Manly Vale Developments No 3 Pty Ltd
Applicant:	Manly Vale Developments No 3 Pty Ltd

Application lodged:	11/02/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	27/05/2019 to 10/06/2019
Advertised:	23/02/2019
Submissions Received:	1
Recommendation:	Approval

Estimated Cost of Works:	\$ 9,299,945.00
--------------------------	-----------------

EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of development application DA2019/0114 from Manly Vale Developments No 3 Pty Ltd for the demolition of existing buildings and the construction of a shop top housing development, comprising 27 apartments, 4 retail tenancies and car parking at 267 Condamine Street, Manly Vale.

The subject site is zoned B2 Local Centre under the provisions of *Warringah Local Environmental Plan 2011* (WLEP 2011), and the proposed development is permissible with consent.

The public notification of the application resulted in two submissions in objection to the proposal on behalf of one adjoining property owner. The concerns raised in these submissions have been addressed in the assessment report, and overall, there were no matters raised that would warrant the refusal of the application in the public's interest.

The proposed development is a high quality architectural response to the context of the site, compatible with the height, bulk and scale of surrounding built form. The resultant development will provide a high level of amenity for future occupants, and will not result in any adverse impacts upon the character of the streetscape or the amenity of adjoining properties. As such, the proposal has been found to be consistent with the principles of *State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development* (SEPP 65), and the relevant objectives of the *Apartment Design Guide*, WLEP 2011 and *Warringah Development Control Plan 2011* (WDCP 2011).

The proposal is reliant upon a variation to the maximum building height development standard prescribed by clause 4.3 of WLEP 2011, with a maximum variation of 33%. The applicant's written request to vary this standard satisfactorily addresses the matters required, and overall, the consent authority can be satisfied of the relevant matters of clause 4.6 of WLEP 2011.

The application seeks consent for a four-storey shop top housing development that is subject to the provisions of SEPP 65 and involves a variation to the building height development standard greater than 10%. As such, the application is referred to the Northern Beaches Local Planning Panel for determination in accordance with the direction issued by the Minister for Planning on 23 February 2018.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - Zone B2 Local Centre
Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - B2 Number of Storeys

Warringah Development Control Plan - B6 Merit Assessment of Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - D2 Private Open Space
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	<p>Lot A DP 39108 , 267 Condamine Street MANLY VALE NSW 2093</p> <p>Lot B DP 39108 , 267 Condamine Street MANLY VALE NSW 2093</p>
Detailed Site Description:	<p>The site has a 28.397m wide frontage to Condamine Street, a 34.45m wide frontage to Kenneth Road, and a total area of 1075.3m². The site currently comprises a one and two storey commercial premises and a number of outbuildings, with vehicular access and perpendicular parking along the Kenneth Road frontage. The site experiences a fall of approximately 4m from the western side boundary down towards the Condamine Street frontage, with a slope of approximately 12%. The site is surrounded by a variety of different land uses and buildings of varied age and character, with a number of recent development approvals under construction or yet to be acted upon.</p> <p>Condamine Street is a seven lane classified road, with bus lanes and intermittent parking restrictions on both sides of the street. The Condamine Street road reserve immediately adjacent to the site comprises a narrow footpath, with no street trees or overhead infrastructure. Kenneth Road is a three lane local road, that lacks formal kerb and guttering for the majority of the frontage of the site. Traffic lights control the intersection of Condamine Street and Kenneth Road, with signalised pedestrian crossings on the western, northern and eastern sides of the intersection.</p>

Map:



SITE HISTORY

On 14 August 2018, a prelodgement meeting was held between Council staff and the applicant to discuss a four storey shoptop housing development at the subject site, similar to that now proposed. The prelodgement minutes confirmed that Council would be supportive of the "substantial height and storey non-compliance", subject to refinements, including the reduction and centralisation of the area of the top floor. The proposed development is generally consistent with this advice.

On 25 September 2018, development application DA2018/1579 was lodged with Council.

On 23 November 2018, development application DA2018/1579 was withdrawn following concerns raised by Council in relation to:

- Building height non-compliance
- Front setback non-compliance
- Side setbacks
- Accessibility
- Works in the public road reserve
- ADG non-compliance

On 11 February 2019, the subject development application was lodged with Council.

On 18 April 2019, amendments were requested by Council to address concerns relating to:

- vehicular access, noting that RMS did not support the location of the driveway
- design of the retail frontage
- size of the upper floor
- ceiling heights at the ground floor
- solar access

On 14 May 2019, Council received amended plans to address concerns raised by Council. Most notably, the amended plans demonstrate the relocation of the access driveway, further to the west on Kenneth Road.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the demolition of all existing structures and the construction of a four storey shop top housing development over two levels of basement car parking. Specifically, the application comprises:

- 5 x Studio apartments
- 6 x 1 Bedroom apartments
- 16 x 2 Bedroom apartments
- 4 x Retail tenancies, ranging in size from 42m² to 105m²
- 20 x Retail parking spaces, inclusive of 1 space for people with disabilities
- 6 x Residential visitor parking spaces, inclusive of 1 space for people with disabilities and a dedicated car wash bay
- 31 x Residential parking spaces, inclusive of 6 spaces for people with disabilities
- 33 x Bicycle racks
- 1 x On-street loading bay in Kenneth Road

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	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	WDGP 2011 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p>

Section 4.15 Matters for Consideration'	Comments
	<p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the WDCP 2011 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:

Name:	Address:
Tomasy Pty Ltd	1073 Pittwater Road COLLAROY NSW 2097

Two submissions were received on behalf of the owner of the adjoining properties at 265 Condamine Street and 1 Kenneth Road in objection to the proposed development; one in response to the notification of the original proposal in February 2019, and a second in response to the amended proposal in June 2019. In accordance with Council's notification policy prescribed by clause A.7 of WDCP 2011, all submissions received on behalf of the one property will be considered as one submission. The matters raised on behalf of the adjoining property owner are considered as follows:

- **Permissibly**

Comment: The submissions raise concern that the proposed development is not consistent with the definition of shop top housing as defined by WLEP 2011, and as such, the development is prohibited on the subject site. Shop top housing is defined by WLEP 2011, as follows:

shop top housing means one or more dwellings located above ground floor retail premises or business premises.

The submission makes reference to the decision of the NSW LEC in *Hrsto v Canterbury City Council (No 2) [2014] NSW LEC 121*, which provides clarity on the definition of shop top housing development, as follows:

[33] ... a dwelling must be in the same building as the ground floor retail premises or business premises and on a floor of that building that is at a level higher than the top most part of the ground floor retail premises or business premises in order to be characterised as "shop top housing" as defined.

[34] Residential development that has a floor level that is lower than the top most part of ground floor retail premises or business premises could not be properly characterised as "shop top housing".

[35] The Respondent accepts that dwellings do not need to be directly or immediately above ground floor retail premises or business premises in order to be characterised as "shop top housing". If it was intended that "shop top housing" be limited to dwellings that are directly or immediately above ground floor retail premises or business premises it is expected that those words would have been included in the definition of the term 'shop top housing'.

[36] The Respondent contends that dwellings must be in the same building as the ground floor retail premises or business premises for the purposes of the term "shop top housing". However, the Respondent accepts that a broad interpretation of the word "above" in the definition should be given which would suggest that the dwellings need only be at a floor level that is higher than the top of the ground floor retail or business premises and do not need to be contained in an envelope on the higher floor level that would be intersected by a line drawn vertically from within the envelope of the ground floor retail or business premises.

The submission contends that, with a finished floor level (FFL) of 15.0m AHD, the western-most Level 1 residential apartments (Apartments 1, 2 and 3) are not at a level higher than the top most part of the ground floor retail premises at 15.5m AHD (being the FFL of the residential level above the eastern ground floor retail). The submission states that to achieve compliance with the shop top housing definition, the FFLs of the western-most apartments will need to be raised by 500mm.

This assertion is not supported for a number of reasons. Firstly, is not considered appropriate to identify the 'top most part of the ground floor retail premises' as the FFL of the residential level above. This incorrectly includes any common service cavities and structural elements as being solely related to the ground floor retail use. Secondly, as shown in Section C (DA-12 revision J), the western-most apartments are above the upper most level of Retail 4, with an internal ceiling height of 14.7m AHD (300mm below the FFL of the residential apartments above). Thirdly, Section C also clearly demonstrates the inclusion of a dropped ceiling within the eastern most retail spaces at 14.9m AHD, 100mm below the FFL of the western-most Level 1 apartments. This dropped ceiling is designed to accommodate a variety of services for various aspects of the development, and is not solely associated with the ground floor retail use. To avoid concerns that the ceiling cavity space will be solely associated with the ground floor retail space, conditions of consent are recommended to ensure the construction of the dropped ceiling at 14.9m AHD in Retail 1-3, and to identify the cavity as common property.

All residential apartments are on a floor of the proposed building that is at a level higher than the top most part of the ground floor retail premises, and as such, the proposal is consistent with the shop top housing definition and permissible with consent within the B2 Local Centre zone.

- **Building height**

Comment: The submission raises objection to the height of the proposed development, in particular, the visual impact of the upper most floor as seen from Condamine Street. The submission seems to generally accept the four storey character of development throughout the Manly Vale B2 zone, but raises concerns that the upper most floor will be seen as a fifth storey as viewed from Condamine Street. The proposed upper level is setback 18m from the Condamine Street frontage, and will be generally screened from view by the lower level roof form and proposed roof planters. The upper level is also setback 10m from the Kenneth Road frontage, with a three-four storey dominant facade presenting to the street.

The applicant has provided a number of visual representations of the development as seen from a variety of view points along Condamine Street and Kenneth Road. From the majority of vantage points, the proposed upper floor is not readily visible. It is acknowledged that the upper most level will be visible from upslope along Kenneth Road, however, from this vantage point, the floor space will have the appearance of a fourth storey, consistent with the scale of other nearby and surrounding development. Overall, the upper most floor is not considered to be overly dominant or incompatible with the streetscape.

The reasonableness of the height of the development is discussed in further detail with respect to clauses 4.3 and 4.6 of WLEP 2011.

- **Height and Bulk Planning Principle**

Comment: The submission received raises objection to the height and bulk of the proposed development, and in accordance with the Height and Bulk Planning Principle developed by the NSW LEC in the matter of *Veloshin v Randwick Council [2017] NSWLEC 428*, deems the height and bulk of the development to be unacceptable. As discussed in further detail with regard to clauses 4.3 and 4.6 of WLEP 2011 and clause D9 of WDCP 2011, the height and bulk of the proposal is considered to be acceptable in the context of the site.

- **Floor to ceiling heights**

Comment: Non-compliance with the minimum floor to ceiling heights of retail spaces prescribed

by the ADG is highlighted in the submission received on behalf of the adjoining property owner. The submission suggests that strict compliance must be enforced, which would result in further increases to the non-compliant building height. As discussed with regard to Objective 4C of the ADG, the ceiling heights of the proposed retail spaces are considered to be acceptable.

