
Sent: 8/03/2019 11:36:08 AM
Subject: Objection to 267-269 Condamine Street, Manly Vale (DA2019/0114)
Attachments: 190306 - Tomasy - Objection to D2019-0114.pdf;

Hi Northern Beaches Council,

Please see the attached submission to the proposed development at no. 267-269 Condamine Street, Manly Vale for the demolition of the existing structures and construction of a new four storey shop-top housing development.

Should you require any clarification to the content of the written submission, please advise and we would be happy to go through it with you.

Kind regards,

Matthew Choi
Executive Planner



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Please think before you print



6 March 2019

Rebecca Englund
Principal Planner
Northern Beaches Council
725 Pittwater Road,
Dee Why, NSW 2099

Dear Rebecca,

Re: OBJECTION TO DEVELOPMENT PROPOSAL (DA2019/1579) at no. 267-269 Condamine Street, Manly Vale

Tomasy Planning has been instructed by the owners, Nick Scali Limited ('the objector') who are the adjoining neighbours at no. 265 Condamine Street and no. 1 Kenneth Road, Manly Vale ('the objector's premises') to prepare a submission to object to the development proposal at no. 267-269 Condamine Street, Manly Vale ('the subject site').

A previous written objection to the development application no. DA2018/1579 was also submitted by Tomasy Planning on behalf of the objector's premises. The proposed development involved the demolition of the existing structures on the site and the construction of a new part four/part five storey shop-top housing development consisting of 28 residential dwellings, four retail tenancies and two levels of basement car parking. It is noted that this development application was withdrawn by the applicant on the 12 December 2018.

Tomasy has now reviewed the most recent development application (DA2019/1579) and advise that the development is similar in nature to the previously submitted development application (DA2018/1579) aside from minor modifications to the development proposal and represents a slight improvement to the overall design. Our understanding of the latest set of architectural plans that are available on the Northern Beaches Council online DA Tracker is as follows:

- i. Reduce building footprint to the western building block at the top-most level;
- ii. Provision of new terraces on the northern and southern edges to the western building block of the top-most level;
- iii. Increase height of mechanical exhaust unit by 150mm;
- iv. Increase height of roof parapet by 50mm to eastern building block;
- v. Reduce height of roof parapet by 500mm to western building block;
- vi. Reduce finished floor level at levels 01, 02, 03 and 04 by 500mm;
- vii. Minor alterations to decorative wall elements to the eastern elevation;
- viii. Reduce the number of apartments by 1 (28 units to 27 units);
- ix. Reposition driveway along the northern elevation.

Note: No floor plans were available at the time of preparing this written submission.

This submission considers the effects and changes that were addressed and raised with Northern Beaches Council regarding the original submission to the development application DA2018/1579. However, both the owners of no. 265 Condamine Street and no. 1 Kenneth Road (the adjoining neighbours) and Tomasy Planning maintain that the changes do not fully address the concerns raised

in our original submission to DA2018/1579 and will continue to result in an adverse amenity and streetscape impact.

The resubmitted development application should, once again, not be in a position to receive Council support and be recommended for refusal. The proposal does not adequately address the relevant matters of consideration under Section 4.15C of the *Environmental Planning and Assessment Act, 1979* in that the development is a substantial departure from the relevant planning policies including the Warringah Local Environmental Plan 2011 (WLEP2011) and the Warringah Development Control Plan 2011 (WDCP2011).

Our client's property is located immediately to the south and to the west of the subject site (see image below).

