

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0845
Responsible Officer:	David Auster
Land to be developed (Address):	Lot A DP 961049, 68 A Queenscliff Road QUEENSCLIFF NSW 2096
Proposed Development:	Demolition works and construction and strata subdivision of a shop top housing comprising 2 commercial units and 5 residential units
Zoning:	Warringah LEP2011 - Land zoned B1 Neighbourhood Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Christine Coultis
Applicant:	Classic Plans
Application Lodged:	07/08/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	24/08/2019 to 07/09/2019
Advertised:	24/08/2019
Submissions Received:	38
Clause 4.6 Variation:	4.3 Height of buildings: 49.4%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 1,943,930.25

Executive Summary

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposed shop top housing development is not suitable and appropriate development for the subject site.

The proposal is well above the height limit, and is generally bulky in appearance. This will contribute to unreasonable view loss and other unacceptable environmental impacts. The application is not consistent with the Apartment Design Guidelines under SEPP 65. Further, the proposal falls well short of the required amount of parking. The application has failed to satisfy a number of Council's referral

officers, including with respect to stormwater, driveway design, parking, elements overhanging the front boundaries, general design of the building and consistency with the Apartment Design Guidelines, and the design of the waste facilities.

Numerous submissions were received. The bulk of these submissions focused on the height and bulk of the building and resulting view impacts, the roof top terrace and resulting environmental impacts including noise, and on the short fall in parking. There were also other issues raised as discussed within the report.

The objections to these issues are generally supported, and the application is recommended for refusal for these and other reasons. The application falls generally short in various areas with respect to a number of relevant planning controls.

The application has been assessed against the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), Environmental Planning and Assessment Regulations 2000 (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs) and Council policies. The outcome of this assessment is detailed within this report.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be refused, for the reasons attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves demolition of the existing structures on site and construction of a shop top housing development which will be strata subdivided into 7 lots. Specifically, the proposal comprises the following components:

Basement

- Access from Queenscliff road to parking for 6 vehicles, one of which is a small car space.
- Bicycle racks, storage areas and plant room.
- Lift installation and exit stairs to ground floor and Bridge Road.

Ground Floor

- Commercial space 1 (including kitchen, cool room and unisex toilet) opening onto covered awning terrace areas to be used as a cafeteria.
- Commercial space 2 including unisex WC.
- Residential and commercial waste storage facilities.
- Lift, entry lobby and stairs to basement and first floor level.

First Floor

- Units 1, 2 and 3, each comprised of open plan kitchen, living and dining room areas, balconies, 1 bedroom and 1 bathroom.
- Lift, lobby area and stairs to ground and second floors.

Second Floor

- Unit 4 comprised of open plan kitchen, living and dining room, balcony, 3 bedrooms, all with built

- in robe and bedroom 1 with en-suite, 1 common bathroom.
- Unit 5 comprising open plan kitchen, living and dining room, balcony, two bedrooms, each with built in robe, 1 bathroom.
- Lift installation lobby area and stairs to first floor and roof terrace areas.

Roof Plan

- Private roof terrace areas for units 5 and 6 comprising 40.5sqm and 28.6sqm respectively.
- “Tilt” pop up glazed roof sky lights over internal stairs.
- Common roof terrace area of 70sqm with access from common stair well.
- Lift installation and overrun.
- Central building services flute.
- Planter box and privacy screen divisions between respective terrace areas.

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 B1 Neighbourhood Centre
 Warringah Development Control Plan - B6 Merit Assessment of Side Boundary Setbacks
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - C2 Traffic, Access and Safety
 Warringah Development Control Plan - C3 Parking Facilities
 Warringah Development Control Plan - C4 Stormwater
 Warringah Development Control Plan - C9 Waste Management
 Warringah Development Control Plan - D2 Private Open Space
 Warringah Development Control Plan - D3 Noise
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy

Warringah Development Control Plan - D9 Building Bulk

Warringah Development Control Plan - D11 Roofs

Warringah Development Control Plan - F1 Local and Neighbourhood Centres

SITE DESCRIPTION

Property Description:	Lot A DP 961049 , 68 A Queenscliff Road QUEENSCLIFF NSW 2096
Detailed Site Description:	<p>The site is a corner lot located at the intersection of Queenscliff Road and Bridge Road. The site is slightly irregular in shape, and has an area of 315.2sqm. The site falls from the northern front boundary on Queenscliff Road to the southern side boundary by up to approximately 1.6m. The surrounding topography continues to fall to the south and rise to the north.</p> <p>There is an existing brick three storey shop top housing development on site. The development includes limited parking at the western end of the site and a raised timber deck in the south east corner of the site attached to one of the commercial units.</p> <p>Surrounding development consists mainly of residential flat buildings of various ages and architectural styles to the north, east and west. The adjoining neighbour to the south is a single detached dwelling. Both the subject site and the southern neighbour are zoned B1 Neighbourhood centre.</p> <p>There are views of the ocean and Manly/Queenscliff Beach and surrounds available across the site from the neighbouring residential flat buildings across the road to the north and north west.</p>

Map:



SITE HISTORY

PLM2018/0143 - A prelodgement meeting was held between Council and the applicants on 17 July 2018. The notes from this meeting stated that the proposed height was unlikely to be supported by Council, particularly if the proposed height contributed to unreasonable view loss or other unreasonable environmental impacts. Reduction to a compliant 8.5m overall height was recommended. Concerns were also raised with the possible impacts caused by the roof top terrace, side setbacks, and number of parking spaces.

DA2015/1079 - Alterations and additions to the existing shop top housing development and strata subdivision of low rental dwellings under SEPP (Affordable Rental Housing) 2009 was approved by Council on 5 April 2016. These alterations and additions, though over the height limit in places, generally resulted in a reduction in height of the existing building, by replacement of the existing pitched roof with a flat roof.

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	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – 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>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of consent should the application be approved.</p> <p>Clause 50(1A) 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>Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p>

Section 4.15 Matters for Consideration'	Comments
	<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 can be addressed via a condition of consent should the application be approved.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent should the application be approved.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent should the application be approved.</p> <p><u>Clause 143A</u> 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 should the application be approved.</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 Warringah Development Control Plan section in this report. As discussed throughout this report, the proposal is considered to have unreasonable environmental impacts in terms of impacts to the surrounding vicinity.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the development as proposed. The use of the site as shop top housing is acceptable, but the intensity of development and built form proposed is considered to be an over-development of the site.
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	This assessment has found the proposal to be contrary to the relevant

Section 4.15 Matters for Consideration'	Comments
public interest	requirements of the Warringah LEP and DCP, and State Environmental Planning Policy 65 - Design Quality of Residential Apartment Development, and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited 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 38 submission/s from:

Name:	Address:
Mr Bruce James Geddes	1 / 12 Bridge Road QUEENSCLIFF NSW 2096
Mr Phillip James Bailey Mrs Nicole Simone Bailey	8 / 48 Pavilion Street QUEENSCLIFF NSW 2096
Guilherme Guaragni Flavia Martins Pereira E Silva	2 / 48 Pavilion Street QUEENSCLIFF NSW 2096
Mr Paul Anthony Cook	4 / 12 Bridge Road QUEENSCLIFF NSW 2096
Peter John Rawling	11 / 63 - 67 Pavilion Street QUEENSCLIFF NSW 2096
Ms Lyn Rhodes Ellis	57 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Bret Stephen Gambrill Mrs Mary Geraldine Gambrill	74 Queenscliff Road QUEENSCLIFF NSW 2096
Withheld	QUEENSCLIFF NSW 2096
Sally Mills Glover	6 / 61 - 63 Queenscliff Road QUEENSCLIFF NSW 2096
Deborah Mary McMeniman	7 / 75 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Chris Liell-Cock	94 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Martin Joseph Hartcher	8 / 61 - 63 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Gregory Sydney Sullivan	5 / 61 - 63 Queenscliff Road QUEENSCLIFF NSW 2096
Mrs Karen Lisa Birch	119 Woodland Street BALGOWLAH NSW 2093
Mr Paul James Mitchell	6 / 53 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Sean Andrew Kiely Sally Frances Kiely	49 Pozieres Parade ALLAMBIE HEIGHTS NSW 2100

Name:	Address:
Jennifer Dean	16 / 15 a Pine Avenue BROOKVALE NSW 2100
Grant Raymond Davis	PO Box 140 NOOSA HEADS NSW 4567
Mr Malcolm Craig Hanlon	8 / 53 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Andreas Ulrich Faeste	88 Queenscliff Road QUEENSCLIFF NSW 2096
Dean Cameron Andrews	5 / 53 Queenscliff Road QUEENSCLIFF NSW 2096
George Davis	23 Greycliffe Street QUEENSCLIFF NSW 2096
Phillip Andrew Callaghan	3 / 55 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Shane Andrew Wynhoven	4 / 53 Queenscliff Road QUEENSCLIFF NSW 2096
Miss Sophie Helen Rouse	6 / 55 Queenscliff Road QUEENSCLIFF NSW 2096
David Peter Steindl Mrs Jennifer Jane Steindl	72 Queenscliff Road QUEENSCLIFF NSW 2096
Greg Oreilly	2 / 68 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Peter Gregory Richter	29 Crown Road QUEENSCLIFF NSW 2096
Mr Paul Robert Corbitt	2 / 55 Queenscliff Road QUEENSCLIFF NSW 2096
Ms Bronwyn Joy Cameron	8 / 55 Queenscliff Road QUEENSCLIFF NSW 2096
Jessica Train	2 / 53 Queenscliff Road QUEENSCLIFF NSW 2096
Ms Gillian Margaret Ruskin	21 A Greycliffe Street QUEENSCLIFF NSW 2096
Mr Robert Joseph Mather	78 Queenscliff Road QUEENSCLIFF NSW 2096
Peter Gray	2 / 12 Bridge Road QUEENSCLIFF NSW 2096
Mr Antonios Kanis	9 / 55 Queenscliff Road QUEENSCLIFF NSW 2096
Mark Lindsay Robinson	1 / 55 Queenscliff Road QUEENSCLIFF NSW 2096
Hedwig Williams Martina Williams	7 / 53 Queenscliff Road QUEENSCLIFF NSW 2096

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

- Height
- Views
- Parking and traffic
- Solar access
- Excavation
- Building bulk, design, neighbourhood character
- Roof terrace
- Apartment Design Guidelines

The matters raised within the submissions are addressed as follows:

- **Height**
Concerns were raised regarding the height of the proposal.