- **Number of storeys**

Comment: The submission received also highlights non-compliance with the three storey limit prescribed by WDCP 2011. As acknowledged in the submission itself, the predominant character of development in the area is four storeys, and as discussed with regards to clause B2 of WDCP 2011, the four storey nature of the proposal is considered to be acceptable.

- **Overdevelopment**

Comment: The submission concludes that the combined effect of all proposed areas of non-compliance results in the overdevelopment of the site. The proposal is a well-articulated and high-quality architectural response to the context of the site, that will be a positive contribution to the streetscape. The proposal is not considered result in a building that would be perceived as an overdevelopment of the site.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Approval, with conditions.</p> <p>The application proposes four (4) residential levels that are located above ground floor level retail tenancies, with two (2) levels of basement car parking located under. The building proposes twenty seven (27) sole occupancy units. Vehicular and pedestrian access is provided to the building from Kenneth Street.</p> <p>No objections subject to conditions to ensure compliance with the National Construction Code.</p>
Landscape Officer	<p>Approval, with conditions.</p> <p>The plans indicate internal courtyards and landscape works in the road reserve on Kenneth Road. No objections are raised to the works as indicated in the plans with regard to landscape issues, subject to conditions.</p>
NECC (Development Engineering)	<p>Approval, with conditions.</p> <p><u>Overland Flow:</u></p> <p>The Application relies upon an Overland Flow Study prepared by Barrenjoey Consulting Engineers, job number 180803, dated September 2018, previously submitted for DA2018/1579. Please ensure this document is linked to the current Application.</p> <p><u>External Works:</u></p>

Internal Referral Body	Comments
	<p>Civil works within Kenneth Road and Condamine Street shall be the subject of a Roads Act Approval.</p> <p>No objections are raised to the proposed development, subject to conditions.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>Approval, with conditions.</p> <p>The property at 267-269 Condamine St, Balgowlah is tagged as being within the Medium Flood Risk Precinct. However it is only a very tiny part of the property, less than 1m inside the property boundary in the south-east corner, which is affected. The flood affectation is from overland flow flowing south along Condamine St.</p> <p>The entrance to the basement car park is on Kenneth Rd, outside of the PMF extent, and there are no entrances into the building below the FPL.</p> <p>Based on the HECRAS analysis in the Flood Management Report by Barrenjoey Consulting Engineers, the basement entry driveway will crest above the overland flow travelling down Kenneth Rd.</p> <p>There are no flood related objections to the proposed development.</p>
Strategic and Place Planning (Urban Design)	<p>Approval, no conditions.</p> <p><u>Original comments (28.03.2019):</u> The proposal should reconsider the following:</p> <ol style="list-style-type: none"> 1. The building height control of 11m has been breached in multiple areas by up to 2.6 m. The proposed breach comprises of an apartment with a big roof garden. The development will benefit from a communal room and open space located on the roof deck as recommended by the Apartment Design Guide (ADG). The proposed apartment should be made smaller to accommodate the communal room in order to not increase the building footprint on the roof. The proposed breach in building height is sympathetic to the surrounding developments which have similar taller built form that is well set backed from the main street facade. 2. The ceiling heights proposed in Retail 3 and 4 are below the 3.3m floor to ceiling height recommended in the ADG. 3. The vehicular ramp access to the basement divides up the retail area 3 and 4. It also creates two entry points to the residential lift lobbies which is not desirable. 4. The 1350mm wide strip between the retail frontages and footpath to Condamine Street should follow the same level and gradient as the public footpath to avoid trip hazard ie. there should not be a step-down as indicated in the Condamine street elevation and perspective view drawing.

Internal Referral Body	Comments
	<p data-bbox="520 320 957 349"><u>Amended comments (8.06.2019):</u></p> <p data-bbox="520 349 1366 421">The proposed revisions to the development satisfy the previously raised Urban Design concerns as follows;</p> <ul data-bbox="555 459 1439 1904" style="list-style-type: none"> <li data-bbox="555 459 1439 705"> <p data-bbox="555 459 1062 488">Revised Vehicular Access Point</p> <p data-bbox="612 495 1439 705">The revised location of the vehicle access point/driveway is supported in that the resultant entry foyer to the residential lobby is more clearly articulated and legible. The revisions to the Kenneth Road elevation and entry sequence is sufficiently resolved from a pedestrian amenity, wayfinding and circulation point of view.</p> <li data-bbox="555 779 1439 1055"> <p data-bbox="555 779 986 808">Entry Ramp Kenneth Road</p> <p data-bbox="612 815 1439 1055">It is noted that the access ramp from the residential foyer entry point off Kenneth Road in front of retail unit 3 does not provide for a sufficient landing dimension at the bottom of the ramp to the perpendicular cross path of travel. The ramp should shift further to the east to provide for a minimum compliant landing to meet the cross path of travel at the residential entry foyer. Refer AS1428.1.</p> <li data-bbox="555 1128 1439 1375"> <p data-bbox="555 1128 1347 1200">WDCP 2011 - B5 Side Boundary Setback and B7 Front Boundary Setback</p> <p data-bbox="612 1207 1439 1375">The revised drawings and view analysis submitted demonstrate the upper storey will have little impact on surrounding views and street level views. The upper storey unit is sufficiently setback from the building line and as such can be supported.</p> <li data-bbox="555 1406 1439 1659"> <p data-bbox="555 1406 1031 1435">WDCP 2011 - D9 Building Bulk</p> <p data-bbox="612 1442 1439 1659">The revised treatment and amendments to the Condamine Street and Kenneth Road elevations has sufficiently addressed previous concerns of appropriate articulation and break-up of the built form, including the variation and expression of materials and colours and as such can be supported.</p> <li data-bbox="555 1733 1439 1904"> <p data-bbox="555 1733 1102 1762">WLEP 2011 - 4.3 Height of Buildings</p> <p data-bbox="612 1769 1439 1904">As discussed above the upper level apartments are sufficiently setback from the building line resulting in minimal visual impacts on the surrounding views. The height breach can be supported in the overall context of development in the locality.</p> <p data-bbox="520 1977 1439 2078">Generally, the proposed revisions to the development have addressed the majority of concerns raised in previous Urban Design referrals and as such can be supported.</p>
Traffic Engineer	Approval, with conditions.

Internal Referral Body	Comments
	<p>The amended 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 274m² and 27 residential apartments. 57 offstreet parking spaces are proposed including 6 visitor spaces, 20 retail spaces and 31 residential spaces. A total of 8 of the parking spaces are proposed for disabled use.</p> <p><u>Traffic:</u> The original comments on this proposal requested a revision of the traffic report to reflect that the development was a medium density development based on RMS criteria. This statement was incorrect as RMS defines any development with more than 20 dwellings as being high density. The anticipated traffic generation from the site of 23 vtp/h utilising RMS traffic generation rates for high density residential is therefore considered appropriate and results in only 1 trip more than the potential peak hour traffic generation from the existing site. The traffic generation is acceptable</p> <p><u>Parking:</u> The development requires 31 residential spaces, 6 visitor spaces and 17 retail spaces. The developer proposes 31 residential spaces, 6 visitor spaces and 20 retail spaces.</p> <p>Given the proximity of the location to the Manly Vale B-Line bus stop the lower number of residential spaces when compared to the DCP requirements is considered reasonable and likely to encourage lower levels of car ownership and higher use of public transport by the residents. There is also a high demand for on street parking in the location and the higher level of retail parking when compared to the DCP requirements is not opposed.</p> <p>There is some concern that the retail bike parking space is located within retail space 10 which reduces its effective length and will result in access to the bike parking spaces being blocked. The bike parking space should be relocated.</p> <p>It is noted that there are 4 small car spaces within the carpark. These spaces are within acceptable size limits for small car spaces as outlined in AS2890.1 section 2.4.1 (iii) and their provision is not opposed given that parking numbers exceed DCP requirements.</p> <p>Car parking numbers are acceptable</p> <p><u>Pedestrian:</u> While the plans show that 2.5m x 2.0m pedestrian sight line triangles have been provided. These sight line triangles are not provided at a location which is consistent with the requirements of AS2890.1 Fig 3.3 which stipulates that the sight line triangle is to be provided at the property boundary not the centre point of the footpath. The wall adjacent to the western boundary will need to be cut back to ensure</p>

Internal Referral Body	Comments
	<p>that the 2.5m x 2.0m sight line triangle is available.</p> <p>Subject to compliance with a condition regarding pedestrian sight line triangles the proposal is acceptable</p> <p><u>Accessibility:</u> It is noted that the amended plans have relocated the driveway to the western boundary of the site which is supported and consistent with RMS requirements.</p> <p>The driveway width is not dimensioned on any of the plans however it must be at least 5.5m in width to be consistent with AS2890.1 and to allow for passing of ingressing and egressing vehicles.</p> <p>Subject to compliance with a condition regarding driveway width the access arrangements are acceptable</p> <p><u>Servicing:</u> It is noted that the RMS Traffic Generating Guidelines require that an on-site service bay be provided at a rate of 1 bay for each 50 units and 1 space per 400sqm of retail space. This equates to 0.54 spaces for residential and 0.69 spaces for the retail component. The applicant proposes only a single loading zone bay of 10m in length which is to be created on street. While the Loading Bay should ideally be provided off-street the creation of an on-street Loading Zone is not opposed, provided that the design and all costs associated with its installation are undertaken at the developers costs. This Loading Zone being on-street would also be public parking and would therefore be available for use by adjacent commercial premises and require approval through the Local Traffic Committee prior to construction.</p> <p>In addition, it is also considered that at least one off-street space should also be set aside as a service bay for deliveries by vans and utilities etc. One of the retail spaces should therefore be signposted and marked as a Service Bay</p> <p>Subject to compliance with conditions reflecting the above the servicing arrangements are acceptable.</p>
Waste Officer	<p>Approval, with conditions.</p> <p>Residential & retail binrooms acceptable to Council. Bulky goods room door must open outwards rather than inwards.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>Approval, no conditions.</p> <p>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</p>

External Referral Body	Comments
NSW Roads and Maritime Services (Traffic Generating Development)	Approval, with conditions.

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. Council records indicate that the subject site has been used for commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7(1)(b) and (c) of SEPP 55 and the land is considered to be suitable for the residential & commercial land use proposed.

SEPP 65 - Design Quality of Residential Apartment Development

The application seeks consent for a four storey shoptop housing development, comprising 27 dwellings, and as such, the provisions of SEPP 65 apply to this development.

Clause 28 of SEPP 65 requires a consent authority to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration) the design quality of the development when evaluated in accordance with the design quality principles identified in Schedule 1 of SEPP 65, and the ADG.

The proposal is considered to be consistent with the design quality principles of SEPP 65, as follows:

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

Comment: The proposed development is located on one of the main roads through the Northern Beaches, at one of the busiest intersections in the locality. The site is surrounded by development of varying land use, scale, character and density. Nonetheless, the proposed development is compatible with the character of surrounding development within the B2 zone, and is consistent with the dominant form of development along Condamine Street; being four storey shoptop development.