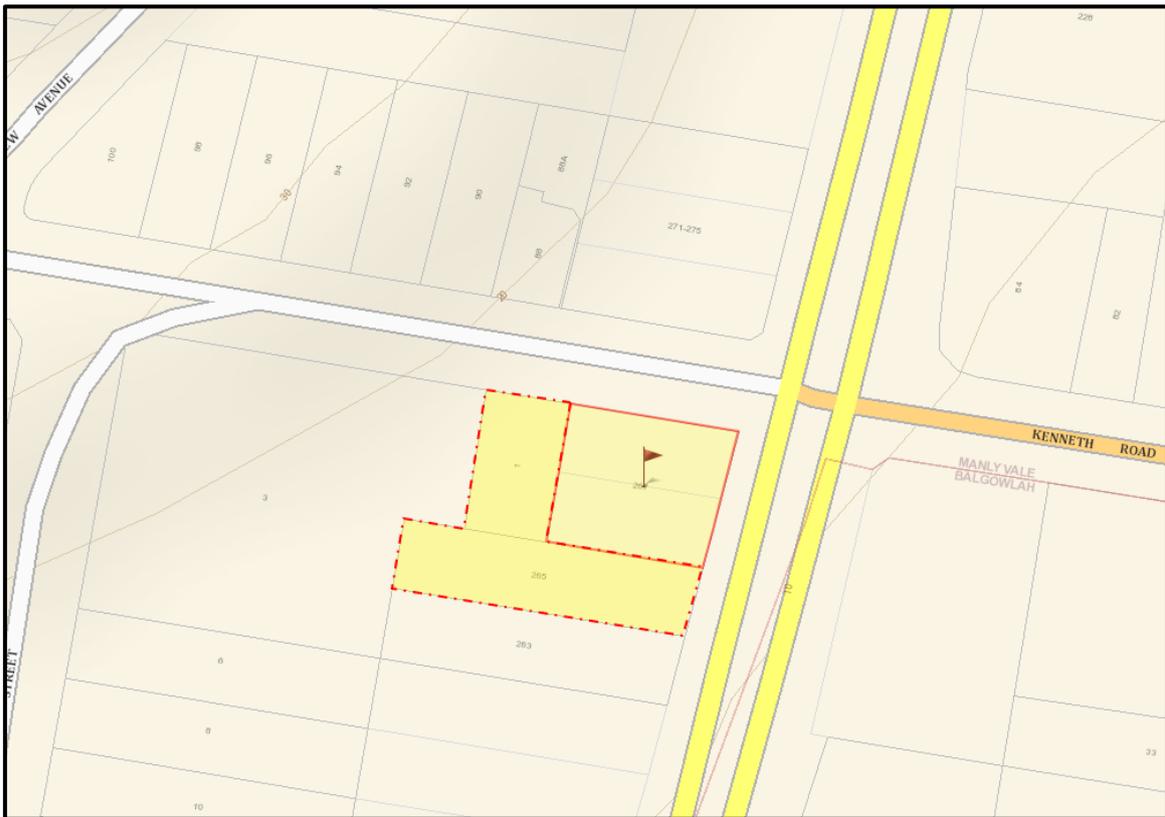


Figure 1: a) Location of the proposed development denoted with a flag
b) Location of the objector's premises denoted with a dotted line



Figure 2: Location of the objector's premises and the subject site to the north



Figure 3: Location of the objector's premises and the subject site to the east.

In preparing this submission, consideration has been given to the following:

- Site inspection (carried out on 5 March 2019);
- Review of development application documentation including architectural plans, statement of environmental effects and relevant consultant reports;
- Warringah Local Environmental Plan 2011;
- Warringah Development Control Plan 2011;

The key areas of concern are outlined below:

1. Shop Top Housing Development:

The proposed development is characterised within the Statement of Environmental Effects as a 'shop-top housing' development comprising four ground floor retail tenancies and 27 residential units above. In accordance with the definitions section of WLEP2011 'shop-top housing' means *one or more dwellings located above ground floor retail premises or business premises*.

The north-western corner of the proposed development fronting Kenneth Road consists of residential units at the ground floor level and subsequently is inconsistent with the definition of 'shop top housing'. In order to be in keeping within the definition of 'shop-top housing' the ground floor level must be used for the purposes of a retail or business premises and all residential units on that respective level be entirely above the ground level (see box shown red). In addition to the above, the residential units on the eastern block of the building (see box shown in green) must be above the ceiling level of the retail tenancies to ensure that the entirety of the dwellings is above the ground floor retail/business premises.

In accordance with *Hrsto v Canterbury City Council (No 2) [2014] NSWLEC121* the Courts have held that to qualify as 'shop top housing', the relevant parts of the building must be truly above the relevant retail or commercial parts of the building. It is also noted that 'residential accommodation' including 'residential flat buildings' is prohibited within the zone. As the development does not provide 'shop-top housing', the proposal is considered to be an 'innominate' use and is therefore prohibited within the B2 Local Centre Zoning under the WLEP2011.