Comment:

The height of the development is addressed in detail under clause 4.6 in this report. In summary, the proposal is well above the 8.5m height limit, and is not considered acceptable. The concerns raised in the submissions are supported in this regard, to the extent discussed

within this report. The height of the proposal is a recommended reason for refusal.

- **Views**

Concerns were raised with respect to impacts on views.

Comment:

This issue is addressed in detail under clause D7 Views in this report. In summary, the proposal is not considered to maintain a reasonable sharing of views as required. The submissions are supported in this regard, and the application is recommended for refusal partly on this basis.

- **Parking and traffic**

Concerns were raised with regard to the lack of off-street parking provided, particularly in relation to the lack of on-street parking available in the surrounding area. Concerns were also raised with regard to traffic generation from the development.

Comment:

Parking is discussed in detail under clause C3 Parking Facilities in this report. In summary, the proposal is not considered to provide adequate off-street parking, and the submissions are supported in this regard. This forms part of the reasons for refusal.

With respect to extra traffic being generated in the area, the proposal was referred to Council's Traffic Engineer who stated that the traffic generation would have no adverse impact on the road network. The intensity of the development is not such that the amount of traffic generated would be unreasonable in the medium density area. The submissions are not supported in that respect.

- **Solar access**

Concerns were raised by the southern neighbour, particularly with regard to shading of their back yard area between dwelling and pergola, and in their front yard also.

Comment:

The shadow diagrams provided indicate that the proposal will not create any greater overshadowing of the southern neighbour's rear private open space than is currently caused by the existing building on site (the extended shadows will fall on the roof area of the southern neighbour).

It is noted that the rear private open space is highly vulnerable to overshadowing, being both to the south and downhill from the subject site. Further, the southern neighbour has their own shade casting pergola in the north west corner of the rear yard, which shades a significant portion of the rear, and the area between this pergola and the rear of house is immediately adjacent to the northern boundary, making it difficult to be protected from overshadowing even if the proposal complied with the height limit.

Given these factors, the proposal is not considered to result in unreasonable overshadowing. The submission is not supported in this regard. However, the proposed height of the building is not supported for other reasons, as discussed throughout this report.

- **Excavation**

Concerns were raised regarding the amount of excavation proposed, and possible impacts on the neighbouring building to the south.

Comment:

The application includes a geotechnical report (Geo-Environmental dated 21 June 2019). This

report has addressed the potential impacts to surrounding buildings due to vibrations from excavation, and includes recommendations to limit any risk in this regard. The report also recommends a dilapidation report be carried out on surrounding properties. Subject to the recommendations of this report, the proposal is considered acceptable in this regard.

If the application was to be approved, a condition of consent requiring all recommendations of this report to be carried out would be recommended for inclusion in the consent. The submission is considered to be reasonably satisfied in this regard.

- **Building bulk, design, neighbourhood character**

Concerns were raised regarding the overall design of the development, particularly with regard to the bulk and scale created by blank dominant facades, broken up only by features attached to the facades, and the cluttered roof top caused by the lift and privacy screens. Further concerns were raised regarding the bulky design of the upper levels in particular, and lack of awnings for pedestrians to take shelter, and that this meant the proposal would fail to create a 'village like atmosphere'.

Comment:

These concerns are generally supported, as discussed throughout this report. The proposed building is lacking in articulation and depth, and the features on the front (northern and eastern) facades in particular, attached to create some articulation and visual interest, are generally overhanging the boundary (and are therefore not supported by Council), and are inadequate to sufficiently break up the bulk of the building in any case. Council's Urban Designer has also raised various concerns regarding the overall design. These concerns form part of the reasoning for refusal.

- **Roof terrace - Privacy, noise, safety**

Concerns were raised with regard to potential environmental impacts caused by the roof top terrace, including privacy, noise, safety, and general cluttered design of the roof being out of character with the neighbourhood.

Comment:

These concerns are generally supported, as discussed throughout this report. The roof terrace is entirely above the permitted height limit for the site, and there are no other roof terraces in the vicinity which create any precedent for such development. The application has not demonstrated that noise from use of the terrace will be adequately contained within the site. These concerns form part of the recommended reasons for refusal.

- **Apartment Design Guidelines**

Concerns were raised with respect to various aspects of the Apartment Design Guidelines, particularly with regard to the floor to ceiling heights of the commercial units, the amount of storage provided, lack of deep soil area, and setbacks to the southern boundary in particular.

Comment:

These concerns are supported to the extent discussed under the SEPP 65 section of this report. In particular, the floor to ceiling heights of the commercial units is inadequate, and Council's Urban Designer has recommended that the southern side setbacks of balconies be increased somewhat. Inconsistency with the requirements of SEPP 65, including the Apartment Design Guidelines, is a recommended reason for refusal.

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>It is noted that the Juliet balconies and polystyrene window surrounds encroach over the property boundary, but this is a matter for Planning to determine.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Environmental Health (Food Premises, Skin Pen.)	<p>General Comments</p> <p>Primary concerns are with regards to noise from the commercial occupations , mechanical ventilation, plant and the rooftop deck.</p> <p>Despite a kitchen fit out being shown for commercial unit No 1 it is noted that commercial units will be subject to a separate development application at which time the acoustic implications and fit out requirements for the kitchen including mechanical exhaust can be taken into consideration.</p> <p>For the residential component , basement mechanical exhaust can be dealt with by way of a condition relating to the acoustic engineers report.</p> <p>Concern is expressed for the rooftop terrace areas.</p> <p>The applicant is proposing to restrict " groups" of people using these areas between 10 pm and 7 am however I believe the condition should relate to any use of the area, as it is difficult to define and police a group.</p> <p>Therefore Environmental Health believe that the application can be approved provided robust conditions are put in place with regards to Environmental Health issues</p> <p>Recommendation</p>

Internal Referral Body	Comments
	APPROVAL - subject to conditions
Landscape Officer	<p>The proposed development provides little by way of soft landscape, however it is noted that the site is zoned B1-Neighbourhood Centre with nil front setback and landscape open space requirements.</p> <p>The plans indicate some paving and landscape works within the road reserves surrounding the site. No details have been provided regarding treatments, Comment from Council's Roads Assets section should be sought regarding the suitability of the proposed paving, paths and stairs in the road reserve.</p> <p>The plans indicate street tree planting to Queenscliff Rd, but no details are provided. If the proposal is to be approved, recommended small coastal tolerant species have been included in conditions.</p>
NECC (Coast and Catchments)	The proposed development has been assessed to comply with clauses 13 and 15 of SEPP Coastal Management and is supported without condition. It is not likely to alter coastal processes to the detriment of the environment or other land and is not likely to reduce public amenity or existing access to and use of a foreshore.
NECC (Development Engineering)	<p>Based on the above mentioned issues the proposal is not supported for approval due to inadequate information to address:</p> <ul style="list-style-type: none"> • Storm-water drainage for the site and road drainage in accordance with Council Water Management Policy PL 850 Water. • Driveway crossing design in accordance with AS/NZS2890.1. • Pedestrian access for the site in accordance with the latest version of AS1428.1. <p>It is recommended that the Applicant consult further with Council's Development Engineers regarding any future proposal of civil works.</p> <ul style="list-style-type: none"> •
NECC (Development Engineering)	<p><u>General Information</u></p> <p>Development application for demolition of the existing structures and construction of a shop top housing development and strata subdivision into 7 lots at Lot A DP 961049 No 68A Queenscliff Road, Queenscliff. The proposal was the subject of a pre-lodgement meeting 17 July 2018 and the application incorporates appropriate responses to the recommendations from this meeting.</p> <p>DA 2015/1079 for Subdivision - Alterations and Additions to an existing Shop Top Housing Development and Strata Subdivision of low rental dwellings under SEPP (Affordable Rental Housing) 2009 Consent granted 5 April 2016.</p> <ul style="list-style-type: none"> • Construction Certificate CC2018/0053 Alterations and Additions to

Internal Referral Body	Comments
	<p>an existing Shop Top Housing Development and Strata Subdivision of low rental dwellings under SEPP (Affordable Rental Housing) 2009 – Approved 15 January 2018</p> <ul style="list-style-type: none"> • NOC2018/0068 Notification of Commencement - Alterations and Additions to an existing Shop Top Housing Development and Strata Subdivision of low rental dwellings under SEPP (Affordable Rental Housing) 2009 17 January 2018. <p>The Applicant has stated that the development in accordance with the above consent and approval has “physically commenced”.</p> <p><u>Stormwater Assessment comments</u></p> <p>The proposed design for connection of the development storm-water drainage discharge, via required OSD, directly to Council's pipe in Bridge Road by using "Flowcon Conconnect" is not in accordance with Council's standard requirements, and for that reason, the proposed design shall be amended. It is recommended to relocate the OSD to the most suitable location (north east corner of the development) and connect discharge by gravity to the existing pit with kerb inlet fronting the site. The grated access hatch to OSD shall be accessible. A Drains model shall be provided with the amended storm-water design.</p> <p><u>Civil Works Assessment comments</u></p> <p>The proposed profile for vehicular crossing access from Queenscliff Road (dwg No 040/19) is very different from the approved proposal under DA2015/1079 and is not in accordance with Council's Standard. The Applicant shall provide long sections along the center line and both edges of the vehicular access in accordance with AS/NZS2890.1 and Council Standard. The sections are to be taken from the center line of the street through to the Basement Parking and must show ground clearance in accordance with AS/NZS2890.1 for B85 and B99. Proposed layout for the allocated basement parking spots is not in accordance with AS/NZS2890.1 and the layout shall be rearranged to comply with Council requirements imposed at the pre-development meeting in regards to number of parking lots. However, this issue will be addressed from Council Traffic Engineer.</p> <ul style="list-style-type: none"> • The proposed footpath shall be aligned in continuation of the existing footpath along Queenscliff Road. The amended plan shall provide design for 1.5 m wide footpath, placed adjacent to the kerb and a long section through the main pedestrian access to the property/Lobby to justify complying of the proposed design with the requirements of Australian Standard - Access for people with Disabilities.
Road Reserve	<p>The building encroaches into the airspace of Council's road reserve. The encroachment of the building is not supported. The building should be contained within the property boundaries of the subject site.</p>