The design of the front facades also individually respond to the context of the site, with a more solid and enclosed presentation to Condamine Street in response to traffic conditions and a

softer, more open presentation to Kenneth Street, noting the lower order classification of the street, leading into a residential area.

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

Comment: The proposed four storey development steps up the slope of the site, and is consistent with the height and scale of surrounding development. The upper most floor is set well back from the street, and will be generally screened from view as seen from the public domain. The resultant three-four storey presentation is consistent with the scale of surrounding built form that is dominated by four storey shoptop housing developments. The scale of the proposal is appropriately minimised by virtue of articulation, modulation and varied materials, and overall, the form and scale of the development is considered to be an appropriate response for the site.

- **Principle 3: Density**

Comment: There are no provisions within WLEP 2011 or WDCP 2011 that relate to the density anticipated on the subject site, and as such, the appropriateness of the density proposed is appraised based on the amenity of the development, the size/scale of the development and the impact of the development upon the surrounding environment.

The proposed development is an appropriate contextual fit for the site, with a density that is suitable within the B2 Local Centre zone and for a site that is in such close proximity to the main transport links on Condamine Street (namely the B1 bus stops on the northern side of the Kenneth Road/Condamine Street intersection). The proposed density does not attribute to excessive bulk and scale, nor does it compromise the amenity for future occupants of the development. As such, the proposed density is considered to be appropriate for the site.

- **Principle 4: Sustainability**

Comment: The proposed development was supported by BASIX and NatHERS Certificates, which include recommendations to ensure that the building performs in accordance with industry standards. Furthermore, the majority of apartments achieve natural cross ventilation with adequate levels of natural daylight, such that the amenity and livability of apartments is high, without excessive reliance upon air-conditioning and artificial lighting.

- **Principle 5: Landscape**

Comment: The site is located within a zone/area of Manly Vale that has no landscaped area requirements prescribed by WDCP 2011. Nonetheless, the proposal seeks to significantly improve the landscaped treatment of the Kenneth Road street frontage, and includes plantings on structures to soften the built form and provide a high level of amenity within the internal courtyards. The landscape solution is considered to be appropriate for the site.

- **Principle 6: Amenity**

Comment: As detailed in the assessment against the ADG and WDCP 2011, the proposed development provides a reasonable level of amenity for future occupants of the development,

without unreasonably compromising the amenity of adjoining properties. Whilst there are some areas of technical non-compliance with regard to the design criteria and guidance prescribed by the ADG with regard to solar access, natural ventilation and dimensions, the design is considered to be an appropriate response for the context of the site and the majority of apartments are reasonably resolved with high internal amenity.

- **Principle 7: Safety**

Comment: The proposed development is considered to maximise safety for future occupants and visitors of the development, with appropriate division/delineation between public and private spaces.

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

Comment: The application proposes a mix of 5 x studio, 6 x 1 bedroom and 16 x 2 bedroom apartments, inclusive of 6 "Livable" apartments interspersed throughout the development. The proposal is considered to be an appropriate response for the Manly Vale housing market, providing an appropriate balance of different housing options for a variety of living need and household budgets.

- **Principle 9: Aesthetics**

Comment: The composition of the proposal is well refined, with appropriate articulation and modulation to respond to the scale of adjoining development, without overwhelming the streetscape. The proposal also features varied materiality to break down the scale of the development, and respond to the context of each individual streetscape.

The following table is an assessment against the ADG as required by SEPP 65:

DC – Is the development consistent with the Design Criteria?

DG – Is the development consistent with the Design Guidance?

O – Is the development consistent with the Objective?

ADG reference	Subclause	Design Criteria	DC	DG	O
Part 3 Siting the Development					
3A Site analysis	3A-1	Design decisions based on site analysis.	-	Y	Y
3B Orientation	3B-1	Layouts respond to the streetscape and optimise solar access.	-	Y	Y
	3B-2	Overshadowing of neighbouring properties is minimised during mid winter.	-	Y	Y
3C Public domain interface	3C-1	Transition between private and public places is achieved without compromising safety and security.	-	Y	Y
	3C-2	Amenity of the public domain is retained and enhanced.	-	Y	Y
3D Communal and public open space	3D-1	Communal open space has a minimum area equal to 25% of the site.	N	Y	Y
		Development must achieve a minimum of 50% direct sunlight to the principal usable part of the communal	Y	Y	Y

ADG reference	Subclause	Design Criteria	DC	DG	O
		open space for a minimum of 2 hours between 9am and 3pm on 21 June (midwinter).			
	3D-2	Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting.	-	Y	Y
	3D-3	Communal open space is designed to maximise safety.	-	Y	Y
	3D-4	Public open space is responsive to the existing pattern and uses of the neighbourhood.	-	Y	Y
3E Deep soil zones	3E-1	At least 7% of the site are shall comprise deep soil zones.	N	Y	Y
3F Visual privacy	3F-1	A minimum setback of 6m is to be provided between habitable rooms and balconies and side or rear setbacks, and a minimum setback of 3m is to be provided is to be provided between non-habitable rooms and side and rear setbacks.	N	Y	Y
	3F-2	Building design elements increase privacy without compromising access to light and air and balance outlook from habitable rooms and private open space.	-	Y	Y
3G Pedestrian access and entries	3G-1	Entries and pedestrian access connects to and addresses the public domain.	-	Y	Y
	3G-2	Access, entries and pathways are accessible and easy to identify.	-	Y	Y
	3G-3	Large sites provide pedestrian links for access to streets and connection to destinations.	-	Y	Y
3H Vehicle access	3H-1	Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.	-	Y	Y
3J Bicycle and car parking	3J-1	Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.	-	Y	Y
	3J-2	Parking and facilities are provided for other modes of transport.	-	Y	Y
	3J-3	Car park design and access is safe and secure.	-	Y	Y
	3J-4	Visual and environmental impacts of underground car parking are minimised.	-	Y	Y
	3J-5	Visual and environmental impacts of on-grade parking are minimised.	-	-	-
	3J-6	Visual and environmental impacts of above ground enclosed car parking are minimised.	-	-	-
Part 4 Designing the building					
Amenity					
4A Solar and daylight access	4A-1	Living rooms and private open space of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at midwinter.	N	Y	Y
		A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Y	Y	Y

ADG reference	Subclause	Design Criteria	DC	DG	O										
4B Natural ventilation	4A-2	Daylight access is maximised where sunlight is limited.	-	Y	Y										
	4A-3	Design incorporates shading and glare control, particularly for warmer months.	-	Y	Y										
	4B-1	All habitable rooms are naturally ventilated.	Y	Y	Y										
	4B-2	The layout and design of single aspect apartments maximises natural ventilation.	-	Y	Y										
	4B-3	At least 60% of all apartments are naturally cross ventilated. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	N Y	Y Y	Y Y										
4C Ceiling heights	4C-1	As measured from the finished floor level, the minimum ceiling height for: - habitable rooms is 2.7m, - non-habitable rooms is 2.4m, and - ground floor non-residential uses is 3.3m.	N	Y	Y										
	4C-2	Ceiling height increases the sense of space in apartments and provides for well proportioned rooms.	-	Y	Y										
	4C-3	Ceiling heights contribute to the flexibility of building use over the life of the building.	-	Y	Y										
4D Apartment size and layout	4D-1	Apartments are required to have the following minimum internal areas:	N	Y	Y										
		<table><tr><th>Apartment Type</th><th>Min. internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 Bedroom</td><td>50m²</td></tr><tr><td>2 Bedroom</td><td>70m²</td></tr><tr><td>3 Bedroom</td><td>90m²</td></tr></table>	Apartment Type	Min. internal area	Studio	35m²	1 Bedroom	50m²	2 Bedroom	70m²	3 Bedroom	90m²			
		Apartment Type	Min. internal area												
		Studio	35m²												
		1 Bedroom	50m²												
		2 Bedroom	70m²												
	3 Bedroom	90m²													
	The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.														
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	Y	Y	Y											
4D-2	Habitable room depths are limited to a maximum of 2.5 x ceiling height.	Y	Y	Y											
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Y	Y	Y											
4D-3	Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobes).	Y	Y	Y											
	Bedrooms have a minimum dimension of 3m (excluding wardrobes).	Y	Y	Y											
	Living rooms or combined living/dining rooms have a minimum width of 3.6m for 1 bedroom apartments and 4m for 2 bedroom apartments.	Y	Y	Y											
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow	Y	Y	Y											

ADG reference	Subclause	Design Criteria	DC	DG	O															
4E Private open space and balconies	4E-1	apartment layouts.																		
		All apartments are required to have primary balconies as follows:	Y	Y	Y															
		<table><tr><th>Apartment Type</th><th>Min. area</th><th>Min. depth</th></tr><tr><td>Studio</td><td>4m²</td><td>-</td></tr><tr><td>1 Bedroom</td><td>8m²</td><td>2m</td></tr><tr><td>2 Bedroom</td><td>10m²</td><td>2m</td></tr><tr><td>3 Bedroom</td><td>12m²</td><td>2.4m</td></tr></table>	Apartment Type	Min. area	Min. depth	Studio	4m ²	-	1 Bedroom	8m ²	2m	2 Bedroom	10m ²	2m	3 Bedroom	12m ²	2.4m			
		Apartment Type	Min. area	Min. depth																
		Studio	4m ²	-																
		1 Bedroom	8m ²	2m																
	2 Bedroom	10m ²	2m																	
	3 Bedroom	12m ²	2.4m																	
		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 ² and a minimum depth of 3m ² .	Y	Y	Y															
4E-2	Primary private open space and balconies are appropriately located to enhance liveability for residents.	-	Y	Y																
4E-3	Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.	-	Y	Y																
4E-4	Private open space and balcony design maximises safety.	-	Y	Y																
4F Common circulation and spaces	4F-1	The maximum number of apartments off each circulation core on a single level is eight.	Y	Y	Y															
	4F-2	Common circulation spaces promote safety and provide for social interactions between residents.	-	Y	Y															
4G Storage	4G-1	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is to be provided:	Y	Y	Y															
		<table><tr><th>Apartment Type</th><th>Min. area</th></tr><tr><td>Studio</td><td>4m³</td></tr><tr><td>1 Bedroom</td><td>6m³</td></tr><tr><td>2 Bedroom</td><td>8m³</td></tr><tr><td>3 Bedroom</td><td>10m³</td></tr></table>	Apartment Type	Min. area	Studio	4m ³	1 Bedroom	6m ³	2 Bedroom	8m ³	3 Bedroom	10m ³								
		Apartment Type	Min. area																	
		Studio	4m ³																	
		1 Bedroom	6m ³																	
		2 Bedroom	8m ³																	
3 Bedroom	10m ³																			
		At least 50% is to be located within the apartment.																		
	4G-2	Additional storage is conveniently located, accessible and nominated for individual apartments.	-	Y	Y															
4H Acoustic privacy	4H-1	Noise transfer is minimised through the siting of buildings and building layout.	-	Y	Y															
	4H-2	Noise impacts are mitigated within apartments through layout and acoustic treatments.	-	Y	Y															
4J Noise and pollution	4J-1	In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings.	-	Y	Y															
	4J-2	Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.	-	Y	Y															