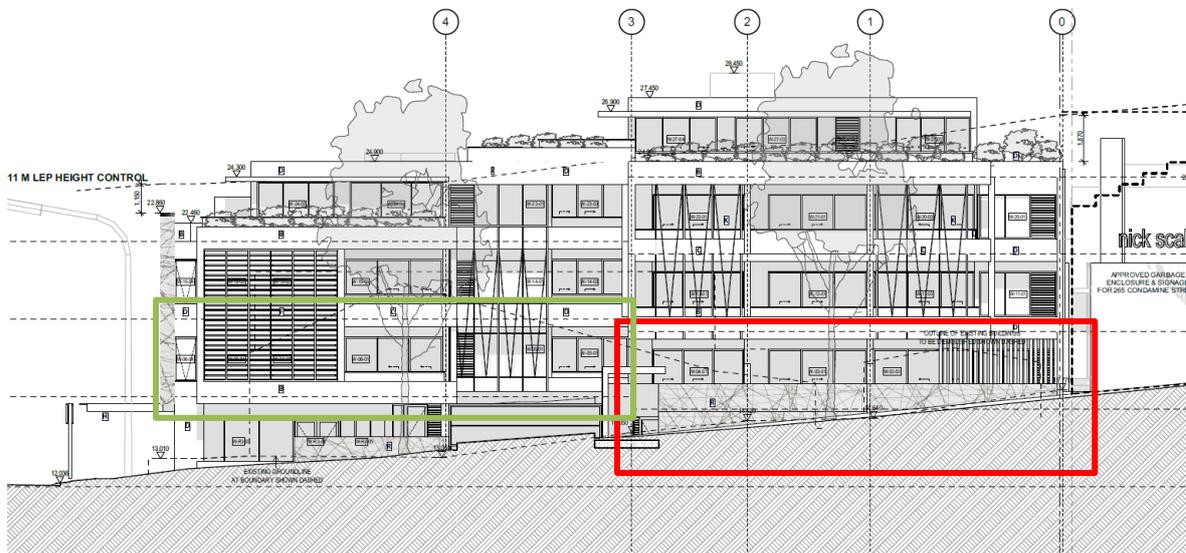


Figure 7: Residential units located at the ground floor level

2. Building Height:

The maximum permissible building height for the site is 11m pursuant of the Warringah Local Environmental Plan 2011 ('WLEP2011'). The definition of the building height in the WLEP2011 is the 'vertical distance between the ground level (existing) and the highest point of the building'. The definition of ground level (existing) means 'the existing level of a site **at any point**'. Since the proposed development will occupy a similar building footprint as the existing building it is reasonable to assume that the ground level (existing) should constitute the finished floor level of the ground floor of the existing building on the site.

The breach to the maximum building height is as follows:

- A. The vertical distance between the ground floor of the existing building (RL12.95) and the lift overrun of the new building to the west is (RL28.45) will result in a building height of 15.5m (36% variation from the maximum building height development standard).
- B. The vertical distance between the ground floor of the existing building (RL12.95) and the roof parapet of the western building block (RL27.45) will result in a building height of 14.5m (32% variation from the maximum building height development standard).
- C. The vertical distance between the ground floor of the existing building (RL12.95) and the roof parapet of the eastern building block (RL24.9) will result in a building height of 11.95m (8.6% variation from the maximum building height development standard).

In accordance with WLEP2011, a Clause 4.6: Exceptions to Development Standards is required to vary the maximum height of building requirements and a merits assessment against the objectives of WLEP2011 is required to justify the contravention to the Council's development standard. Clause 4.6(4)(a)(i) and (ii) within the WLEP2011 prescribes that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause 4.6(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.*

In respect of 4.6(a)(ii) the objectives of the height of buildings development standard are follows:

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

To ameliorate the apparent bulk and scale of the upper floor level from the previous development application (DA2018/1579), the applicant has reduced the size of the upper floor level on the western building block including an increased setback from the northern property boundary - above the minimum requirement of 5m as prescribed within WDCP2011. While the reconfiguration of the upper floor level represents a minor improvement than the previous development application, the proposal will still contribute to extensive visual bulk and scale when viewed in the context of the neighbouring buildings within the street. The existing streetscape consists of a mixture of 2 – 4 storey shop-top housing developments and commercial developments, all of which fall within a relatively consistent building height plane as measured from the roof parapets of the neighbouring buildings. The non-compliant upper floor level which breaches the maximum permissible building height by 36% will extend beyond the building height plane set by the neighbouring buildings and will not be consistent with the existing built form pattern within the street. The non-compliant fourth floor level on the western building block presents as a fifth storey building element when viewed from the street. The additional storey detracts from the quality of the streetscape in that it creates a disproportionate building height that adds considerable bulk and scale when viewed from the Condamine Street and Kenneth Road.

The amended design which incorporates an increased setback from the front building alignment does not reduce the visibility of the upper floor level from the existing streetscape. The subject site is located within a prominent position given it is located on a corner allotment at the intersection of Condamine Street/Kenneth Road and topographically is substantially elevated above the footpath

level due to the significant sloping nature of the site. As a consequence, the site is highly visible from a number of key viewing vistas along the public domain; in particular, the road intersection of Condamine Street and Kenneth Road and any non-compliances to the height and storey control will be intensified. The building separation from the non-compliant upper floor level to the eastern side of the Condamine Street alignment will ensure that the fourth storey will be visible from the street and is appreciable from the existing streetscape setting. A more compliant development which removes the topmost level will represent a more compatible built form that is consistent with the neighbouring buildings within the street. It should be noted that the view impacts of the building are visible from the opposite side of Condamine Street have been neglected within the view analysis and fails to address any potential detracting view elements that may be visible from the street.