Internal Referral Body	Comments
	<p>There are known flooding problems of adjoining properties associated with the low level profile of the existing driveway. Details are required to demonstrate the driveway to the development can accommodate Normal Low Standard Vehicle Crossing Profile to reduce flooding of downstream properties.</p> <p>As per Development Engineering comments, the proposed paving on road reserve shall be subject to Road Act approval and include kerb ramp crossings on both the Queenscliff Road and Bridge Road frontages.</p> <p>No other impact on existing road assets.</p>
Strategic and Place Planning (Urban Design)	<p>1. Built Form Controls</p> <p>WLEP 2011</p> <p>4.3 Height of Buildings</p> <p><i>(1) The objectives of this clause are as follows:</i></p> <p><i>(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,</i></p> <p><i>(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,</i></p> <p><i>(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,</i></p> <p><i>(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.</i></p> <p>The upper storey rooftop common and private spaces are not supported. There are several instances of the lift overrun and associated elements obstructing medium to long distance views from the northern side of Queenscliff Road. As such any built form elements to the rooftop area should be minimised and where necessary for external mechanical plant, screened from view appropriately and with minimal height of built form obstructions.</p> <p>Additionally the final flight of risers to the stair that leads to the rooftop is unsupported.</p> <p>Given the rooftop common area is not supported the need for the stair is questioned.</p> <p>2.1 Land Use Zone</p> <p>B1 Neighbourhood Centre</p> <p>Objectives of zone</p> <ul style="list-style-type: none"> <i>• To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.</i> <i>• To ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians.</i> <i>• To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential</i>

Internal Referral Body	Comments
	<p><i>land uses.</i></p> <p>RESPONSE The proposed use represents the desired future land uses for the property.</p> <p>As will be mentioned herein a fine grain approach to the detailing of level access to the premises and the resolution of the frontage to Bridge Road to provide more opportunities for activation; rest or pause areas that have a pedestrian friendly interface with the premises is highly recommended. At the moment the elevation from ground plane to the ground floor FLL is a blank wall.</p> <p>WDCP 2011 B7 – Front Boundary Setback Requirements <i>A - nil setback</i></p> <p>RESPONSE Nil setback applies to the property. The drawings demonstrate entrances from both street frontages. Access to premises standards should be adopted for the ground floor tenancies with access provisions for all tenancies in accordance with the relevant standards. It is noted there is a significant level change on the short north south frontage of Bridge Road. Street activation along both frontages is encouraged with design details at the building line and public interface providing a well resolved final built form outcome; avoid high street wall effect on the lower southern side of the Bridge Road frontage.</p> <p>(Existing Use Rights application – proposed development will be required to maintain the existing building setbacks.)</p> <p>B7 – Side Boundary Setback Requirements A - Merit Assessment</p> <p>RESPONSE Whilst it is noted the existing building approved DA 2015/1079 has provided a 3 metre setback to the southern boundary from the building line, the pre-lodgement meeting advice (provided PLM2018/0143) reinforced the need for a minimum 3metre setback.</p> <p>Whilst the ground level terrace extends to the boundary the planter screening device is supported and would provide better acoustic attenuation. It is recommended this planter screening device be returned at the western end to run the short length of the terrace at the western most point thus providing further acoustic separation to the property at 21 A Bridge Road.</p> <p>(Existing Use Rights application – proposed design would be required</p>

Internal Referral Body	Comments
	<p>to remain within the existing building footprint and setback alignments.)</p> <p>2. Apartment Design Guide (ADG)</p> <p>3F Visual Privacy The recommendation notes separation from habitable rooms; balcony, living and bedroom require a nominal 6 metre setback from the boundary. It is noted that the site is constrained and the previous merit assessment (see above) nominates a 3 metre setback to all three street frontages. The balconies of the upper levels on all three street frontages should be within the boundaries of the site on the northern and eastern elevations and within the 3 metre setback control on the south.</p> <p>The Juliet balconies to the north elevation overhang the public pedestrian thoroughfare and as such cannot be supported. Recessing the balconies back into the building and providing full height vertical operable privacy screening to the balconies would be the preferred outcome.</p> <p>The balconies to the southern elevation should similarly be set back within the building line, aligned with the three metre setback, recessed and with full height vertical operable privacy screening to the whole balcony(s).</p> <p>3G – Pedestrian Access and Entries The drawings demonstrate the front entry to the apartments has a nil setback to the boundary. This also relies on the weather protection awning overhanging the public pedestrian path. Whilst an awning over a public path is not strictly prohibited the entry and lobby poses a few issues in terms of adequate circulation space. Upon entering the building the circulation access stairs from the upper levels exits directly onto a cross path of travel from both the entry door and the lobby inside the building.</p> <p>Ideally there would be a recessed porte cochere entry with minimum 2 metres from the boundary and an internal lobby with adequate circulation space for several occupants to pass and circulate comfortably once inside the building. Moving the kitchen wall in Commercial 1 by approx. 2 metres to the east would assist to create a more generous lobby and circulation zone, minimise circulation conflicts and allow for a more realistic entry into the private lobby without obstructing pedestrians in the public zone.</p> <p>The applicant is directed to the above mentioned clauses from the ADG to guide design of the public private interfaces of the development.</p>
Traffic Engineer	Proposal

Internal Referral Body	Comments
	<p>The proposal is for demolition of the existing structure and construction of a multi-dwelling mixed-use development comprising 2 retails at ground floor with a total GFA of 112m², and 5 dwellings. The proposal provides six (6) car parking spaces within the basement level with the breakdown of 5 residential parking spaces; and one commercial parking space with driveway access on Queenscliff Road.</p> <p>Parking</p> <p>In compliance with Warringah DCP, the provision of 14 parking spaces is required for the proposed development, this is whilst there are 6 spaces provided within the car parking area. Given that the proposal is for construction of a new development, the compliance with the DCP will be required.</p> <p>Access and internal design</p> <p>The proposal includes a signal system to control the traffic movement on the driveway. Whilst this will improve the sightline issue on the proposed driveway, given the proposed driveway being a long and curved single lane driveway, to prevent any reversing and adverse impact on the frontage road, the provision of a passing bay is considered necessary. The passing bay is to be minimum 5.5m wide for at least first 6m from the property boundary.</p> <p>The driveway gradients shall be designed in compliance with Australian Standards AS2890.1:2004. In this regard, the gradient of the first 6m of the driveway shall be maximum 1:20.</p> <p>The car space No.2 is proposed to be a small car space. The proposed small space is not supported particularly given the significant shortfall in parking provision. All parking spaces are to be designed for a standard vehicle in accordance with AS2890.1:2004. It should be noted that the swept path analysis indicates that this space will not be accessible without intruding on the adjacent car space when turning in / out of the spaces, which is not acceptable.</p> <p>Traffic generation</p> <p>The proposed development is expected to generate 7.5 veh/hr during the AM and PM peak period. The anticipated traffic generation is not considered to have adverse impact on the road network, and is acceptable.</p> <p>Conclusion</p> <p>In view of the above, the proposal cannot be supported on traffic grounds.</p>
Waste Officer	The applicant has not complied with the Northern Beaches Council

Internal Referral Body	Comments
	<p>Waste Management Guidelines as follows. A redesign is required to ensure compliance.</p> <p>The access between the Waste Storage Area and Collection Point must be a minimum width of 1200mm. Any doors fitted on the Waste Storage Area, pathway and access must be: a) A minimum width of 1200mm. b) Able to be latched in an open position. c) Unobstructed by any locks and security devices. d) Open in an outward direction.</p> <p>Recommendation</p> <p>Refusal</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	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.

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 mixed residential / commercial purposes for a significant period of time. 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 mixed residential and commercial land use.

SEPP 65 - Design Quality of Residential Apartment Development

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

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

- (a) the development consists of any of the following:
 - (i) the erection of a new building,
 - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
 - (iii) the conversion of an existing building, and
- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development is for the erection of a three storey shop top housing development plus basement car parking for the provision of five self-contained dwellings.

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

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

Clause 28 of SEPP 65 requires:

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

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

DESIGN REVIEW PANEL

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

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

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

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

Comment: The subject site is zoned B1 Neighbourhood Centre and is surrounded by a mixture of traditional and modern apartment style buildings interspersed by two storey dwelling houses within landscape settings. Shop top housing development is permissible development within the zone. A shop

top housing development was constructed on the site during the mid 1960's (Land Use Consent No.65/61) and has since been modified.

Council's Urban Designer has raised concerns regarding the design of the development with regard to access to the premises and activation of the commercial units, elements overhanging the front boundaries, and inadequate articulation of the bridge road elevation in particular. Given these concerns, the proposal is not considered to be consistent with principle 1.