ADG reference	Subclause	Design Criteria	DC	DG	O
Configuration					
4K Apartment Mix	4K-1	A range of apartment types and sizes is provided to cater for different household types now and into the future.	-	Y	Y
	4K-2	The apartment mix is distributed to suitable locations within the building.	-	Y	Y
4L Ground floor apartments	4L-1	Street frontage activity is maximised where ground floor apartments are located.	-	Y	Y
	4L-2	Design of ground floor apartments delivers amenity and safety for residents.	-	Y	Y
4M Facades	4M-1	Building facades provides visual interest along the street while respecting the character of the local area.	-	Y	Y
	4M-2	Building functions are expressed by the facade.	-	Y	Y
4N Roof design	4N-1	Roof treatments are integrated into the building design and positively respond to the street.	-	Y	Y
	4N-2	Opportunities to use roof space for residential accommodation and open space are maximised.	-	Y	Y
	4N-3	Roof design incorporates sustainability features.	-	Y	Y
4O Landscape design	4O-1	Landscape design is viable and sustainable.	-	Y	Y
	4O-2	Landscape design contributes to the streetscape and amenity.	-	Y	Y
4P Planting on structures	4P-1	Appropriate soil profiles are provided.	-	Y	Y
	4P-2	Plant growth is optimised with appropriate selection and maintenance.	-	Y	Y
	4P-3	Planting on structures contributes to the quality and amenity of communal and public open spaces.	-	Y	Y
4Q Universal design	4Q-1	Universal design features are included in apartment design to promote flexible housing for all community members.	-	Y	Y
	4Q-2	A variety of apartments with adaptable designs are provided.	-	Y	Y
	4Q-3	Apartment layouts are flexible and accommodate a range of lifestyle needs.	-	Y	Y
4R Adaptive reuse	4R-1	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	-	-	-
	4R-2	Adapted buildings provide residential amenity while not precluding future adaptive reuse.	-	-	-
4S Mixed Use	4S-1	Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement.	-	Y	Y
	4S-2	Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents.	-	Y	Y
4T Awnings and signage	4T-1	Awnings are well located and complement and integrate with the building design.	-	Y	Y
	4T-2	Signage responds to the context and desired street character.	-	-	-
Performance					
4U Energy	4U-1	Development incorporates passive environmental	-	Y	Y

ADG reference	Subclause	Design Criteria	DC	DG	O
efficiency		design.			
	4U-2	Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer.	-	Y	Y
	4U-3	Adequate natural ventilation minimises the need for mechanical cooling.	-	Y	Y
4V Water management and conservation	4V-1	Potable water use is minimised.	-	Y	Y
	4V-2	Urban stormwater is treated on site before being discharged to receiving waters.	-	Y	Y
	4U-3	Flood management systems are integrated into site design.	-	Y	Y
4W Waste management	4W-1	Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.	-	Y	Y
	4W-2	Domestic waste is minimised by providing safe and convenient source separation and recycling.	-	Y	Y
4X Building maintenance	4X-1	Building design detail provides protection from weathering.	-	Y	Y
	4X-2	Systems and access enable ease of maintenance.	-	Y	Y
	4X-3	Material selection reduces ongoing maintenance costs.	-	Y	Y

Detailed Assessment

- **3D Communal and public open space**

The proposed development is inconsistent with the requirement for an area of communal open space equal to 25% of the site area, with an area of only 17m² or 1.6% of the site area proposed. Despite non-compliance, the area proposed is sufficient to act as an extension to the areas of private open space proposed in conjunction with each apartment. The proposed area of communal open space is reasonably dimensioned to facilitate slightly larger gatherings of people, in an area with good solar access and district outlooks, away from the noise of the streets below. The comparably small area of communal open space is also seen to be justified noting the presence of a number of parks and reserves located within walking distance of the subject site.

The reduced area of communal open space is not considered to compromise the amenity of the development and is supportable, despite non-compliance with the ADG.

- **3E Deep soil zones**

With no deep soil zones proposed, the development is inconsistent with the requirement for a minimum of 7% of the site area to comprise deep soil zones. However, as acknowledged by the ADG, this requirement may not be possible on some sites, including sites such as this within a local centre with a non-residential ground floor use, where the DCP does not require any landscaped areas. Nonetheless, the proposal comprises appropriate landscaping, including plantings on structures, and an appropriate stormwater solution can be achieved.

- **3F Visual privacy**

With a setback of 3m from the western boundary, the western wall of the upper floor (Level 4),

which contains a window associated with a bedroom, is inconsistent with the 6m setback requirement for habitable rooms prescribed by Objective 3F-1 of the ADG. However, the entire glazed area is covered by a privacy screen, such that the 3m setback associated with non-habitable windows is considered to be appropriate in this instance. The setback of the western wall of the upper floor, which is predominantly blank is considered to be an appropriate response to the context of the site, minimising the visual impact of the upper floor and any impacts upon the adjoining site, should it be developed in a similar manner in the future.

- **4A Solar and daylight access**

As currently proposed, the development is inconsistent with Objective 4A-1 of the ADG which requires living rooms and private open spaces of at least 70% of apartments in a building to receive a minimum of 2 hours of direct sunlight between 9am and 3pm in midwinter, with only 18 apartments (67%) receiving compliant levels of solar access. However, it is noted that compliance could be achieved with the incorporation of an additional skylight above the kitchen of Apartment 18, such that 19 apartments (70%) will achieve compliant levels of solar access.

The proposed development has been designed to maximise the number of apartments presenting to the north, and subject to a condition requiring the additional skylight, the proposal is considered to maximise solar access and daylight to the residential component of the development.

- **4B Natural ventilation**

With 16 of 27 (59%) of the apartments proposed designed to achieve cross-ventilation, the proposed development falls just shy of the 60% minimum requirement prescribed by Objective 4B-1 of the ADG. However, Apartment 24 has been designed with an operable skylight to maximise air flow through the apartment. Whilst this is not the typical way in which natural ventilation is achieved, it will increase natural ventilation and amenity within the single aspect apartment. This design solution could also be adopted in relation to the skylight required in Apartment 18, ensuring that natural ventilation is maximised throughout the development.

- **4C Ceiling heights**

The residential floors of the development have been designed with 2.7m high ceilings throughout all habitable spaces. However, two of the four ground floor retail spaces are inconsistent with the 3.3m minimum ceiling height prescribed by Objective 4C-1 of the ADG, as follows:

Retail 1: 3.4m ceiling height + 300mm cavity for services

Retail 2: 3.3m ceiling height + 300mm cavity for services

Retail 3: 3m ceiling height + 300mm cavity for services

Retail 4: 3m ceiling height (no cavity for services)

Despite non-compliance in relation to the 3.3m minimum ceiling height in relation to Retail 3 and 4, the ceiling height of these spaces is considered to be adequate in light of the limited depth of the spaces and the extent of glazing proposed along the frontage of each space. Furthermore, the 300mm non-compliance is not considered to detrimentally affect the future use or flexibility of the spaces, particularly in relation to Retail 3 which also includes a 300mm cavity for services.

Whilst the provisions of the ADG override the relevant provisions of WDCP 2011 with respect to minimum ceiling heights, it is at least noted that the proposal achieves compliance with the 3m

minimum ceiling heights for ground floor retail spaces as prescribed by clause F1 of WDCP 2011.

- **4D Apartment size and layout**

Apartments 6 (72m²), 15 (72m²) and 26 (73m²) are inconsistent with the 75m² minimum area requirement for 2 bedroom, 2 bathroom apartments as prescribed by Objective 4D-1 of the ADG. Despite these minor areas of non-compliance, the layouts of these apartments are well-resolved, resulting in functional, well organised apartments with a high standard of amenity.

- **4E Private open space and balconies**

With an area of 9m², the private open space of Apartments 14 and 19 are inconsistent with the 10m² minimum prescribed by Objective 4E-1 of the ADG. Furthermore, with a minimum depth of 1.8m, the private open space of Apartment 23 is less than the 2m minimum depth prescribed by this design criteria. The areas of non-compliance are limited and do not unreasonably impact the usability or amenity of the areas proposed. As such, the areas of private open space are considered to achieve consistency with the intent of the objective, despite minor non-compliance with the design criteria prescribed.

The consent authority can be satisfied that the development has been considered in accordance with the requirements of clause 28 of SEPP 65, and that the proposal is generally consistent with the design principles of SEPP 65 and the objectives of the ADG.

SEPP (Infrastructure) 2007

The proposed development, which comprises parking for more than 50 motor vehicles, constitutes Traffic Generating Development, and a referral to RMS is required in accordance with clause 104 of this policy. The application was referred to the RMS who did not raise any objection to the proposal, subject to the imposition of the following conditions of consent:

1. *The proposed changes to the frontage of Kenneth Road (including relocation of driveway and installation of loading bay) shall be reflected in the TCS plan of Condamine Street/Kenneth Road intersection and submitted to Roads and Maritime for review. The submitted design, drawn by a suitably qualified practitioner, shall be in accordance with Austroads Guide to Road Design in association with relevant Roads and Maritime supplements (available on www.rms.nsw.gov.au). The certified copies of the signal design and civil design plans shall be submitted to Roads and Maritime for consideration and approval prior to the release of a Construction Certificate and commencement of road works. Roads and Maritime fees for administration, plan checking, civil works inspections and project management shall be paid by the developer prior to the commencement of works. The developer may be required to enter into a Works Authorisation Deed (WAD) for the abovementioned works.*
2. *The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001. The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by Roads and Maritime. Documents should be submitted to Development.Sydney@rms.nsw.gov.au. If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least*

seven (7) days notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

3. Detailed design plans and hydraulic calculations of any changes to the Roads and Maritime's stormwater drainage system are to be submitted to Roads and Maritime for approval, prior to the commencement of any works. Documents should be submitted to Development.Sydney@rms.nsw.gov.au. A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued.

Clause 101 of SEPP (Infrastructure) requires the consent authority to be satisfied of certain matters relating to development with a frontage to a classified road. The consent authority can be satisfied of these matters, noting that:

- Vehicular access is provided by the lower order street (Kenneth Road) and not Condamine Street,
- The safety, efficiency and ongoing operation of Condamine Street will not be adversely affected by the proposed development, and
- The application has been accompanied by an acoustic report and the proposal has been designed to incorporate measures to ameliorate potential traffic noise and vehicle emissions associated with the ongoing use of Condamine Street.

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

Standard	Requirement	Proposed	Variation	Complies
Height of Buildings:	11m	14.6m	3.6m (33%)	No

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
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Zone B2 Local Centre

The proposed development is considered to be consistent with the objectives of the B2 Local Centre zone, 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.*

Comment: The proposed development comprises four retail tenancies to enhance retail opportunities in the area and to help serve the needs of people who live in, work in and visit the Manly Vale Locality.