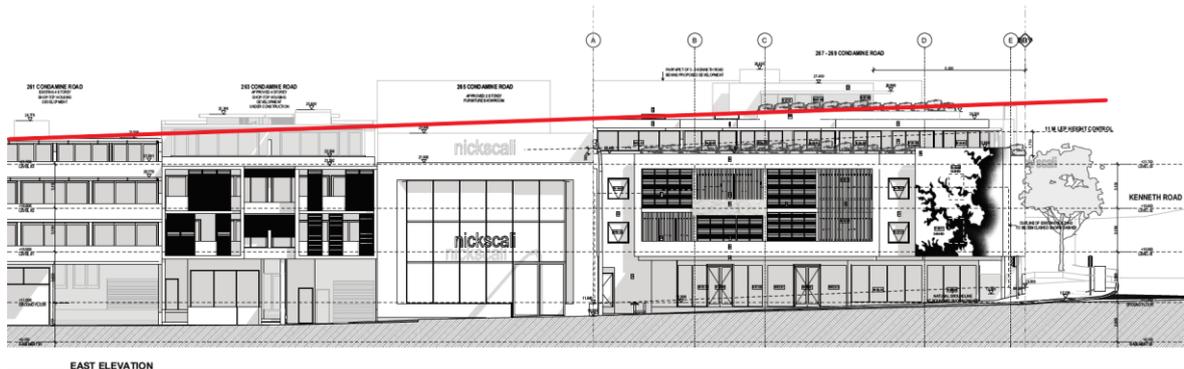


Figure 4: Building height plane within the streetscape

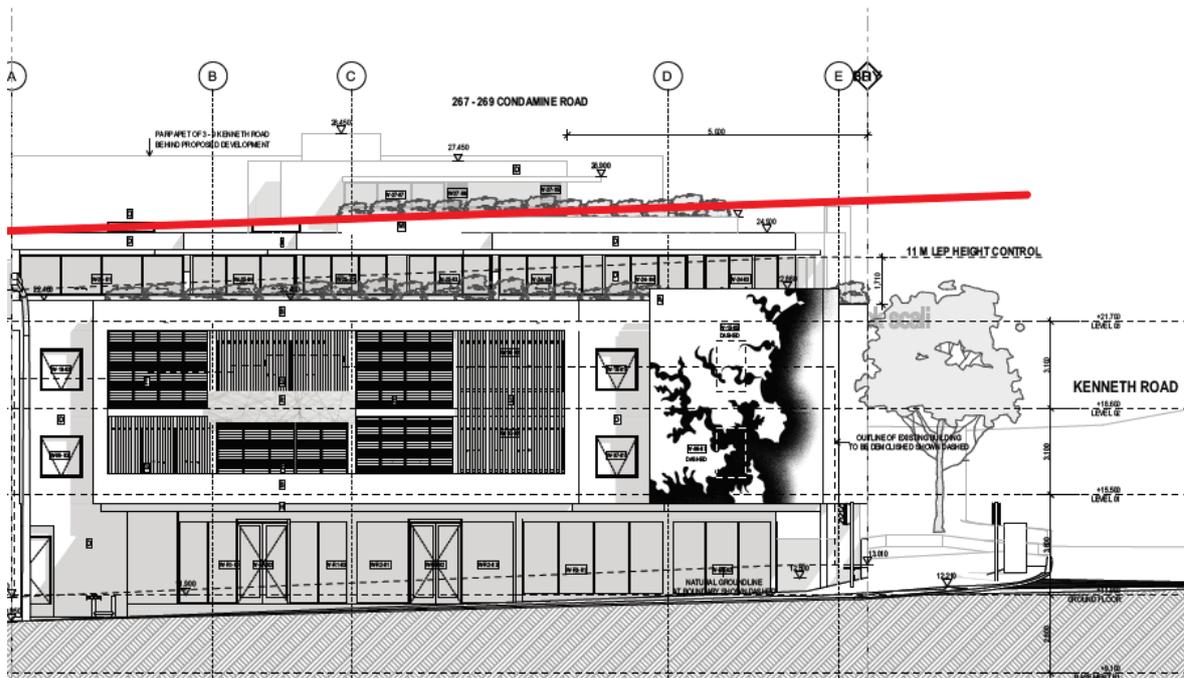


Figure 5: The proposed development and the breach to the building height plane

It is worthwhile noting Council’s urban design officer shared a similar view commenting that:

‘the site frontage is a prominent location and by virtue of its location, prominence and topographical aspect the height exceedance is exacerbated with the bulk, mass and bold architectural gestures of the building’.

‘The objective is to ensure buildings are compatible with the height and scale of surrounding and nearby development is noted and as such levels 1-3 are supported, noting that level three still represents a minor breach of the control. When assessed against the height and scale of surrounding buildings, the slope of the land the surrounding context the upper level 4 apartments are not supported’.

While the above comments were made in respect to the previous development application (DA2018/1597) they are still relevant in respect to the current development application. Given the particulars of the subject site will enhance the visual bulk and scale from the non-compliant storey and building height the upper most level should not be supported.

3. Height, Bulk and Scale:

In *Veloshin v. Randwick Council* [2007] NSWLEC 428 outlines appropriate planning consideration be given to test and determine the degree of weight the document given on the height and bulk. Paragraph 30 prescribes that due consideration be given on the importance of local planning controls and its characterisation of the local area.

It prescribes that 'building height and bulk can be meaningful only against the background of local planning controls, such as maximum height, floor space ratio, site coverage and setbacks. While these controls are usually also based on subjective judgement, they have been through a statutory process involving exhibition and the consideration of public comment. They therefore express the subjective preferences of a local community and should be given greater weight than the subject preferences of some individuals'.

The appropriate testing principles of *Veloshin v. Randwick City Council* [2007] NSWLEC 428 prescribes the following:

- Are the impacts consistent with impacts that may be reasonably expected under the controls?

No. The visual impacts of the proposed development quantified under the WLEP2011 anticipates a maximum building height of 11m or the equivalence of 3 storeys (when considering appropriate floor to ceiling heights of the Apartment Design Guide in accordance with SEPP65: Design Quality for Residential Apartment Development). The controls anticipate a much lower building height plane than that of the proposed four storey development which would be more in keeping with heights of the neighbouring buildings along Condamine Street. The breach of the building height by 5m results in a development that is more than one storey higher than what is reasonably expected under a compliant development scheme.