Principle 2: Built Form and Scale

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

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

Comment: The proposal is generally well above the 8.5m height limit applicable to the site, and the design in general does not provide a great deal of articulation to the northern, eastern and western elevations in particular to break up the general bulk of the building. The features used on these elevations to provide visual relief are comprised in large part of juliet balconies and window treatments which overhang the front boundary (and are not supported for that reason), with little depth otherwise provided to these elevations by varying setbacks or similar. Council's Urban Designer has raised concerns with various aspects of the design (see Referrals section of this report), and as such, the proposal is not considered to be consistent with principle 2.

Principle 3: Density

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

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

Comment: The proposal results in a significant height non-compliance in order to provide the roof top terrace in particular, which is intended to provide the common open space required by the SEPP. The upper level of units is also above the height limit with a minimum height of 8.66m at the lowest point, even if the roof terrace was deleted entirely. Despite this non-compliance the proposal is still unable to fully achieve the minimum floor to ceiling heights for the commercial units under both the SEPP and the Warringah DCP. The proposal provides only six car spaces (one of which is a small car space), which falls well short of the 13 spaces required by the Warringah DCP. Taken together these non-compliances indicate an over development of the site in terms of density.

Principle 4: Sustainability

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

Comment: The application includes a BASIX certificate, and generally provides for internal natural cross ventilation and solar access, and is largely consistent with the requirements of the SEPP in this regard.

The proposal is considered to be generally consistent with Principle 4.

Principle 5: Landscape

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

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

Comment: Minimal landscaping is provided by the proposal, which is limited to 3.6sqm of deep soil area in the south western corner of the site, and planter boxes on the southern deck off Commercial unit 1, and on the roof top terrace. Given the size of the site, provision of landscaping in accordance with the minimum requirements of the SEPP is perhaps unrealistic. However, this emphasises the need for excellence in design of the building to wholly provide a visually attractive development with good amenity, that provides a positive image and contextual fit, in the way that this principle suggests could be contributed to by landscaping. Given the concerns raised in the above principles with regard to the overall design of the building, the proposal is not considered to be consistent with this principle.

Principle 6: Amenity

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

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

Comment: The proposal is generally well designed in terms of internal amenity for the units. However, as discussed throughout this report, the proposal is considered to result in unreasonable amenity impacts to surrounding neighbours, particularly in terms of view loss and possible acoustic and visual privacy impacts from the roof top terrace.

Principle 7: Safety

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

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

Comment: The proposal will provide for casual surveillance of the surrounding area, and all units will be accessible via the stairwell and lift which will be behind lockable doors. The proposal is generally consistent with this principle.

Principle 8: Housing Diversity and Social Interaction

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

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

Comment: The proposal provides for 3 x 1 bedroom units, 1 x 2 bedroom unit and 1 x 3 bedroom unit. A mix of apartment sizes is therefore provided. A large communal space is provided on the roof top terrace, with views towards the ocean and Manly Beach (although this roof terrace is not supported for other reasons as discussed throughout this report). The proposal is generally consistent with this principle.

Principle 9: Aesthetics

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

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

Comment: As discussed above, Council's Urban Designer has raised concerns with various aspects of the design (see Referrals section of this report). The articulation of the building to break up the bulk on the northern elevation in particular is largely provided by juliet balconies and window treatments which overhang the boundary (and are not supported for this reason). The general design of the building without these features is lacking in articulation and depth provided by varying setbacks. The proposal is not considered to achieve this principle.

APARTMENT DESIGN GUIDE

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Inconsistent The proposal is not satisfactory in relation to this clause. The proposed shop top housing use is suitable in the context of the site, being land zoned B2 Local Centre. However, the proposal presents excessive development for the subject site given the large proposed non-

		compliances with the height and parking controls in particular, and creates unacceptable impacts to surrounding neighbours in this regard.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	<p>Inconsistent</p> <p>The proposal is situated to the north eastern corner of the site, minimising overshadowing of the southern and western neighbours. The shadow diagrams provided indicate that solar access generally in accordance with the minimum requirements will be maintained to neighbours, noting that the southern neighbour is highly vulnerable to overshadowing.</p> <p>The proposed units are generally orientated to the south to take advantage of the views as opposed to maximising northern sun to living areas. This is generally acceptable in the circumstances of the site.</p> <p>However, with regard to the streetscape, concerns have been raised by Council's Urban Designer around the design of the building, particularly with regard to the elements overhanging the front boundary which are not supported. The proposal is not therefore satisfactory in relation to this clause.</p>
Public Domain Interface	<p>Does the development transition well between the private and public domain without compromising safety and security?</p> <p>Is the amenity of the public domain retained and enhanced?</p>	<p>Consistent</p> <p>The private access to the units is generally separate from the public access to the commercial units on the ground level, and</p>

		locked door access will be provided to the private areas of the development. The proposal is satisfactory in relation to this clause.						
Communal and Public Open Space	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter) 	<p>Consistent</p> <p>The proposal complies with these requirements due to the common area proposed on the roof top terrace. As discussed throughout this report, the roof terrace is considered unacceptable for other reasons such as the height and impact on views.</p>						
Deep Soil Zones	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td>7%</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	<p>Inconsistent</p> <p>The proposal provides for 1.2% (3.6sqm) of the site as deep soil landscaped area, located in the south western corner of the site. Given the size of the site, provision of compliant deep soil area may be unrealistic. However, the proposal does not comply with the minimum requirements, and this may be considered as another potential sign of over development of the site.</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)						
Less than 650m ²	-	7%						
Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> </tbody> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p><i>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</i></p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	<p>Inconsistent</p> <p>The proposal provides for a minimum 1.865m setback to the southern side boundary from the residential balconies, and a minimum 3m to western side boundary from the west facing windows. The lower level southern terrace of the commercial unit is on a nil setback to the southern boundary, with a planter box proposed along the southern edge.</p> <p>Given the size of the site, greater setbacks than</p>
Building height	Habitable rooms and balconies	Non-habitable rooms						
Up to 12m (4 storeys)	6m	3m						

		<p>these may be unrealistic. The neighbouring site to the south, although presently occupied by a single detached dwelling, is also zoned B2. The site is a relatively high density area, and given the views available to the south, it is always likely that any development of the subject site will primarily orientate itself in that direction.</p> <p>Council's Urban Designer has recommended increased setbacks (minimum 3m) to the southern side boundary, by recessing the balconies into the development.</p> <p>The proposal is not considered to have adequately addressed visual privacy and setback concerns in this regard.</p>
Pedestrian Access and entries	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p>Inconsistent</p> <p>Council's Urban Designer has made some comments in relation to the access points (see referral response), in relation to the design of the private entry lobby area and circulation space. Given these comments, the proposal is not considered to have satisfied this clause.</p>
Vehicle Access	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p>Inconsistent</p> <p>Council's Traffic Engineer has recommended refusal based on various traffic issues (see referral response in this report), including lack of a passing bay on the driveway, driveway gradient, lack of parking, and the design of the parking being inaccessible in parts.</p>
Bicycle and Car	<p>For development in the following locations:</p>	<p>Inconsistent</p>

Parking	<ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p>The proposal results in the requirement for 13.5 car spaces, based on the Warringah DCP requirements.</p> <p>The proposal provides for six spaces, one of which is a small car space, which Council's Traffic Engineers have raised concerns may not be accessible.</p> <p>Lack of parking in the surrounding area was a significant issue for neighbours, and was raised as a concern by almost all of the submissions received.</p> <p>The proposal is for a complete knock down and rebuild of the existing development on site. The proposal is well below the minimum requirement for parking, and is not consistent with this clause. As such, inadequate parking is a recommended reason for refusal of the application.</p>
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter. 	<p>Consistent</p> <p>Four of the five proposed residential apartments (80%) have north facing living area windows. The private open spaces are generally located to the south, to take advantage of the southern views. This is considered acceptable in the circumstances of the site in relation to this clause.</p> <p>Consistent</p> <p>20% (1 of 5) of the apartments receives no sunlight, as proposed Unit</p>

		2 is wholly south facing. Given the number of apartments, and the views to the south available, the minor non-compliance is considered acceptable in the circumstances of the site.												
Natural Ventilation	The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by: <ul style="list-style-type: none">At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	Consistent Four of the five (80%) of the apartments are naturally cross ventilated. The other unit (unit 2) is a maximum of 4m in depth from the windows/doors. The proposal is consistent with this clause.												
	<ul style="list-style-type: none">Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	Consistent The maximum cross-through depth for any of the units is 9m in Unit 5. The other units are less deep.												
Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	Inconsistent The proposal includes a minimum 2.84m floor to ceiling height for the commercial unit 2, and 3.24m for commercial unit 1, which is marginally non-compliant with the minimum 3.3m requirement. Further to this, for cafes/restaurants a minimum 4m ceiling height is recommended (which is the intended use for Commercial unit 1). The residential units comply with the minimum 2.7m requirement. Given the significant non-compliance with the overall height control proposed, and that despite this non-compliance, the floor to ceiling heights are still unable to comply, the proposal is not considered
Minimum ceiling height														
Habitable rooms	2.7m													
Non-habitable	2.4m													
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope													
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use													

		satisfactory in relation to this clause.										
Apartment Size and Layout	Apartments are required to have the following minimum internal areas: <table><tr><th>Apartment type</th><th>Minimum 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> The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m ² each.	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	Consistent The one bedroom units are all 50sqm or greater. The two bedroom unit is 72sqm in area. The three bedroom unit is 90sqm, but includes a second bathroom, meaning it results in non-compliance of 5sqm. This non-compliance is considered to be minor, and could easily be fixed by deletion of the bathroom. However, deletion of the bathroom wouldn't improve the unit in terms of internal amenity, and the minor non-compliance is supported in this instance.
	Apartment type	Minimum internal area										
	Studio	35m ²										
	1 bedroom	50m ²										
	2 bedroom	70m ²										
3 bedroom	90m ²											
Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	Consistent Complies											
Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Consistent The floor to ceiling heights of the units are 2.7m, meaning 6.75m is the maximum depth requirement under this clause. All cross-through unit's rooms are within this distance to a window, and the guidelines note that a distance of up to 3 x the floor to ceiling height is acceptable with open plan layouts. The only non cross-through unit is a maximum of 4m deep. The proposal is considered acceptable in relation to this clause.											
In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Consistent Complies											
Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe	Consistent Complies											