- *To encourage employment opportunities in accessible locations.*

Comment: The subject site is located in a highly accessible area, located on one of the main roads servicing the Northern Beaches and located opposite the B1 Manly Vale bus stops. The proposed development comprises four retail tenancies which will enhance employment opportunities in the locality.

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

Comment: The proposed development is sited within 35m of the B1 Manly Vale Bus Stop, which is also serviced by a number of other local bus routes. The proposal is considered to be advantageously sited to maximise public transport patronage amongst future occupants of the development. The local centre features a number of restaurants, services and large supermarkets, all located within walking distance of the proposal. Council is also in the process of upgrading footpaths to provide shared pathways, to encourage cycling throughout the locality. The proposal comprises adequate bicycle parking to encourage the use of bicycles.

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

Comment: The proposal incorporates awnings along the Condamine Street frontage, to provide weather protection to those walking along the footpath adjacent to the site. The application also proposes significant improvements to the Kenneth Road public road reserve, to facilitate a safe environment for pedestrians.

- *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 proposed development has been designed to align with the predominant height and setbacks of development along Condamine Street, stepping up the slope of Kenneth Road, with an upper floor that is recessive and compatible with the scale of surrounding built form. The proposed shop top housing development is well articulated, with a variety of setbacks and materials to visually reduce to apparent size of the development. The development is a high-quality architectural response in the context of the site, which will positively contribute to the streetscape and the wider locality. Whilst landscaping is somewhat lacking along the Condamine Street frontage, this proposed outcome is consistent with the existing and intended streetscape of Condamine Street, with a softer landscaped treatment to Kenneth Road, being a lesser order street leading to a residential area.

- *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 shop top housing development is anticipated within the zone, and will not create any conflict with existing or potential adjoining land uses. Whilst there are currently no adjoining residential land uses, the proposal has been designed to ensure that impacts upon the potential future development of the adjoining site for the purpose of shop top housing has not been compromised. Furthermore, the proposal will not result in any unreasonable impacts upon the amenity of nearby residential properties.

4.3 Height of buildings

and 4.6 Exceptions to development standards

With a maximum height of 14.55m, the proposed development is non-compliant with the 11m maximum building height prescribed by clause 4.3 of WLEP 2011. The maximum building height is a development standard, as defined by the EP&A Act, and as such, the provisions of clause 4.6 of WLEP 2011 can be applied.

Pursuant to clause 4.6(2) of WLEP 2011, consent may be granted for development even though the development contravenes a development standard prescribed by an environmental planning instrument. Whilst this clause does not apply to those standards expressly excluded from this clause, the maximum building height is not expressly excluded and thus the clause can be applied in this instance.

Extent of the height breach

The height breach occurs in three distinct areas, as follows:

1. The eastern façade of Level 3 protrudes beyond the 11m height limit by between 800mm and 1.7m, to a maximum height of 12.7m,
2. Level 4 protrudes beyond the 11m height limit by between 1.1m and 2.55m, to a maximum height of 13.55m, and
3. The lift overrun above Level 4 protrudes up to 3.55m above the 11m height limit, to a maximum height of 14.55m.

Note: The applicant has confirmed that if necessary, an alternate low head height lift could be used, reducing the height non-compliance associated with the lift overrun by 850mm, to a maximum height of 13.7m. This would reduce the overall variation to a maximum of 2.7m or or 24.5%. However, with the exception of the reduction to the percentage variation, the reduction to the height of the lift overrun will not make any practical difference, as it is positioned centrally on the site and will generally be screened from view as seen from the street.

Has the Applicant's submission addressed the relevant criteria?

Pursuant to clause 4.6(4) of WLEP 2011, consent can only be granted if the consent authority is satisfied that the applicant's written request to vary the development standard has addressed the criteria of clause 4.6(3) of WLEP 2011. The application was supported by a detailed submission (**attached**) addressing the provisions of clause 4.6 of WLEP 2011. The submission is considered with regard to the criteria of clause 4.6(3) of WLEP 2011, as follows:

- a. *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,*

Comment: In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council [2007] NSWLEC 827*, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard. The applicant's submission has satisfactorily demonstrated that the proposed development will achieve consistency with the objectives of the building height development standard, and as such, strict compliance with the 11m height limit is considered to be unreasonable and unnecessary in the circumstances of this application.

- 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*, "environmental planning grounds" were found to be grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects prescribed by clause 1.3 of that Act.

The applicant's submission provides that the areas of non-compliance are a result of:

- A desire to be consistent with the massing of development along the streetscape, noting that the majority of existing development has a four storey presentation to the street, including those properties fronting side streets (other than Condamine Street),
- A considered "contextually appropriate" design solution that redistributes floor space centrally at the upper floor, rather than building to the maximum height at the boundaries,
- A design that follows the slope of the land.

The submission also notes that the standard has been virtually abandoned throughout the Manly Vale B2 zoned area, noting that the majority of recent shoptop housing developments have been approved with variations to the height of buildings development standard, with four and five storey presentations to the street. Furthermore, the statement demonstrates that, despite non-compliance with the maximum height prescribed, the proposed development is of good design and amenity, the height of which is compatible with surrounding built form, consistent with objects 1.3(c) and (g) of the EP&A Act.

With this in mind, it is considered that the applicant's written request to vary the maximum building height development standard satisfactorily demonstrates that there are sufficient environmental planning grounds to justify contravention of the 11m maximum building height development standard.

Therefore, the consent authority can be satisfied that the applicant's written request has satisfactorily addressed the matters required by clause 4.6(3) of WLEP 2011.

Is the proposal in the public interest?

Under the provisions of clause 4.6(4)(a) of WLEP 2011, consent must not be granted to a proposal that contravenes a development standard unless that proposed development (as a whole) will be in the public interest because it is consistent with the objectives of the particular development standard and the objectives for development within the zone in which the development is to be carried out.

The proposal is considered to be consistent with the objectives of the building height development standard, as follows:

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

Comment: As discussed in the matter of *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*, compatibility does not require sameness, but rather the capability of existing in harmony together. The proposed development has been designed to align with the street heights of adjoining and nearby built form, consistent with the predominant four storey character of surrounding shop top housing development. The height and scale will not be visually jarring in the streetscape, and is considered to be compatible with surrounding and nearby development.

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

Comment: The proposed development is well-articulated to minimise the visual impact of the proposal. The third and fourth floors are setback from both frontages, with the fourth floor also setback from side boundaries and generally screened from view as seen from the public domain. Furthermore, the development does not result in any unreasonable impact upon views, privacy or solar access of adjoining or nearby sites.

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

Comment: The site is located in a commercial centre, with a mix of retail, industrial and mixed use developments. Whilst not located within an area of coastal or bushland scenic quality, the proposed development will result in a significant improvement of the aesthetic appearance of the site.

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

Comment: As above, the proposed development has been designed to minimise the visual impact of the development by means of modulation of architectural form, varied materiality and landscaping. The proposal is a high quality architectural response for the site.

Furthermore, as discussed in further detail separately above, the proposal is considered to be consistent with the relevant objectives of the B2 Local Centre zone.

Therefore, the consent authority can be satisfied that the proposal is in the public's interest.

Has concurrence been obtained?

Pursuant to clause 4.6(4)(b) of WLEP 2011, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with Planning Circular PS 18-003 (dated 21 February 2018) issued by the NSW Department of Planning and Environment, the Secretary's concurrence may be assumed in this instance as the application is to be determined by the Northern Beaches Local Planning Panel.

Conclusion

Overall, the consent authority can be satisfied of the matters prescribed by clause 4.6 of WLEP 2011, and the proposal can be supported, despite contravention of the building height development standard.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	Variation	Complies
B2 Number of storeys	3 storeys	4 storeys	1 storey (33%)	No
B5 Side Boundary Setbacks	West = Merit	Levels G - 3 = Nil Level 4 = 3m	-	Yes
	South = Merit	Levels G - 3 = Nil Level 4 = 4.25m	-	Yes
B7 Front Boundary Setbacks	Levels G -1 = Nil	Level G - 1 = Nil	-	Yes
	Level 2 = 5m	Level 2 = Nil - 4.5m	0.5m - 5m (10% - 100%)	No
	Level 3 = 5m	Level 3 = 2.5m - 4.5m	0.5m - 2.5m (10% - 50%)	No
	Level 4 = 5m	Level 4 - 10.6m - 18.4m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
A.7 Exhibition, Advertisement and Notification of Applications	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	Yes	Yes
C3 Parking Facilities	Yes	Yes
C3(A) Bicycle Parking and End of Trip Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	No	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	No	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes
F1 Local and Neighbourhood Centres	Yes	Yes

Detailed Assessment

B2 Number of Storeys

The application seeks consent for a four storey shop top housing development, inconsistent with the three storey maximum prescribed by this development control. However, the four storey nature of the proposal is consistent with a number of recent development approvals within the Manly Vale locality, and is reflective of the dominant height and scale of the Condamine Street B2 zoned area, particularly the recent developments constructed and under construction to the south of the site. Furthermore, despite non-compliance with this development control, the proposed development is consistent with the objectives of the number of storeys control, as follows:

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

Comment: The proposed development, by virtue of its height and number of storeys, is consistent with the predominant height and number of storeys of surrounding development. The scale of the proposal is not excessive, and will be compatible with surrounding development. As such, the resultant development will not be visually dominant in its context.

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

Comment: The modulation and articulation of the development is complemented by the proposed use of a variety of materials and finishes, which act to reduce the apparent size and scale of the development as seen from adjoining properties and streets. Furthermore, the Kenneth Street facade is softened by landscaping both forward of the building and on elevated terraces/screens.

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

Comment: The proposed development will not result in any unreasonable impacts upon views to

and from public and private properties.

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

Comment: With respect to the fourth floor presenting to Condamine Street, the height is consistent with nearby development, and does not result in any unreasonable impacts upon the approved two storey (3 storey in height) Nick Scali showroom approved on the adjoining property. With respect to the fourth floor presenting to the west, the built form is setback from all boundaries and is screened from view as seen from the street, such that the additional floor will not negatively impact upon the amenity of the approved at-grade car park to the west of the property.

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

Comment: Irrespective of whether the proposal was to be three storeys or four storeys, it is likely that the design of the roof would be the same. The roof forms have been designed to step down the slope of the site, which also assists to break down the massing of the roof form.

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

Comment: Some elements of the four storey development exceed the height limit prescribed by clause 4.3 of WLEP 2011. However, despite non-compliance with the prescribed height limit, the proposed development is consistent and compatible with the height of surrounding development, and the objectives of the building height development standard.

As such, the proposed development is considered to be an acceptable design response for the context of the site, and is supportable on merit.