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

The height and the bulk of the Council's controls envisage a low-rise scale of development along Condamine Street as dictated by the 11m height of buildings requirement. The scale of development with a maximum building height of 15.5m represent a significant variation from the Council control and the upper floor levels of the building represents a more of a mid-rise development and is inconsistent with the built form pattern that is anticipated under Council's controls. In particular, the fourth floor level is visually prominent from the streetscape setting and detracts from the desired future character of the immediate locality.

The reduced building footprint and increase to the setbacks to the front building alignments does not significantly minimise the bulk and scale of the building visible from the existing streetscape setting. The upper-floor level on the western building block will still be appreciable from the streetscape setting in particular on the opposite side of Condamine Street. The extensive building separation from the roadway to the upper level addition on the western building block will increase the visibility and the visual sightline of the non-compliant storey from the street.

- Does the area have a predominant existing character and are the planning controls likely to maintain it?

The proposal is an infill development and the existing local built form character consists of a mixture of two-to-four storey scale of the existing developments along Condamine Street. The proposal

involves the construction of a four-storey, shop-top housing development on the subject site. However, due to the significant sloping nature of the site which consists of a fall of approximately 4m from west to east, the top-most level addition of the western building block reads as a separate storey and extends beyond the parapet roof of the eastern building block from the street alignment.

The building will appear as a fifth storey when viewed from Condamine Street and is not in keeping with the predominant street character. Compliance with the maximum building height plane at 11m would result in the removal of the upper floor and be a more compatible building height to the neighbouring buildings. Therefore, this places a greater emphasis on the need to comply with the maximum building height limit in order to provide consistency to the urban form pattern of the existing streetscape.

- Does the proposal fit into the existing character of the area?

No. The proposal is not compatible with the character of the existing area as outlined above. The proposal represents a development of considerable bulk and scale that is excessively larger than the neighbouring buildings within the street and detracts from the quality of the existing streetscape setting.

- Is the proposal consistent with the bulk and character intended by the planning controls?

The subject site is located in a B2: Local Centre zone and therefore Part F, Section F1: Local and Neighbourhood Centres within the Warringah Development Control Plan 2011 ('WDCP2011') is applicable to the proposed development. The objectives of the Controls prescribe the following; *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.* The proposed development does not reflect a low-rise shop-top housing development and the proposed four-storey scale of the development is not reflective of a village atmosphere. A compliant building height at 11m and a three-storey scale will be consistent with the intended character of the area as a 'village-like atmosphere' as anticipated under Council's controls.

- Does the proposal look appropriate in its context?

No. The proposal does not look appropriate in its context. The proposal represents a significant variation to the maximum height of buildings development standard and is incompatible with the low-rise scale of the neighbouring developments. The development appears a full storey higher than the neighbouring buildings and is apparent when viewed from a number of key viewing vistas in particular along the intersection of Condamine Street and Kenneth Road. The excessive size and scale of the building are inconsistent to the adjoining buildings and is not appropriate when viewing the building within its streetscape context.

In considering the above and in applying the test of height, bulk and scale of *Veloshin v. Randwick City Council* [2007] NSWLEC 428, the contravention to the height of buildings development standard is unacceptable and a more compliant building height would promote a more compatible streetscape outcome. Above all, the proposal is not within the public interest and does not satisfy Clause 4.6(4)(a)(i) and (ii) in that it is not consistent with the objectives of the height of buildings of Clause 4.3 and does not warrant Council support.

4. Floor to Ceiling Heights:

Clause 4 of the State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development ('SEPP65') is applicable given the proposed development involves the construction of a shop-top housing development that contains more than three storeys and consists of more than four dwellings. The requirement for Ceiling Heights within the Apartment Design Guide prescribes a minimum floor-to-ceiling height of 3.3m at the ground and first floor levels or 4m for café/restaurant use at the ground floor level and 3.3m for first floor levels of a mixed-use area zones. The subject site is located in a B2: Local Centre Zone and permits for mixed-use types of

developments including ‘shop-top housing’ and therefore this requirement is applicable to the proposed development.