	space).																
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	Consistent Complies															
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none">3.6m for studio and 1 bedroom apartments4m for 2 and 3 bedroom apartments	Consistent Complies															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Consistent Complies															
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	Consistent A minor non-compliance is proposed for the 3 bedroom apartment which has a balcony that is only 2.15m wide. However, this balcony will open up directly off the open plan living area, and is over 10m in length. The minor non-compliance is acceptable.
	Dwelling Type	Minimum Area	Minimum Depth														
	Studio apartments	4m ²	-														
	1 bedroom apartments	8m ²	2m														
	2 bedroom apartments	10m ²	2m														
3+ bedroom apartments	12m ²	2.4m															
The minimum balcony depth to be counted as contributing to the balcony area is 1m																	
For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	N/A																
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Consistent Complies															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A															
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²	Consistent The amount of storage provided complies in terms of total areas. However, less than 50% is internal to the apartments. Given the total amount of storage is provided, and the generally limited amount of development space available on the small site, the non-compliance is supported.					
	Dwelling Type	Storage size volume															
Studio apartments	4m ²																
1 bedroom apartments	6m ²																
2 bedroom apartments	8m ²																
3+ bedroom apartments	10m ²																
At least 50% of the required storage is to be located within the apartment.																	

Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Consistent Some of the bedrooms are located adjacent to the stairwell. However, given the small number of units in the building, there will be limited noise created by passing foot traffic in the lobby/stair areas. No concern is raised in this instance.
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Inconsistent Concerns are raised with respect to the roof terrace, which may create unreasonable noise impacts by its use. The acoustic report provided with the application recommends limiting the use of the terraces to 10pm at night to avoid unreasonable noise impacts to neighbours. However, in the absence of a building manager on site, this is not likely to be readily enforceable. Any noise complaints would need to be dealt with by police or council. For these reasons the roof top terrace is not supported.
Configuration		
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Consistent A mix of apartments is provided.
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	N/A
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Inconsistent The proposal largely relies on juliet balconies and window treatments that overhang the front boundaries to provide articulation to the northern facade. These are not acceptable due to overhanging the boundary,

		and do not generally provide a high level of articulation and visual interest to the building.																																			
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	Inconsistent As discussed throughout this report, the roof top terrace is not supported in this instance as it causes unreasonable view impacts to neighbours, and may result in unreasonable noise impacts to the surrounding residential properties.																																			
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	N/A																																			
Planting on Structures	<div>When planting on structures the following are recommended as minimum standards for a range of plant sizes:</div> <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m³</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m³</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m³</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		Inconsistent No details have been provided of proposed planting in the planter boxes or on the Council road reserve. The proposal has failed to demonstrate consistency with this clause.
Plant type	Definition	Soil Volume	Soil Depth	Soil Area																																	
Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent																																	
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Shrubs			500-600mm																																		
Ground Cover			300-450mm																																		
Turf			200mm																																		
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing	Inconsistent The application has not																																			

	Guideline's silver level universal design features	provided any specific information in this regard. All units have accessible paths of travel for people with a disability.
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	N/A
Mixed Use	<p>Can the development be accessed through public transport and does it positively contribute to the public domain?</p> <p>Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.</p>	<p>Inconsistent</p> <p>The site is within walking distance of bus stops along Queenscliff Road to the west, and North Steyne to the south. As discussed throughout this report, concerns are raised with regard to the overall design of the building and the contribution to the public domain.</p>
Awnings and Signage	<p>Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.</p> <p>Signage must respond to the existing streetscape character and context.</p>	<p>Consistent</p> <p>A small awning is provided above the residential entry to the building. Commercial unit 1 will have a covered eastern and southern terrace, within the site boundaries. Given that the area immediately adjacent to the site is not a thoroughfare for passing foot traffic (on the northern side in particular, pedestrians will pass closer to the road where the footpath is, no awning is considered necessary. The one provided to the residential area is considered acceptable.</p> <p>No signage is proposed as part of this application.</p>
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Consistent Complies
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Inconsistent Council's Development Engineers are not satisfied with provisions for

		stormwater (see Referrals section of this report).
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	Inconsistent Council's Waste Officer has raised concerns with aspects of the design of the Waste storage and collection points (see Referrals section of this report).
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Consistent The proposal is acceptable with respect to this clause.

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

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

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

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

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

Comment: As discussed above, the proposal does not achieve the minimum parking requirements, does not fully achieve the minimum floor space areas (due to an extra bathroom being provided), and does not achieve the minimum floor to ceiling height requirements. The proposal is not therefore exempt from refusal on the above matters. Parking is one of the recommended reasons for refusal, as is the proposed overall height of the building.

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

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

(3) To remove doubt:

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

applies.

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

Comment: As discussed above, the design is considered inadequate in a number of aspects, and does not achieve the design quality principles or the objectives of the Apartment Design Guide. Inconsistency with SEPP 65 is therefore a recommended reason for refusal.

SEPP 70 - Affordable Housing (Revised Schemes)

In relation to the discussion under SEPP (Affordable Rental Housing) in this report, SEPP 70 - Affordable Housing (Revised Schemes) includes the following relevant clauses:

3 Aims of Policy

(1) *(Repealed)*

(2) *This Policy:*

- (a) identifies that there is a need for affordable housing across the whole of the State, and*
- (b) describes the kinds of households for which affordable housing may be provided, and*
- (c) makes a requirement with respect to the imposition of conditions relating to the provision of affordable housing.*

9 Identification of need for affordable housing

For the purposes of section 7.32 (1) of the Act, this Policy identifies that there is a need for affordable housing within each area of the State.

10 Requirement for imposition of section 7.32 conditions

Pursuant to section 7.32 (3) (a) of the Act, the following requirement is prescribed with respect to the imposition of conditions under section 7.32 of the Act on development consents:

A consent authority is to have regard to the affordable housing principles set out in Schedule 2 before imposing such a condition.

As discussed under SEPP (ARH) in this report, and given the proposal is recommended for refusal, no conditions are recommended in this regard.

SEPP (Affordable Rental Housing) 2009

The applicant has noted in the Statement of Environmental Effects that:

"The pre-existing development contained four low rental dwellings, as defined under clause 47 ARH SEPP. The Statement of Environmental Effects which accompanied the DA 2015/1079 included a comprehensive assessment of the provisions of the ARH SEPP. In accordance with division 6A of the EP and A Act 1979 and part 3 of the ARH SEPP, condition 8 of the consent required a contribution of \$56,700.00 to account for the loss of affordable housing associated with that development, which was duly paid by the release of the Construction Certificate.

As indicated in the background section of this report, physical commencement of the development under consent 2015/1079 has occurred.

The requirement for contribution for the loss of all rental dwellings from the site would be an expected

condition of consent. This amount would take account of the contribution already made as per the terms of consent 2015/1079."

Clause 49 of the SEPP states:

Part 3 Retention of existing affordable rental housing

49 Buildings to which Part applies

(1) This Part applies only to those buildings that were low-rental residential buildings as at 28 January 2000, and does not apply to any building that becomes a low-rental residential building after that date.

Clause 50 goes on to state:

50 Reduction of availability of affordable housing

(1) A person must not do any of the following in relation to a building to which this Part applies except with development consent:

(a) demolish the building,...

(2) In determining a development application referred to in subclause (1), the consent authority is to take into account the **guidelines (bolding added)** and each of the following:

(a) whether there is likely to be a reduction in affordable housing on the land to which the application relates,

(b) whether there is available sufficient comparable accommodation to satisfy the demand for such accommodation,

(c) whether the development is likely to cause adverse social and economic effects on the general community,

(d) whether adequate arrangements have been made to assist the residents (if any) of the building likely to be displaced to find alternative comparable accommodation,

(e) the extent to which the development contributes to any cumulative loss of affordable housing in the local government area,

(f) the structural soundness of the building, the extent to which the building complies with any relevant fire safety requirements and the estimated cost of carrying out work necessary to ensure the structural soundness of the building and the compliance of the building with the fire safety requirements,

(g) whether the imposition of a condition requiring the payment of a monetary contribution for the purposes of affordable housing would adequately mitigate the reduction of affordable housing resulting from the development,

(h) in the case of a boarding house, the financial viability of the continued use of the boarding house.

The guidelines referred to in subclause (2) are the *Guidelines for the Retention of Existing Affordable Rental Housing*, approved by the Director-General and published in the Gazette. These guidelines state the following:

Buildings excluded from Part 3

Part 3 only applies to boarding houses or residential flat buildings that became low rental dwellings before 28 January 2000. It does not apply to forms of accommodation that are lawfully characterised as an alternative land use.

Examples of alternative residential uses defined in the Standard Instrument (Local Environmental Plans) Order 2006 are attached dwellings, backpackers accommodation, bed and breakfast accommodation, dual occupancy, dwelling house, group home, hostel, hotel or motel accommodation, multi dwelling housing, residential care facility, secondary dwelling, semi-detached housing, seniors housing, serviced apartment or **shop top housing. (Bolding added)**.

Given the above, Part 3 of the SEPP is considered not to apply to the proposal, as the existing building is defined under the standard instrument as shop top housing. However, the guidelines go on to state the following:

What if Part 3 does not apply?

If a development application is not subject to Part 3 but there is concern that loss of the accommodation may have adverse impacts on the local housing market, criteria similar to those in Part 3 can be considered when assessing the social and economic impacts of the development under section 79C(1)(b) of the Act.