B6 Merit Assessment of Side Boundary Setbacks

The Side Boundary Setbacks Map of WDCP 2011 identifies that the side boundary setbacks are to be determined on merit, and under the provisions of this development control, the merits of the proposed setbacks is to have regard to the existing streetscape, amenity of surrounding properties and setbacks of neighbouring development. The application proposes nil setbacks across all levels, excluding the top floor (Level 4), which is setback at a minimum of 4.25m from the southern side setback and a minimum of 3m from western side boundary.

With regard to the existing streetscape, it is evident that the majority of existing and recently approved structures are constructed to nil setbacks, with a solid, consistent presentation to the public domain. In this regard, the proposed development is considered to be compatible with the prevailing streetscape character of the B2 zone. Further, the nil setbacks do not compromise the amenity or development potential of the adjoining property, particularly noting that the site has a recent development consent for a non-residential development with nil setbacks to the south and an at-grade car park to the north. Even if the adjoining site was to be developed for residential development in the future, it is highly likely that the adjoining site will also be developed with nil setbacks to common side boundaries. Overall, the setbacks of the proposed shop top housing development are considered to be acceptable on merit.

B7 Front Boundary Setbacks

The Front Boundary Setback Map of WDCP 2011 prescribes a nil setback for the ground and first floor, with a 5m setback for Levels 2 and above. Both Level 2 and Level 3 are inconsistent with this minimum

requirement, with setbacks ranging from nil to 4.5m on Level 2 and setbacks ranging from 2.5m to 4.5m on the third floor.

Rather than adopting a nil setback at both the ground and first floor, and one consistent 5m setback at the upper levels, the proposed shoptop housing development has been designed with varied setbacks across all levels, with well articulated facades that actively break down the scale and horizontal massing of the building. This is particularly relevant in relation to the Kenneth Road facade, which has a comparably fine-grain composition that steps up the slope of the site.

Despite non-compliance on Levels 2 and 3, the minimum setbacks to Condamine Street are consistent with that of adjoining development, which present with a consistent nil setback for the first three levels (or an equivalent 3 storey height in relation to the approved Nick Scali showroom at 265 Condamine Street). The setbacks to Kenneth Road, which can reasonably be considered as a secondary street frontage, are also considered to be acceptable, as the massing of the building is reasonably resolved.

With this in mind, variations to the minimum setback requirements for Levels 2 and 3 are considered to be warranted in the circumstances of the site, particularly noting that the proposal is otherwise consistent with the objectives of the front building setback development control, as follows:

- *To create a sense of openness.*

Comment: Both the Condamine Street and Kenneth Road facades are well articulated, with defined breaks to reduce the scale of the development. The resultant development will not overwhelm the streetscape, and a sense of openness, comparable to that of adjoining and nearby development, will be achieved.

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

Comment: A number of recent development approvals have established a precedent of built form along Condamine Street, with a nil setback carried across the first three levels. The minimum setbacks proposed are consistent with the pattern of existing buildings and will maintain a visual continuity of built form along both streetscapes.

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

Comment: The proposed development is considered to positively contribute to the streetscape, with a high quality architectural response for the site.

- *To achieve reasonable view sharing.*

Comment: The proposed setbacks will not result in any unreasonable impacts upon views currently enjoyed from surrounding properties.

D2 Private Open Space

Clause D2 of WDCP 2011 requires a total area of 10m² with minimum dimensions of 2.5m for each dwelling within a shoptop housing development. However, these requirements are inconsistent with the minimum requirements of the Apartment Design Guide, and in accordance with clause 6A of SEPP 65, development controls that conflict with the provisions of the Apartment Design Guide in relation to private open space and balconies have no effect.

D6 Access to Sunlight

Clause D6 of WDCP 2011 requires at least 50% of the required area of private open space for each dwelling to receive 3 hours of direct sunlight between 9am and 3pm in midwinter. However, this requirement is inconsistent with the minimum requirements of the Apartment Design Guide, and in accordance with clause 6A of SEPP 65, development controls that conflict with the provisions of the Apartment Design Guide in relation to solar access have no effect.

D9 Building Bulk

The proposed development is consistent with the provisions of this development control, as follows:

- Despite the lack of a prescribed minimum setback in relation to the subject site, the side setbacks of the development are increased at the upper level.
- Large continuous wall planes have been avoided in the proposed development, with a high degree of articulation and modulation on both front facades.
- The height and bulk of the development has been designed to step down the slope of the site, and in doing so, the height and scale of the development has been designed to appropriately relate and respond to topography and site conditions.
- The development has been designed to address the street. The treatment of the Condamine Street facade has a heavier appearance and the extent of openings are comparably reduced in response to the volume and noise of traffic travelling along the road. The treatment of the Kenneth Road facade is markedly different, with lighter architectural elements, greater openings to the north and softer landscaping.
- The proposal comprises a variety of colours and materials to break down the scale of the proposal.
- Landscaping is introduced along the Kenneth Street frontage, and in planters at upper levels, to soften the appearance of the proposed built form.
- The proposal is well articulated to reduce the perceived scale of the development.

Furthermore, in consideration of the Height and Bulk Planning Principle, the built form of the development is considered to be acceptable in the context of the site, as follows:

- *Are the impacts consistent with impacts that may be reasonably expected under the controls? (For complying proposals this question relates to whether the massing has been distributed so as to reduce impacts, rather than to increase them. For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.)*

Comment: The proposed development does not result in any unreasonable impacts upon adjoining properties or the surrounding environment. Whilst the upper portion of the eastern facade and the upper most floor extend beyond the maximum height plane, the four storey height and scale of the development is consistent with that seen in the immediate context of the site. In relation to the Condamine Street facade, strict compliance with the height standard would reduce the proposal to three storeys, which would be inconsistent with the scale and alignment of adjoining and nearby (recently approved) development. In relation to the upper most floor, the built form is well setback from the front boundaries and will not be readily visible from the public domain. Despite non-compliance with the building height development standard and the number of storeys development control, the proposed development has been found to be consistent with the objectives of these standards/controls and as such, the impact of the proposal can be said to be consistent with that expected by the controls.

- *How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls?*

Comment: As above, the proposal has been found to achieve consistency with the objectives of the height and number of storeys controls prescribed in relation to the subject site. Furthermore, the proposal is entirely consistent with the building bulk development controls prescribed by this clause D9 of WDCP 2011.

- *Does the area have a predominant existing character and are the planning controls likely to maintain it? Does the proposal fit into the existing character of the area?*

Comment: As emphasised in the documentation provided to support the application, existing shop top housing developments within the locality have a predominant four storey presentation to the public domain. Whilst inconsistent with Council's height and number of storey controls for the area, this is the outcome that has been consistently accepted and approved by Council in this specific context. The proposed development is considered to be compatible with the existing character of the area.

- *Does the proposal look appropriate in its context?*

Comment: Yes, the proposal complements the existing and anticipated streetscape and is considered to be an appropriate design solution for the corner, sloping site. The design has been supported by Council's Urban Design team.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Council Contributions Plan 2018

The proposal is subject to the application of Council's Section 7.12 Development Contributions Plan.

The following monetary contributions are applicable:

Northern Beaches Council Contributions Plan 2018		
Contribution based on a total development cost of \$ 9,299,945		
Contributions	Levy Rate	Payable
Total Section 7.12 Levy	0.95%	\$ 88,349
Section 7.12 Planning and Administration	0.05%	\$ 4,650
Total	1%	\$ 92,999

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2019/0114 for Demolition of the existing building and construction of a shop top housing development, comprising 27 dwellings, 4 retail tenancies and carparking on land at Lot A DP 39108, 267 Condamine Street, MANLY VALE, Lot B DP 39108, 267 Condamine Street, MANLY VALE, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Analysis & Site Plan DA-01, revision H	5 June 2019	Gartner Trovato Architects
Basement B2 Plan DA-02, revision H	14 May 2019	Gartner Trovato Architects
Basement B1 Plan DA-03, revision H	14 May 2019	Gartner Trovato Architects
Ground Floor Plan DA-04, revision H	14 May 2019	Gartner Trovato Architects
Level 1 Plan DA-05, revision H	14 May 2019	Gartner Trovato Architects
Level 2 Plan DA-06, revision H	14 May 2019	Gartner Trovato Architects
Level 3 Plan DA-07, revision J	16 May 2019	Gartner Trovato Architects
Level 4 Plan DA-08, revision H	14 May 2019	Gartner Trovato Architects
North & East Elevations DA-09, revision J	5 June 2019	Gartner Trovato Architects
South & West Elevations DA-10, revision H	14 May 2019	Gartner Trovato Architects
Sections A & C DA-12, revision J	5 June 2019	Gartner Trovato Architects
Sections 1 & 2 DA-13, revision H	14 May 2019	Gartner Trovato Architects
Sections 3 & 4 DA-14, revision H	14 May 2019	Gartner Trovato Architects
Schedule of Colours and Finishes DA-19, revision G	6 February 2019	Gartner Trovato Architects
Plant Species Schedule DA-20, revision G	6 February	Gartner Trovato

	2019	Architects
--	------	------------

Engineering Plans		
Drawing No.	Dated	Prepared By
Stormwater Management Plan SW1 DA-A	6 June 2019	Barrenjoey Consulting Engineers Pty Ltd
Stormwater Management Plan SW2 DA-A	6 June 2019	Barrenjoey Consulting Engineers Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Flood & Overland Flow Study	February 2019	Barrenjoey Consulting Engineers Pty Ltd
Flood & Overland Flow Study	September 2018	Barrenjoey Consulting Engineers Pty Ltd
Waste Management Plan prepared for Manly Vale Developments No.3 Pty Ltd	9 February 2019	Antony Westwood (Gartner Trovato Architects)
BASIX Certificate 963230M_02	7 February 2019	Gartner Trovato Architects
NatHERS Certificate 0003593060	6 February 2019	NatHERS & BASIX Solutions
Geotechnical Risk Management Report, Issue 1	6 February 2019	Crozier Geotechnical Consultants
BCA Report	8 February 2019	BCA Logic Pty Ltd
Acoustic Report	4 February 2019	Wilkinson Murray Pty Ltd
Access Report	8 February 2019	BCA Logic Pty Ltd
Stage 1 Preliminary Site Investigation	5 February 2019	Alliance Geotechnical Pty Ltd

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

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with the following requirements of the NSW RMS, as specified in their referral response letter to Council dated 7 June 2019:

- (a) The proposed changes to the frontage of Kenneth Road (including relocation of driveway and installation of loading bay) shall be reflected in the TCS plan of Condamine Street/Kenneth Road intersection and submitted to Roads and Maritime for review. The

submitted design, drawn by a suitably qualified practitioner, shall be in accordance with Austroads Guide to Road Design in association with relevant Roads and Maritime supplements (available on www.rms.nsw.gov.au). The certified copies of the signal design and civil design plans shall be submitted to Roads and Maritime for consideration and approval prior to the release of a Construction Certificate and commencement of road works. Roads and Maritime fees for administration, plan checking, civil works inspections and project management shall be paid by the developer prior to the commencement of works. The developer may be required to enter into a Works Authorisation Deed (WAD) for the abovementioned works.