The proposed development provides for a floor-to-floor height of 3.5m and 3.1m at the ground and first floor levels, respectively. A typical service slab between floor levels at 400mm will result in a floor-to-ceiling height of 3.1 metres and 2.7 metres at the ground and first floor levels, respectively, and does not comply with Council’s controls. While Part F, Section F1: Local and Neighbourhood Centres of the Warringah DCP prescribes minimum floor to ceiling heights 3 metres and 2.7 metres for upper storeys, these controls are not applicable given they are superseded by Clause 6A(1)(e) of SEPP65. Subsequently, compliance with the minimum floor-to-ceiling heights as outlined within the Apartment Design Guide will result in further increases of the maximum building height by an additional 700mm to the maximum height of building development standard. The proposal will further exacerbate the bulk and scale impacts and contribute to further disparity to the building height plane of the neighbouring buildings.

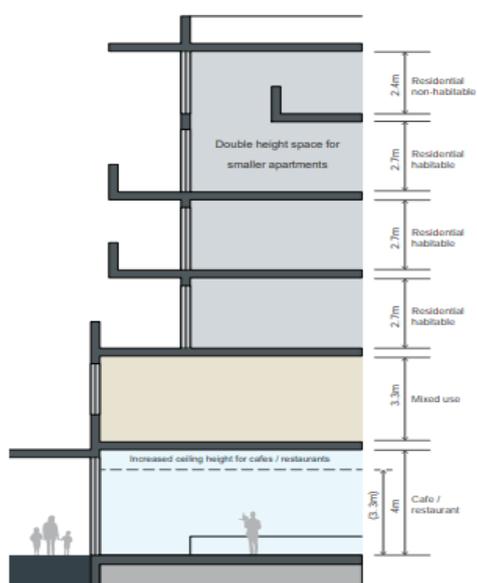


Figure 4C.1 Greater than minimum ceiling heights for retail and commercial floors of mixed use developments are encouraged to promote flexibility of use. Cafe and restaurant uses need greater minimum ceiling heights of 4m to allow for additional servicing needs

Objective 4C-1
Ceiling height achieves sufficient natural ventilation and daylight access

Design criteria

- Measured from finished floor level to finished ceiling level, minimum ceiling heights are:

Minimum ceiling height for apartment and mixed use buildings	
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

These minimums do not preclude higher ceilings if desired

Figure 5: Extract from the minimum ceiling height requirements from the Apartment Design Guide (SEPP65)

5. Number of Storeys:

The WDCP2011 prescribes that any development on the subject site must be a maximum of three storeys.

A storey is defined within WLEP2011 as “a space within a building that is situated between one floor level and the floor level next above, or if there is not floor above, the ceiling or roof above but does not include: a space that contains a lift, stairway or meter room; a mezzanine; or an attic”.

In addition to this, a basement is defined within the WLEP2011 as “a space of a building where the floor level of that space is predominately below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing)”.

The proposal involves the construction of a four-storey, shop-top housing development which does not comply with the Council’s controls and exceeds the storey requirement by one level.