Conditions requiring contributions for the loss of affordable housing can only be imposed on development applications which are subject to Part 3. It is not possible to impose those conditions on other development applications, even if the existing building meets the definition of “affordable housing” in the SEPP. However, imposition of conditions under section 94F(5) requiring other arrangements for the provision, maintenance or retention of affordable housing can be considered in those cases.

The applicant has previously identified that the building has been used for low rental dwellings as defined by the SEPP, and Council has previously imposed the requirement for contributions as a condition of consent DA2015/1079 (which was for alterations and additions to the existing building). Given these considerations, it may be open to Council to impose a similar condition on this application if it was approved, under section 7.32 (previously section 94F) of the Environmental Planning and Assessment Act 1979. However, the application is recommended for refusal for other reasons, as discussed in this report. As such, no further consideration has been taken with regard to this issue, and no such contributions condition would currently be recommended should the application be approved.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. 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.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

13 Development on land within the coastal environment area

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

Comment:

The site falls within the coastal environment area. Council's Coast and Catchments officer has assessed the proposal against this clause and is satisfied that the proposal is not likely to cause any adverse impacts on the above matters for consideration (refer to Referrals section of this report).

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

Comment:

Given the assessment above, Council is satisfied that the proposal is consistent with clause 2(a) above.

As such, it is considered that the application complies with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

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

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

Comment:

Council's Coast and Catchments officer has assessed the proposal against this clause and is satisfied

that the proposal is not likely to cause increased risk of coastal hazards on that land or other land (refer to Referrals section of this report).

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	12.7m (lift)	49.4%	No

Compliance Assessment

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

Detailed Assessment

Zone B1 Neighbourhood Centre

Proposed Use	Permitted or Prohibited
Shop top housing	Permitted without consent

The underlying objectives of the B1 Neighbourhood Centre zone

- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*

Comment:

The proposal is for a permissible use in the zone, being shop top housing, that will provide two commercial units for providing for the needs of people in the surrounding neighbourhood. The proposal is generally consistent with this objective.

- To ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians.*

Comment:

The proposed shops at the ground level may be expected to provide services to locals and help to create a village-like atmosphere, without creating any significant impacts on safety or comfort for pedestrians. The proposal is generally consistent with this objective.

- *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 height of the development will result in unreasonable impacts on the amenity of nearby residential land uses, in particular in the form of view loss, and visual and acoustic privacy impacts from the roof terrace (see relevant discussions within this report). The proposal is not considered to achieve this objective.

4.6 Exceptions to development standards

incoDescription of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	12.7m
Percentage variation to requirement:	49.4%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

The Applicant's written request has not demonstrated that the objectives of the development standard are achieved (see assessment against objectives below).

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *"The bulk of the non-compliant additional areas will for the most part, remain under the relative height of the existing building on the site and the maximum height of 12.7m relates to the lift installation only.*
- *Significant portions of non-compliant portions of the building are largely due to the slope of the site, which falls away to the south. The proposed development provides for a modest floor plan layout only of the residential units and strict numerical compliance would unreasonably limit the redevelopment of the site.*
- *The resultant height of the proposed development is commensurate with and or well under the height of nearby development in the immediate locality, including that immediately opposite the site in Queenscliff Road.*
- *The proposed roof form will improve the articulation of the building when viewed from surrounding properties and the streetscape without adversely impacting privacy or solar access from surrounding properties.*
- *The proposed development, inclusive of the strict numerical non-compliance, generate in a minor to negligible view loss from surrounding properties and facilitate a reasonable sharing of views, consistent with the objectives of the DCP and the planning principle established in Tenacity Consulting versus Warringah Council (2004) NSWLEC 240.*
- *The proposal is generally compliant with the other planning controls under the WLEP and DCP applicable to the proposed development.*
- *The proposed development will have a positive impact on the scenic quality of Warringah's coastal and bush environments.*
- *The visual impact of the proposed development when viewed from public places including the surrounding road reserves and at a distance, from Queenscliff and Manly Beaches, will be enhanced.*
- *The proposed development will replace an existing building on the site which has served its life cycle with a new development and superior outcome to that endorsed under DA2019/1079. The end development will contribute positively to corner location of the subject site and the desired future character of the area."*

The applicant also argues that environmental planning grounds which justify contravening the development standard are as follows:

- *"The proposed development is of high-quality residential design and is accompanied by a BASIX certificate conforming to the requirements of the SEPP in relation to potable water consumption, energy efficiency and thermal comfort.*
- *Shadow diagrams which accompany the application demonstrate solar access and overshadowing impacts which, inclusive of the strict numerical non-compliance, conform to the requirements of the relevant SEPP and Council controls for this type of development.*
- *Safeguards included into the proposed development in accordance with expert recommendations will ensure acceptable impacts on visual and acoustic privacy, which will not be adversely exacerbated by the strict numerical no-compliant components of the proposed development.*
- *The comprehensive view loss analysis which accompanies the application demonstrates that the proposed development, inclusive of the non-compliant components, achieves a level of view sharing that is reasonable, comparable to that associated with the approved development under DA 2015/1079 and entirely consistent with the planning principle established in Tenacity Consulting v Warringah Council (2004) NSWLEC 140.*
- *The proposed development will have demonstrated sustainable environmental impacts on surrounding development and the public domain in respect of solar access and overshadowing, visual and acoustic privacy and view loss."*

These arguments are not generally concurred with, and are not considered to provide adequate justification of the proposed non-compliance. In particular, the following points are made:

- The proposed height non-compliance is a major breach of the 8.5m limit under clause 4.3 Height of buildings. The proposal involves a height of up to 12.7m for the proposed lift (a 49.4% variation to the control), and the entire roof area (the floor of the roof terrace) is between 8.66 and 9.5m high. The privacy screens and other features associated with the roof terrace are up to 11.1m high.
- This height non-compliance will be directly responsible for significant view impacts to neighbours, of highly valuable views of Manly Beach and the surrounds (see discussion under clause D7 Views in this report).
- The proposal is for a complete demolition and rebuild of a wholly new development on site. As such, the height of the existing building, or the alterations and additions to that building approved under DA2015/1079, hold little weight in justifying non-compliance with the height control. Despite this, it is noted that the proposed new building goes significantly beyond the existing building and what was previously approved under DA2015/1079, and creates significantly greater view impacts than the existing building or previously approved alterations and additions.
- Similarly, justification of the non-compliance in relation to the slope of the site may hold weight in some circumstances. But the extent of the proposed non-compliance, combined with the fact that the proposal is for a complete demolition and rebuild means that the site constraint created by the slope is limited in providing justification for non-compliance. The site falls by approximately 1.6m from north to south, a slope of approximately 12%-13%. The building does not comply with the 8.5m height limit at any point (i.e. it is not just the 'downhill' elements that protrude above the height limit), and the slope is not such that a height non-compliance of the extent proposed is considered to be justified.

- The proposal is inconsistent with various other controls under the Warringah Development Control Plan (as discussed in this report) including parking requirements (a function of the number of units proposed), impacts on noise and views created by the roof terrace above the height limit, and non-compliance with the minimum floor to ceiling heights required by clause F1 Local and Neighbourhood Centres (even despite the significant overall height non-compliance). The proposal is also inconsistent with various aspects of State Environmental Planning Policy 65 - Design Quality of Residential Apartment Development (as discussed in this report) relating to floor to ceiling heights, amenity impacts on neighbours from the roof terrace in terms of views and noise, and falls well short of landscaping and parking requirements. These non-compliances are all symptomatic of an over development of the site.
- Council's Urban Designer has raised various concerns with the design of the proposal (see Referrals section of this report).

In this regard, the applicant's written request has not demonstrated that the proposed development is an orderly and economic use and development of the land, nor that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment. Therefore clauses 1.3 (c) and (g) of the EPA Act have not been satisfied.

Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the B1 Neighbourhood Centre zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The height of the proposal is not necessarily visually incompatible with surrounding development. Due to the slope of the land, surrounding buildings generally step down from north to south. There are numerous examples of older buildings in the area that are above the height limit and of similar scale to the proposed building. The proposal is therefore considered to be generally consistent with this objective given the surrounding older development, though is not consistent with various other objectives and controls (as discussed throughout this report) due to its height and scale.

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

Comment:

The proposed height non-compliance will directly contribute to an unreasonable disruption of views (see discussion under Clause D7 Views in this report), and the roof terrace will not minimise loss of visual and acoustic privacy in the area. The proposal is not considered to achieve this objective.

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

Comment:

The proposal is unlikely to have any significant adverse impact on the scenic quality of Warringah's coastal and bush environments given the distance from any coast or bush area. The proposal is generally consistent with this objective.

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

Comment:

Given the comments of Council's Urban Designer (see referrals section of this report), the proposal is not considered to be of a good design that adequately manages the visual impact of the development when viewed from the immediately surrounding public area. The proposal is not considered to achieve this objective.

Zone objectives

The underlying objectives of the B1 Neighbourhood Centre zone are:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*

Comment:

The proposal is for a permissible use in the zone, being shop top housing, that will provide two commercial units for providing for the needs of people in the surrounding neighbourhood. The proposal is generally consistent with this objective.

- *To ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians.*

Comment:

The proposed shops at the ground level may be expected to provide services to locals and help to create a village-like atmosphere, without creating any significant impacts on safety or comfort for pedestrians. The proposal is generally consistent with this objective.

- *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 height of the development will result in unreasonable impacts on the amenity of nearby residential land uses, in particular in the form of view loss, and visual and acoustic privacy impacts from the roof terrace. The proposal is not considered to achieve this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of the B1 Neighbourhood Centre zone.