- (b) The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001. The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by Roads and Maritime. Documents should be submitted to Development.Sydney@rms.nsw.gov.au. If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) days notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.
- (c) Detailed design plans and hydraulic calculations of any changes to the Roads and Maritime's stormwater drainage system are to be submitted to Roads and Maritime for approval, prior to the commencement of any works. Documents should be submitted to Development.Sydney@rms.nsw.gov.au. A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued.

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of the NSW RMS.

3. **Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- An operable skylight, with a minimum surface area of 2m², is to be incorporated in the ceiling/roof above the kitchen of Apartment 18,
- Fixed ceilings are to be incorporated within Retail Tenancies 1-3, to facilitate a 300mm cavity space below the Level 1 slab. The ceilings of these retail spaces must be designed and maintained below RL 15.0m AHD, being the minimum floor level of Level 1 residential apartments.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure that the amenity of the proposal is optimised and consistency with the shop top housing definition, as prescribed by WLEP 2011.

4. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon

- plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative Requirement

5. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
- i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

(k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Council Contributions Plan 2018

The proposal is subject to the application of Council's Section 7.12 Development Contributions Plan.

The following monetary contributions are applicable:

Northern Beaches Council Contributions Plan 2018	
--	--

Contribution based on a total development cost of \$ 9,299,945.00		
Contributions	Levy Rate	Payable
Total Section 7.12 Levy	0.95%	\$ 88,349.48
Section 7.12 Planning and Administration	0.05%	\$ 4,649.97
Total	1%	\$ 92,999.45

The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with Northern Beaches Council Contributions Plan 2018.

7. **Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

8. **Construction, Excavation and Associated Works Bond (Road)**

The applicant is to lodge a Bond with Council as security against any damage or failure to completion of the construction of civil infrastructure works within Kenneth Road and Condamine Street as part of this consent.

The bond shall be valued at 120% the cost of civil infrastructure works. The cost of works shall be determined in consultation with Council by submission of written quote(s) from a suitably qualified, licensed and insured contractor independent from the Applicant.

Details demonstrating payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

9. **Construction, Excavation and Associated Works Bond (Drainage)**

The applicant is to lodge a Bond of \$40,000 as security against any damage or failure to complete the construction of Stormwater drainage works as part of this consent. Details demonstrating payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

10. **Construction, Excavation and Associated Works Bond (Failure to Remove Waste)**

A bond of \$10,000 as security against damage to Council's road(s) fronting the site caused by the transport and disposal of materials and equipment to and from the site.

Reason: Protection of Council's Infrastructure

11. **Construction, Excavation and Associated Works Bond (Maintenance for civil works)**

The developer/applicant must lodge with Council a Maintenance Bond for the construction of civil infrastructure works within Kenneth Road and Condamine Street.

The bond is valued at 10% the cost of civil infrastructure works. The value of the bond shall be determined in consultation with Council.

The Maintenance Bond will only be refunded on completion of the six-month Maintenance Period, if work has been completed in accordance with the approved plans and to the satisfaction of Council. The maintenance bond is to be paid prior to Council issuing practical completion.

Reason: Protection of Council's infrastructure.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

12. **On Slab Landscape Planting and Associated Works**

- (a) Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing to all internal walls and slab, and drainage of the concrete slab over which soil and planting is being provided.
- (b) Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil volume, soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.
- (c) The following soil depths are required in order to be counted as landscaping:
 - 300mm for lawn
 - 600mm for shrubs
 - 1metre for trees
- (d) Certification shall be provided by a structural engineer that the planters are designed

structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate and secure waterproofing and drainage is installed to direct water flow into the drainage system, and away from habitable areas.

13. **Landscape Maintenance Plan**

A Landscape Maintenance Plan is to be prepared and submitted to the certifying authority that outlines the technique and frequency of maintenance tasks during the establishment of the landscaping on the subject site. The Landscape Maintenance Plan is to be implemented for a period 24 months immediately following the completion of landscape and hardscape works on site. The Landscape Maintenance Plan is to incorporate maintenance and care of hardscape elements (e.g. paving, retaining walls), weeding, watering, mowing, consideration of other endemic species where plantings do not respond to the conditions as expected and a procedure for the replacement of failed plantings.

Reason: To ensure the establishment of proposed landscaping.

14. **Structures Located Adjacent to Council Pipeline or Council Easement**

All structures are to be located clear of any Council pipeline or easement. The Applicant is to ensure footings of any new development within this development consent adjacent to an easement or pipeline are to be designed in accordance with Northern Beaches Council's Warringah Water Management Policy PL850. Details and certification prepared by a suitably qualified Civil Engineer demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

15. **Basement Carpark Ramp Crest**

The Applicant is to ensure the basement carpark ramp provides a crest a minimum 300mm above the 100-year ARI water surface level adjoining the property. Access levels across the road reserve are to comply with AS2890.1. Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the construction certificate.

Reason: To ensure suitable vehicular access to private property.

16. **Pump-Out System Design for Stormwater Disposal**

The design of the pump-out system for stormwater disposal will be permitted for drainage of hard surfaces areas such as driveways and basement pavement areas only, and must be designed in accordance with AS/NZS 3500. The Applicant is to provide engineering details demonstrating compliance with this requirement and certified by an appropriately qualified and practising hydraulic engineer. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for the discharge of stormwater from the excavated parts of the site.

17. Submission of Roads Act Application for Civil Works in the Public Road

The Applicant is to submit an application for approval for Infrastructure works within the public road reserve. Engineering plans for the new development works within the road reserve within this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The application is to include four (4) copies of Civil Engineering plans for civil infrastructure works within Kenneth Road and Condamine Street which shall be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer.

The design must include the following information:

Kenneth Road

- (a) Half road construction to match into existing road layout west of the subject site and to match into road centreline.
- (b) Provision of a layback and vehicular crossing 5.5 metres wide. Removal of any redundant vehicular crossings and laybacks.
- (c) Provision of a minimum 1.5m wide footpath and upgrade of any associated pram ramps.
- (d) Provision of a loading bay and any associated signage, subject to the approval of the Local Traffic Committee.
- (e) Provision of any streetscape works in accordance with Council's Warringah Public Space Design Guidelines, including any paving, street furniture etc.

Condamine Street

- (a) Provision of a minimum 1.5m wide footpath and upgrade of any associated pram ramps.
- (b) Provision of any streetscape works in accordance with Council's Warringah Public Space Design Guidelines, including any paving, street furniture etc.
- (c) Concurrence shall be obtained from the RMS.

Note: All works shall be undertaken in accordance with the requirements detailed by the RMS in the letter, reference SYD19/00278/04, dated 7 June 2019.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges. An approval is to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

18. On-site Stormwater Detention

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Warringah Water Management Policy PL850, and generally in accordance with the concept drainage plans referenced in Condition 1 of this consent. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- (a) Appropriate provision shall be made to safely direct emergency overflows towards Condamine Street.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the construction certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from development.

19. Structural Adequacy and Excavation Work

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the construction certificate.

Reason: To provide public and private safety.

20. Sub-Soil Seepage

The Applicant is to submit plans demonstrating that all sub-soil seepage drainage is discharged via a suitable silt arrester pit, directly to the nearest road stormwater drainage line being within Condamine Street and is to be carried out in accordance with relevant Australian Standards. (Note: At the time of determination the following (but not limited to) Standards applied:

- (a) Australian/New Zealand Standard AS/NZS 3500.3 - 2003 Plumbing and drainage - Stormwater drainage
- (b) Australian/New Zealand Standard AS/NZS 3500.3 - 2003 / Amdt 1 - 2006 Plumbing and drainage - Stormwater drainage

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure appropriate drainage and stormwater management on site to protect amenity of residents.

21. Shoring of Adjoining Property

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining(s) with engineering drawings of the proposed shoring works for their consideration and approval.

An application to Council for approval under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Council's road reserve. Owner's approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

22. Traffic Management and Control

The Applicant is to submit plans an application for Traffic Management Plan to Council for approval. The Traffic Management Plan shall be prepared to RMS standard by an appropriately certified person. An approval from Council is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community.

23. Pre-Construction Dilapidation Report

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public and private properties and public infrastructure (including roads, gutter, footpaths, stormwater assets etc). In relation to stormwater infrastructure, the report must be prepared in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset. A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

Reason: Protection of Council's and Private Party's Infrastructure during construction.

24. Amendments to the approved plans

The following amendments are to be made to the approved plans:

- An operable skylight, with a minimum surface area of 2m², is to be incorporated in the ceiling/roof above the kitchen of Apartment 18,
- Fixed ceilings are to be incorporated within Retail Tenancies 1-3, to facilitate a 300mm cavity space below the Level 1 slab. The ceilings of these retail spaces must be designed and maintained below RL 15.0m AHD, being the minimum floor level of Level 1 residential apartments.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the

issue of the construction certificate.

Reason: To ensure that the amenity of the proposal is optimised and consistency with the shop top housing definition, as prescribed by WLEP 2011.

25. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

26. **Reports Certification**

Written certification from a suitably qualified person(s) shall submit to the Principal Certifying Authority, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the reports referenced in Condition 1 of this consent have been incorporated into the design of the development.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the occupation certificate.

Reason: To ensure compliance with recommendations of approved reports.

27. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

Reason: To ensure compliance with the statutory requirements of Sydney Water.

28. **Bicycle Parking**

Bicycle parking spaces are to be located in locations where they can not be obstructed by parked vehicles. A Bicycle parking space denoted "retail bike(1)" shall be relocated in compliance with the above. Revised plans to be submitted to the Certifying Authority showing the revised location for this bicycle parking space.

Reason: Accessibility of bicycle parking.

29. **Geotechnical Recommendations**

The recommendations of the approved Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction certificate detail plans. Detailed plans demonstrating consistency in this regard are to be submitted to the certifying authority.

Reason: To minimise the risk of development on a landslip affected site.

30. **Utility Services**

Prior to the issue of the construction certificate, written evidence is to be submitted to the certifying authority from all relevant utility suppliers that satisfactory arrangements have been made for the approved development to be connected to all required services.

All services for the proposed development are to be located underground. The location of any trenching for underground services is to take into account future/proposed landscaping. Details demonstrating compliance with this requirement are to be submitted to the certifying authority prior to the issuance of the construction certificate.

Reason: To ensure that service have been provided as required by this Consent.

31. **External Finishes**

The development is to be in accordance with the Schedule of Colours and Finishes referenced in Condition 1 of this consent. Details demonstrating compliance are to be submitted to the certifying authority prior to the issuance of the construction certificate.

Reason: To ensure that the visual impact is appropriately minimised.

32. **Livable Housing**

Prior to the issuance of the construction certificate, a suitably qualified accessibility consultant is to provide written certification to the certifying authority to confirm that all 6 “livable” apartments (and access thereto) have been designed to meet the Silver Level requirements of the Livable Housing Design Guidelines.

Reason: To provide livable housing options.