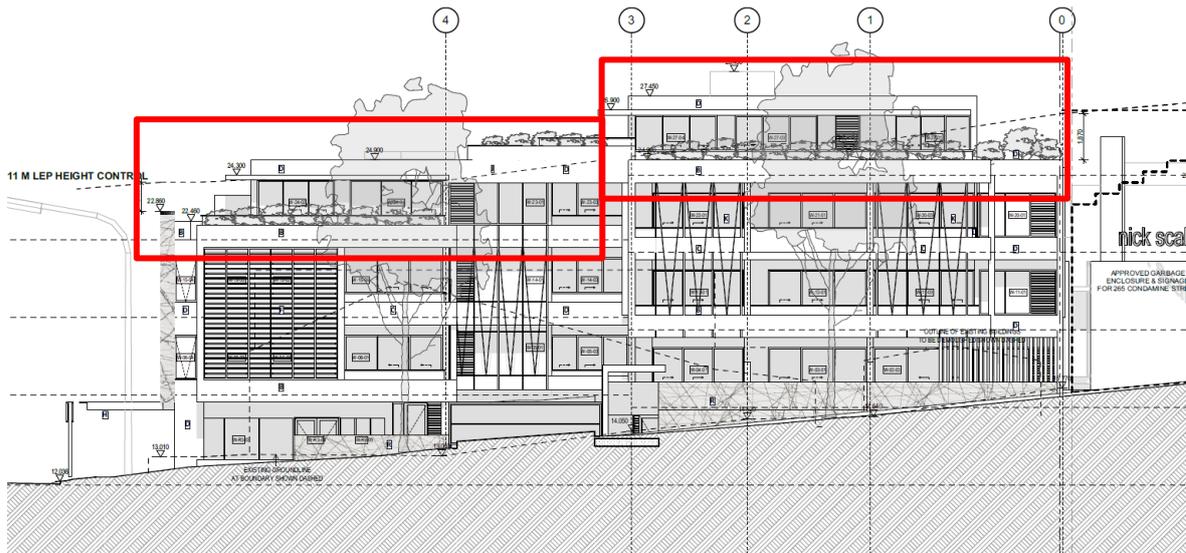


Figure 6: Non-compliant storey of the proposed development as seen in red.

The proposed four storey, shop-top housing is a breach to Council's controls which permits a maximum number of three storeys. Any variation from the numerical requirements of the Council controls requires the proposal to demonstrate compliance with the relevant objectives of B2: Number of Storeys within the WDCP2011. The relevant objectives that are applicable to the proposed development are as follows:

- *To ensure development does not visually dominate its surrounds;*
- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreational purposes; and*
- *To complement the height of buildings control in the LEP with a number of storeys control.*

As indicated within matter no. 2 (refer within submission) the proposal will result in a development that is excessive in size and scale and is not compatible nor complementary with the existing buildings within the streetscape setting. The existing buildings along Condamine Street are characterised by two to four storey scale shop-top housing and/or commercial developments and the proposed stepped built form character at four-storey development is significantly larger and will visually dominate the neighbouring developments within the street.

While the four-storey building element to the street frontage of Condamine Street will generally be aligned to similar building heights along the street frontages of the neighbouring developments, the upper-most level to the west of the building is visible from the existing streetscape setting in particular from key viewing vistas along the intersection of Condamine Street and Kenneth Road. The additional bulk and scale of the development, which arise from a non-compliant building height, will detract from the quality of the streetscape setting and visually dominate its immediate surroundings. Notwithstanding this, the number of storeys do not correspond with the height of buildings development standard within WLEP2011. The WLEP2011 prescribes a maximum 11 metre building height limit which permits a maximum of three storeys when applying the minimum floor-to-ceiling heights of Apartment Design Guide. The variation from the Council's controls above three storeys is not compatible with the objectives of the WDCP2011 and does not warrant Council support.

7. Materiality Treatment to the Western Façade

The proposed development involves the installation of a timber batten planting trellis along the western end of the site adjoining the objectors' premises. It is requested that further detail be provided including 1:50 cross sections be included in order to illustrate the relationship between the timber battens and the functionality of the approved car park, given it is sited up to the property boundary of the site.

8. Overdevelopment of the site

The key concerns of the proposed development raised in the items above including the non-compliances to the building height, number of storeys and floor-to-ceiling heights all contributes to an overdevelopment of the site and is not a suitable form of development for the subject site. The variation and non-compliances to the above results in a development that is not compatible with the existing streetscape quality and detracts from the building within the Manly Vale Local Centre zoning.

A more compliant building envelope with respect to the building height and number of storeys would be more compatible with the neighbouring buildings and would positively respond to the existing streetscape. In considering the above, the proposed development is unacceptable and should not be supported until these outstanding matters are addressed during the course of the development assessment process.

In light of the above, Tomasy Planning recommends that Council refuse the development application in its current form under Section 4.16 (formerly Section 80) of the Environmental Planning and Assessment Act, 1979. The proposed development is considered to be a prohibited form of development given the proposal is not consistent with the characterisation of a 'shop-top housing'. In addition to this, the proposal represents a number of substantial departures to the relevant planning policies including the Apartment Design Guide contained within the SEPP65; WLEP2011 and WDCP2011.

Please forward all Council correspondence to both the sender's and owners addresses to ensure that we remain involved with Council's proceedings in the determination of this development application.

Should you require any further clarification of the above, please do not hesitate to contact me on 8456 4752.

Yours faithfully



Matthew Choi
Executive Planner