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of buildings Development Standard can not be assumed.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B5 Side Boundary Setbacks	South (Merit assessment)	Nil	N/A	No
	West (Merit assessment)	3.0m	N/A	Yes
B7 Front Boundary Setbacks	Nil	Nil	N/A	Yes
B9 Rear Boundary Setbacks	N/A - no rear boundary on corner lot	N/A	N/A	N/A

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B6 Merit Assessment of Side Boundary Setbacks	No	No
B7 Front Boundary Setbacks	Yes	Yes
B10 Merit assessment of rear boundary setbacks	N/A	N/A
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	No	No
C3(A) Bicycle Parking and End of Trip Facilities	Yes	Yes
C4 Stormwater	No	No
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	No	No
D2 Private Open Space	No	Yes
D3 Noise	No	No
D6 Access to Sunlight	Yes	Yes
D7 Views	No	No
D8 Privacy	No	No
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	No	No
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E10 Landslip Risk	Yes	Yes
F1 Local and Neighbourhood Centres	No	No

Detailed Assessment

B6 Merit Assessment of Side Boundary Setbacks

See comments under SEPP 65 and Urban Design referral response in relation to side boundary setbacks.

B7 Front Boundary Setbacks

The proposal generally complies with the nil setback requirement to the front boundaries. However, some elements overhang the front boundary including Juliet balconies and window treatments, and are not supported (see referral responses from Urban Design and Road Reserve in this report).

C2 Traffic, Access and Safety

The proposed driveway design, and parking layout, are not in accordance with Council standards. Further concerns were raised regarding the design of the footpath in the road reserve. (see Development Engineer referral response in Referrals section of this report). Given these concerns, the proposal has not achieved the requirements or objectives of this control.

C3 Parking Facilities

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To provide adequate off street carparking.*

Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Shop (includes retail / business component of shop top housing, retail premises and neighbourhood shop)	1 space per 16.4 m ² GLFA (6.1 spaces per 100 m ² GLFA).	112sqm GLFA = 6.8 spaces	1 'small car' space	- 6.8
Shop-top housing (residential component)	1 space per 1 bedroom dwelling 1.2 spaces per 2 bedroom dwelling 1.5 spaces per 3 bedroom dwelling 1 visitor space per 5 units or part of dwellings	3 dwellings = 3 spaces 1 dwelling = 1.2 spaces 1 dwelling = 1.5 spaces 5 units = 1 space Total = 6.7 spaces	5 spaces	-1.7
Total		13.5	5 + 1 small space	-7.5

The proposal provides less than half the amount of required parking. The site is situated in an area where on-street parking is very limited, and it is notable that almost all 43 submissions received by Council raised parking as a concern with the development. Given the large shortfall

to the requirements, and the generally limited amount of on-street parking opportunity available in the area, the proposal is not considered to provide adequate off street carparking in accordance with this objective.

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

Comment:

The proposed parking area is partially below ground, and will minimise visual impacts in accordance with this objective.

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

Comment:

The proposed parking area is partially below ground and will not dominate the street frontage.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

C4 Stormwater

The proposed stormwater design is not in accordance with Council's Water Management Policy (see Development Engineer referral response on Referrals section of this report).

C9 Waste Management

The design of the waste storage area and collection point is inconsistent with the Northern Beaches Council Waste Management Guidelines (refer to Waste Services referral response in this report). As such, the proposal is not considered to achieve the requirements or objectives of this control.

D2 Private Open Space

The requirements of SEPP 65 overrule the DCP control in this regard. See discussion under SEPP 65 in this report. The proposed private open space is considered generally acceptable in this case.

D3 Noise

The proposed roof terrace area has been the subject of numerous objections from neighbours in regard to noise impacts. The roof terrace is proposed with one large common area in the centre of the roof (70sqm), and two private roof top terraces for the top floor units at the eastern and western ends of the roof (40.5sqm and 28.6sqm respectively).

The acoustic report provided with the application recommends that large groups using the common terrace should be restricted to 10 pm in the evening to ensure that an exceedance of night criteria at Northern neighbours does not occur.

The site falls within an almost entirely residential area, and is surrounded on all sides generally by medium density housing (with the exception of a single detached dwelling adjacent to the south). There

is therefore a potential for greater noise concerns arising out of the large roof top terrace areas from large gatherings. It is noted that there are no other roof top terraces in the vicinity. A condition limiting the use of the terraces to 10pm for large groups is unlikely to be easily enforceable given there will be no building manager on site. Council's Environmental Health referral response states that the application could be approved (in relation to the noise issue) only with 'robust conditions'.

However, this is a new development on a vacant site (given the proposed demolition), and the introduction of a large roof top terrace into the residential area is not considered to be an ideal outcome for development, particularly given the lack of any precedent in the surrounding vicinity.

The application is not considered to have adequately demonstrated that unreasonable noise impacts will be contained, and the application is therefore recommended for refusal in this respect.

D7 Views

Numerous objections were received from neighbours across the road to the north in relation to view loss. Height poles were not requested to be erected, as the view analysis provided by the applicant was considered to be adequate in this case to make a reasonable assessment that the proposal is not acceptable in relation to view sharing (see assessment below).

Site visits were carried out which confirmed the view analysis provided with the application is reasonably accurate, and given that the proposal is considered to be well beyond what would be considered acceptable in terms of height and impacts on views in particular, requiring the additional cost of height poles was not considered necessary.

Note regarding the view analysis: The view analysis provided with the application has made errors in identifying the neighbouring addresses. Number 55 Queenscliff Road in the view analysis actually shows the views from number 53, and vice versa. Number 59 Queenscliff Road has been identified as number 9. The unit numbers shown on the view analysis are also incorrect. For the purposes of this assessment and ease of reference, the unit numbers shown on the view analysis will be used, but the actual street numbers will be used.

Further, it should be noted that the view analysis compares the impact to the alterations and additions approved under DA2015/1079, not to the building as it currently exists on site, though the existing building is partially visible at some points.

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To allow for the reasonable sharing of views.*

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly

than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".

Comment to Principle 1:

The views affected include highly valuable views of Manly Beach, the land/water interface, North Head and the general surrounding built up area surrounding including the St Patrick's Estate. Given the features encompassed, the views from some of the neighbouring units may be considered to be almost iconic in some cases, although the views of the headland and northern end of the beach are broken up to an extent by existing buildings in the foreground.

2. What part of the affected property are the views obtained

"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".

Comment to Principle 2:

The views from the unit blocks at numbers 53 and 55 Queenscliff Road are all obtained from the primary living areas of the units across the road, including kitchens, dining/living areas, and balconies off these areas. These units are all orientated to take advantage of the southern views, generally in a direction across the front boundaries, or diagonally across the front/side boundaries. The view from the upper level of number 59, further to the west, is obtained more across the side boundary, but is also from the primary living area.

3. Extent of impact

"The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating".

Comment to Principle 3:

The view analysis indicates that the extent of the impact of the proposal will range from negligible to severe.

53 Queenscliff Road (shown as number 55 in the view analysis)

Unit 1 (Unit numbers as shown in the view analysis) - This unit is on the lower level. Compared to the alterations and additions approved by Council in 2016 (DA2015/1079), it will lose a small amount of additional headland to the east of the building, and some district views to the west of the building. The view impact is considered to be negligible.

Unit 2 - This unit is on the lower level. The impact compared to DA2015/1079 will include the loss of most of the remaining headland and waterview, including the water/headland interface to the east of the building. A small amount of water view will be maintained. The impact from this

unit is considered to be minor compared to DA2015/1079, or moderate compared to the existing building on site.

Unit 3 - This unit is on the next level up, and will have a view corridor to the headland/water interface blocked, and much of the headland and St Patrick's blocked by the balustrade, privacy screening and lift elements on the proposed roof top terrace. The impact is considered to be moderate to severe.

Unit 4 - This unit is on the same level as unit 3, and will have a similar impact, though more of the headland and St Patrick's may remain slightly less obscured by a transparent balustrade (as opposed to the privacy screens and lift). The view available will still be largely broken up and obscured however. The impact is considered to be moderate to severe.

Unit 5 - This unit will have almost the entire beach/water interface blocked by the proposed lift, as well as further water and headland views blocked by the lift and privacy screen. It will still retain a large part of the headland and water/headland interface, but the 'wholeness' of the view will be highly impacted. The impact is considered to be severe.

Unit 6 - Similar to unit 5, the proposed lift will block a large part of the beach and beach/water interface, and the western end of the headland. The impact is not quite as severe as for unit 5, but given that the highly valuable beach view will be heavily impacted, the impact is still considered to be severe.

Unit 7 - This unit is on the upper level. The view impact will be limited to the northern end of the beach, where the proposed lift will block a portion of the beach and lagoon entrance. The views will otherwise be largely retained. The impact from here is considered to be moderate, given the proposal will further impinge on the 'wholeness' of the view (along with other existing development in the foreground).

Unit 8 - This unit will be the least affected, with the proposed lift and other roof elements blocking out the Queenscliff SLSC Clubhouse, and boardwalk and lagoon entrance in front, but the wider beach/ocean/headland views will remain. The impact is considered to be minor to moderate.

Number 55 (shown as number 53 in the view analysis)

Unit 10 (Unit numbers as shown in the view analysis) - This unit is on the lower level of the residential flat building. The view analysis indicates that it may gain a very small amount of headland view compared to the previously approved alterations and additions, though it may lose some headland view compared to the existing building. The impact is considered to be negligible to minor.

Unit 11 - Similar to unit 10, in that it may gain a very small amount of headland view compared to the previously approved alterations and additions, though it may lose some headland view compared to the existing building. The impact is considered to be negligible to minor.

Unit 12 - The development will partially block some ocean/headland interface, caused mainly by the balustrade and privacy screening on the roof top. The impact is considered to be minor.

Unit 13 - Similar to the unit 12, the proposal will block some ocean/headland, but will block substantially more of the existing view than for number 12. The impact is considered to be moderate given around 50% of the beach/ocean/headland view will be obscured.