33. **Residential Apartment Development**

Prior to the issuance of the construction certificate, a statement by the qualified designer is to be submitted to the certifying authority to verify that the plans and specifications of the development achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles.

Reason: Legislative requirement.

34. **Car Wash Bay**

The car wash bay is to incorporate a tap/hose for use by residents. The car wash bay is to be graded to drain to the sewerage system. The perimeter of the wash bay is to be suitably bunded to prevent stormwater entering the sewer. Details demonstrating compliance are to be submitted to the certifying authority prior to the issuance of the construction certificate.

Reason: To provide a usable area for car washing.

35. **Driveway Width**

In accordance with AS 2890.1- 2004 (Parking Facilities, Part 1: Off-street car parking), the driveway shall be a minimum of 5.5 metres in width between the kerb alignment and the basement carpark. Driveway design plans confirming the above shall be submitted to the principal certifying authority to confirm the above.

Reason: Compliance with standards.

36. **Pedestrian Sight Distance at Property Boundary**

A pedestrian sight line triangle of 2.0 metres by 2.5m metres, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property where the driveway intersects with the property boundary. Revised plans for the driveway to be submitted to the Certifying Authority to verify that this will be achieved.

Reason: To ensure pedestrian safety.

37. **Waste and Recycling Requirements**

Details demonstrating compliance with Warringah Development Control Plan – Part C9 Waste Management, including the required Warringah Waste Management Plan, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with Warringah Development Control Plan – Part C9 Waste Management, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

38. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

39. **Construction Traffic Management Plan**

A Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Certifying Authority prior to commencement of works.

The CTMP must address following:

- (a) The proposed phases of construction works on the site, and the expected duration of each construction phase;
- (b) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- (c) Make provision for all construction materials to be stored on site, at all times;
- (d) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- (e) The proposed method of access to and egress from the site for construction vehicles, including access routes and truck rates through the Council area and the location and type

of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;

- (f) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- (g) Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available.
- (h) Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- (i) Include a Traffic Control Plan or plans prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic.
- (j) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- (k) Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- (l) Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- (m) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;
- (n) Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- (o) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent;
- (p) Proposed protection for Council and adjoining properties;
- (q) The location and operation of any on site crane;;

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

40. **Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public Safety.

41. **Demolition Works - Asbestos**

If asbestos is found to be on site, demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

42. **Civil Works Supervision**

The Applicant shall ensure all civil works approved in the Section 138 approval are supervised by an appropriately qualified and practising Civil Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works.

43. **Notification of Inspections**

The Applicant shall notify Council's Development Engineering and Certification team is to be given 48-hour notice when the works reach the following stages:

- a) Installation of Silt and Sediment control devices
- b) Prior to backfilling of pipelines
- c) Prior to pouring of stormwater gully pits

- d) Prior to pouring of kerb and gutter
- e) Subgrade level / basecourse level / subbase
- f) All layers of the road formation are to be proof rolled to Council's satisfaction
- g) Sealing road pavement

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification.

Reason: To ensure new Council infrastructure is constructed in accordance with AUSPEC 1 Council's design and specification standards.

44. **Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: To ensure the developer/builder adheres to the Construction Traffic Management procedures.

45. **Waste/Recycling Requirements (Waste Plan Submitted)**

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan referenced in Condition 1 of this consent.

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided.

46. **Waste/Recycling Requirements (Materials)**

During demolition and/or construction the following materials are to be separated for recycling – timber – bricks – tiles – plasterboard – metal – concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible.

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE**

47. **Landscape Certification**

Prior to the issuance of the occupation certificate, a qualified landscape architect/designer is to

certify that the landscaping works have been completed in accordance with the approved plans referenced in Condition 1 of this consent, as amended by any conditions of consent.

Furthermore, evidence is to be provided to confirm the engagement of a suitably qualified landscape architect who will be responsible for the implementation of the Landscape Maintenance Plan for a minimum period of 2 years. The landscape architect is to confirm that they will undertake to:

- (a) visit the site immediately following completion of the landscaping and hardscape works on site; and
- (b) visit the site on a three (3) monthly basis for a period of 2 years to ensure implementation of the Landscape Maintenance Plan.

Reason: To ensure the approved landscaped solution is provided and appropriately established and maintained.

48. Stormwater Disposal

The Applicant shall submit a certificate from a suitably qualified person that the stormwater drainage works have been constructed/installed in accordance with all relevant Australian Standards and Codes. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

49. Certification of Structures Located Adjacent to Council Pipeline or Council Easement

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed footing works have been constructed in accordance with this consent, Northern Beaches Council's Warringah Water Management Policy PL850 and the approved Construction Certificate plans. Civil Engineer demonstrating compliance is to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of Council's Infrastructure.

50. Positive Covenant for the Maintenance of Stormwater Pump-out Facilities

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance of the pump-out facility on the property being developed. Northern Beaches Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the NSW Land Registry Services. Details demonstrating compliance are to be

submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of final Occupation Certificate.

Reason: To ensure adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard.

51. Positive Covenant and Restriction as to User for On-site Stormwater Detention

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater detention structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for on-site storm water detention is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of final Occupation Certificate.

Reason: To ensure the on-site stormwater detention system is maintained to an appropriate operational standard.

52. Reports Certification

Written certification from a suitably qualified person(s) shall submit to the Principal Certifying Authority, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the reports referenced in Condition 1 of this consent have been completed.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the occupation certificate.

Reason: To ensure compliance with recommendations of approved reports.

53. Post-Construction Dilapidation Survey

The applicant is to engage a suitably qualified person to prepare a post-dilapidation report of the condition of adjoining public and private properties and public infrastructure (including roads, gutter, footpaths, stormwater assets etc) following the completion of works. Any noted damage is to be rectified by the applicant, to the satisfaction of Council, prior to the release of the security bond. The post construction dilapidation report must be submitted to the Council for review and the certifying authority prior to the issue of the occupation certificate.

Reason: To ensure all assets are left in a serviceable state or repaired to ensure ongoing serviceability of the asset.

54. Certification of Civil Works and Works as Executed Data on Council Land

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed works have been constructed in accordance with this consent and the approved Section 138 plans. Works as Executed data certified by a registered surveyor prepared in accordance with Council's 'Guideline for preparing Works as Executed data (details overdrawn on a copy of the approved civil plans) for Council Assets' in an approved format shall be submitted to Council for approval prior to the release of any security deposits.

Reason: To ensure compliance of works with Council's specification for engineering works.

55. Garbage and Recycling Facilities

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the occupation certificate.

Reason: To prevent pollution of the environment and to protect the amenity of the area.

56. Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)

The units within the development are to be numbered in accordance with the Australia Post Address Guidelines (https://auspost.com.au/content/dam/auspost_corp/media/documents/Appendix-01.pdf).

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website Unit Numbering for Multi-Unit Developments Form

External directional signage is to be erected on site at driveway entry points and on buildings and is to reflect the numbering in the table provided. Unit numbering signage is also required on stairway access doors and lobby entry doors.

It is essential that all signage throughout the complex is clear to assist emergency service providers in locating a destination within the development with ease and speed, in the event of an emergency.

Details are to be submitted with any Interim/Final Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

57. **Sydney Water**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure compliance with the statutory requirements of Sydney Water.

58. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and Fire and Rescue NSW.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Interim / Final Occupation Certificate.

Each year the Owners must send to the Council and Fire and Rescue NSW, an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

59. **Livable Housing**

Prior to the issuance of the occupation certificate, a suitably qualified accessibility consultant is to provide written certification to the certifying authority to confirm that all 6 "livable" apartments (and access thereto) have been constructed in accordance with the Silver Level requirements of the Livable Housing Design Guidelines.

Reason: To provide livable housing options.

60. **Plan of Management**

Prior to the issuance of the occupation certificate, a Plan of Management is to be produced for the management of the site and submitted to the certifying authority, identifying:

- (a) Consistency with all 'on-going' conditions of consent over the life of the development,
- (b) Outlining all required maintenance responsibilities for private infrastructure, including water management infrastructure and landscaping, and
- (c) Space management strategies including activity coordination, site cleanliness, rapid repair of vandalism and graffiti, and the maintenance of lighting and landscaping.

The Plan of Management is to be adopted in the by-laws of any future Strata subdivision of the development.

Reason: To ensure the on-going management of the site over the life of the development.

61. **Indented Parking Bay and Associated Signage & Linemarking**

Plans for the proposed on-street indented Loading Zone and associated signage and linemarking shall be prepared by a suitably qualified person and submitted for consideration and approval by Council's Traffic Committee. The works are to be constructed at the full cost to the developer in accordance with the approved plans. Evidence of the completion of works is to be provided to the certifying authority prior to the issuance of the occupation certificate.

Reason: To ensure approval under the Roads Act.

62. **Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with Warringah Development Control Plan – Part C9 Waste Management

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the occupation certificate.

Reason: To ensure waste and recycling facilities are provided.

63. **Waste/Recycling Compliance Documentation**

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled. (DACWTF02)

64. **Positive Covenant for Waste Services**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to provide access to the waste storage facilities prior to the issue of any occupation certificate. The terms of the positive covenant are to be prepared to Council's standard requirements, at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities.

65. **Authorisation of Legal Documentation Required for Waste Services**

The original completed request form (Department of Lands standard form 13PC) must be submitted to Council for authorisation prior to the issue of the occupation certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

66. **Landscape Maintenance**

Trees shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Plans.

Reason: To maintain local environmental amenity.

67. **Commercial Waste and Recycling Storage**

Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins as shown on the approved plans.

Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed.

68. **Parking**

All parking spaces are to be maintained free of obstruction and used solely for the parking of vehicles. The development is to maintain the following spaces for the life of the development:

- (a) 31 dedicated car spaces for the 27 residential apartments, with at 1 space for each studio, one and two bedroom apartments and 2 spaces for each three bedroom apartments,
- (b) 19 dedicated car spaces for the retail component of the development, clearly marked "retail",
- (c) 6 dedicated car spaces for residential visitors, including 1 parking space for people with disabilities compliant with the provisions of AS2890.6,
- (d) 1 dedicated car space for small delivery vehicles, clearly marked "deliveries".

The 19 dedicated spaces for the retail component of the development and the 1 dedicated delivery space must be accessible at all times during trading hours of the associated retail tenancies.

Reason: To ensure that off-street parking is maintained for the life of the development.

69. **Livable Housing**

6 apartments are to be maintained in accordance with the Silver Level Livable Housing Design Guidelines.

Reason: To provide livable housing.

70. **Consistency with the Plan of Management**

The proposed development is to be maintained in accordance with the Plan of Management required by this consent.

Reason: To ensure that the site is maintained in accordance with the standards required by this consent.

71. **Common Property**

The 300mm cavity space between the ceilings of Retail Tenancies 1-3 and the Level 1 slab is to

be common property. The ceilings of these retail spaces must be constructed and maintained below RL 15.0m AHD, being the minimum floor level of Level 1 residential apartments.

Reason: To ensure consistency with the definition of shop top housing, as prescribed by WLEP 2011.