Unit 14 - The proposal will block some ocean views (caused by the privacy screening on the roof). The lift will also block the eastern end of the headland that currently is visible to the east of another tall building in the foreground. The impact is considered to be only moderate given the end of the headland is already broken to an extent by the other building.

Unit 15 - Similar impacts to number 14, but will have substantially more water view blocked by the privacy screening and balustrade. The impact is considered to be still in the moderate range.

Number 59 (shown on the view analysis as 9)

The proposed lift will block a small amount of water view to the east, but the wider headland/beach/ocean views to the west of the subject site will remain unaffected. The impact is considered to be negligible in this regard.

4. Reasonableness of the proposal that is causing the impact

"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

Comment to Principle 4:

The application proposes substantial non-compliance with the height limit of 8.5m, with the highest element (the lift) being 12.7m high (a 49.4% variation). Further, the privacy screening and balustrades on and around the roof top terrace are all well above the height limit, and contribute directly to significant view loss. The floor level of the roof top terrace, what could be made the roof if the terrace and access was removed, is a minimum of 8.66m above the height limit, and would still contribute to significant view impacts for some of the units across the road even at this height.

Further to this, the general bulk of the building raises concern, particularly with regard to the elements that overhang the front boundary at the north eastern corner of the site, and cut into the small water views from the lower level units across the road to the north through the north eastern corner of the subject site.

The bulk and particularly the height of the proposal is the main factor contributing to the view impacts. As discussed above, these view impacts range up into the severe range, and apply to highly valuable, almost iconic views. Given the level of non-compliance with the applicable built form controls, and the impacts caused, the proposal is not considered to maintain a reasonable sharing of views.

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

Comment:

As discussed above, the proposal results in unreasonable impacts to the views from neighbouring residences, and as such, the design is not considered to improve the urban environment.

- *To ensure existing canopy trees have priority over views.*

Comment:

No trees are to be impacted by the proposal.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D8 Privacy

The proposal is not generally considered to result in unreasonable visual privacy impacts, given the zoning of the site and generally higher density nature of the neighbourhood. The roof terrace balustrade is setback from the edge of the roof, and privacy screening has been provided to the western edge of the second floor western deck. Council's Urban Designer has suggested that setbacks to the balconies should be increased to the southern side boundary and the planter box along the southern edge of the commercial terrace should be returned along the western edge of the deck.

However, the proposed roof terrace is not considered to maintain a reasonable level of acoustic privacy, which is also a requirement of this control.

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

The roof terrace will enable large gatherings, and the acoustic report provided with the application has suggested that in order to limit unreasonable impacts, gatherings such as these would need to be limited to 10pm. Given there would be no building manager on site, enforcement of such a condition is unlikely to be effective, being left to Council or the Police to ensure compliance when complaints are received. There are no other roof terraces in the vicinity, and the site is located in the midst of an almost entirely residential neighbourhood, with no other obvious noise sources in close proximity. The application has not adequately demonstrated that unreasonable noise impacts will be contained, and the proposal is not supported in this regard.

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

Comment:

As discussed above, the roof top terrace is not considered to improve the urban environment.

- *To provide personal and property security for occupants and visitors.*

Comment:

No concerns are raised in this regard.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D9 Building Bulk

The proposal is inconsistent with various requirements in this clause, including:

- 1. Side and rear setbacks are to be progressively increased as wall height increases.*
- 2. Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.*
- 4. Building height and scale needs to relate to topography and site conditions.*
- 6. Use colour, materials and surface treatment to reduce building bulk.*
- 7. Landscape plantings are to be provided to reduce the visual bulk of new building and works.*
- 8. Articulate walls to reduce building mass.*

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To encourage good design and innovative architecture to improve the urban environment.*

Comment:

Council's Urban Designer has raised concerns with various aspects of the design. Further, a significant number of the design elements meant to provide visual interest and articulation overhang the front boundaries, and are not supported for this reason. The building facades to the front boundaries do not provide adequate articulation to break up the bulk of the building, and the proposal is not considered to achieve this objective.

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

Comment:

As discussed in this report, the proposal is well above the applicable height limit for the site, and this will directly result in significant and unreasonable view loss to neighbours. The visual impact is not considered to be minimised in accordance with this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D11 Roofs

The proposal is not considered to achieve the following requirements of the control:

- 1. Lift overruns, plant and other mechanical equipment are not to detract from the appearance of roofs.*
- 2. Roofs should complement the roof pitch and forms of the existing buildings in the streetscape.*

6. Service equipment, lift overruns, plant and other mechanical equipment on the roof shall be minimised by integrating as many services, etc as possible into the building.

Merit consideration

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

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

Comment:

The proposed roof terrace is generally well above the 8.5m height limit, and will be responsible for significant and unreasonable view loss for neighbours. The application has also failed to adequately demonstrate that the roof terrace will not result in unreasonable noise impacts to neighbours. The proposal is not considered to improve the urban environment in this regard.

- *Roofs are to be designed to complement the local skyline.*

Comment:

The proposed roof terrace would be the only one in the vicinity, and is considered to cause unreasonable impacts as discussed within this report with regard to view sharing and noise. As such, it is not considered to complement the local skyline.

- *Roofs are to be designed to conceal plant and equipment.*

Comment:

The proposed lift forms the highest point of the building, and creates the most significant non-compliant element with the overall height control. It also has a major impact on views from some of the units across the road to the north. The proposal is not supported in this regard.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

F1 Local and Neighbourhood Centres

The application has not demonstrated it will achieve the following requirements of this control:

- 2. The minimum floor to ceiling height for buildings is to be 3.0 metres for ground floor levels and 2.7 metres for upper storeys.*
- 4. Development that adjoins residential land is not to reduce amenity enjoyed by adjoining residents.*
- 6. Buildings greater than 2 storeys are to be designed so that the massing is substantially reduced on the top floors and stepped back from the street front to reduce bulk and ensure that new development does not dominate existing buildings and public spaces.*
- 7. Applicants are to demonstrate how the following significant considerations meet the objectives of this control:*
 - *Scale and proportion of the façade;*
 - *Pattern of openings;*

- *Ratio of solid walls to voids and windows;*
- *Parapet and/or building heights and alignments;*
- *Height of individual floors in relation to adjoining buildings;*
- *Materials, textures and colours; and*
- *Architectural style and façade detailing including window and balcony details*

Merit consideration:

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

- *To encourage good design and innovative architecture.*

Comment:

Given the significant non-compliance with the overall height control under the WLEP, the proposed, albeit relatively minor, non-compliance with the floor to ceiling heights is difficult to support. Concerns have been raised with the overall design by Council's Urban Designer, and a significant amount of articulation and visual interest is provided by elements which overhang the front boundaries (juliet balconies and window treatments) and are not supported by Council.

Without these elements the building lacks articulation and depth to break up the bulk and scale of the development. The proposal results in significant impacts to highly valuable views, caused primarily by the overall height of the building, where the upper level (named Second Floor Plan in the plans) has not been stepped back to reduce massing.

The control has not been addressed in the Statement of Environmental Effects provided with the application, and given Council's Urban Designer's comments, has not demonstrated it achieves requirement 7 above.

The proposal is not considered to achieve this objective.

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

Comment:

No concerns are raised in this regard. The proposal will provide casual overlooking of the surrounding public areas.

- *To provide a range of small-scale shops and business uses at street level with offices or low-rise shop-top housing to create places with a village-like atmosphere.*

Comment:

The proposal will provide two commercial units, with apartments above. However, the proposed height and bulk of the development is not supported, as discussed within this report. The bulk of the upper levels detracts from the ability of the development to create a village like atmosphere.

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

Comment:

The proposal is not necessarily inconsistent with the scale and pattern of existing development in the area. However, the proposal is for a demolition and rebuild, and the proposed breach of the height control in particular will result in significant and unreasonable impacts to neighbours, as discussed throughout this report. That being the case, the proposal is not necessarily inconsistent with this objective of this control, but is not supported in relation to scale for other reasons as discussed in this report.

- *To enhance the public domain.*

Comment:

The proposed design is considered to be inadequate to enhance the public domain, given the reliance of elements which are overhanging the boundary (and are thus not supported) to provide articulation and visual interest to the building.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

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.

CONCLUSION

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

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

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

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

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP

- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

Council is not satisfied that:

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

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

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

Accordingly

In summary, the application has failed to demonstrate an adequate level of compliance with following specific issues:

- SEPP 65
- Building height
- Parking and driveway design
- View sharing
- Noise
- Stormwater
- Waste facility design
- Privacy
- Building bulk
- Roof
- Local and Neighbourhood Centres

The proposal presents as an overly high, overly bulky development, and the issues identified are generally symptomatic of an over-development of the site. As such, refusal of the application is recommended, for the reasons discussed within the report.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2019/0845 for the Demolition works and construction and strata subdivision of a shop top housing comprising 2 commercial units and 5 residential units on land at Lot A DP 961049,68 A Queenscliff Road, QUEENSCLIFF, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Environmental Planning and Assessment Act 1979
2. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the

proposed development is inconsistent with the provisions of State Environmental Planning Policy 65 - Design Quality of Residential Flat Development.

3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
4. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the objectives of Zone B1 Neighbourhood Centre of the Warringah Local Environmental Plan 2011.
5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of Buildings of the Warringah Local Environmental Plan 2011.
6. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the following clauses of the Warringah Development Control Plan:
 - Clause C2 Traffic, Access and Safety
 - Clause C3 Parking Facilities
 - Clause C4 Stormwater
 - Clause C9 Waste Management
 - Clause D3 Noise
 - Clause D7 Views
 - Clause D8 Privacy
 - Clause D9 Building Bulk
 - Clause D11 Roofs
 - Clause F1 local and Neighbourhood Centres
8. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.