

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0179
Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 8 DP 604034, 255 Condamine Street MANLY VALE NSW 2093
Proposed Development:	Construction of a boarding house development
Zoning:	Warringah LEP2011 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	Yes
Owner:	My Manly Vale Pty Ltd
Applicant:	My Manly Vale Pty Ltd
Application Lodged:	09/03/2021
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	22/03/2021 to 21/04/2021
Advertised:	22/03/2021
Submissions Received:	21
Clause 4.6 Variation:	4.3 Height of buildings: 78%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 5,084,700.00

EXECUTIVE SUMMARY

The application seeks consent for the construction of a 39 room boarding house under the provisions of *State Environmental Planning Policy (Affordable Rental Housing)* (**SEPP ARH**).

The site is significantly constrained by a natural creekline (Burnt Bridge Creek) that dissects the site in two. The application proposes to construct the boarding house over and partially within the creekline, inconsistent with the policy position of both Council and the Natural Resources Access Regulator (**NRAR**). The application constitutes integrated development, and in the absence of general terms of approval from NRAR, the application cannot be approved, irrespective of the merits of the application. The application also requires concurrence from Transport for NSW (**TfNSW**) for works within the road reserve, which has not been obtained.

The proposal is contrary to the provisions of SEPP ARH, *Warringah Local Environmental Plan 2011 (WLEP 2011)* and *Warringah Development Control Plan 2011 (WDCP 2011)*, with specific concerns relating to character, height, bulk and scale, setbacks, flooding, stormwater management, traffic, parking and general amenity. These matters were also raised as cause for concern in the 21 submissions received in objection to the proposal.

The proposed boarding house development is reliant upon a variation to the maximum building height development standard prescribed by clause 4.3 of WLEP 2011, with a maximum variation of 8.58m or 78%. The variation is not limited in height or area, with the entire upper floor protruding above the 11m height plane by a minimum of 3.1m. The applicant's written request to vary this standard has not satisfactorily demonstrated that compliance with the standard is unreasonable or unnecessary, nor that there are sufficient environmental planning grounds to warrant the variation.

As the application has received more than 10 unique submissions by way of objection, and as the development involves a variation to the building height development standard greater than 10%, the application is referred to the Northern Beaches Local Planning Panel for determination, with a recommendation of refusal.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the demolition of existing site improvements and the construction of a boarding house at the subject site. Specifically, the boarding house comprises:

- 1 39 boarding rooms, all double rooms, with a maximum occupancy of 78 people,
- 1 Off-street parking for 7 cars (inclusive of 3 car share spaces), 8 motor bikes and bicycles,
- 1 2 internal common rooms and 1 external area of communal open space,
- 1 Stormwater infrastructure,
- 1 New driveway crossing and access driveway, and
- 1 Landscaping.

The proposal involves works over and within the creekline, constituting integrated development under the provisions of s91 of the *Water Management Act 2000* and s4.46 of the EP&A Act, and general terms of approval are required from NRAR.

The application also seeks consent for works within the road reserve of a classified road, requiring the concurrence of TfNSW in accordance with the provisions of s138 of the *Roads Act 1993*.

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:

- 1 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;
- 1 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;
- 1 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;
- 1 A review and consideration of all submissions made by the public and community interest groups in relation to the application;

- 1 A review and consideration of all documentation provided with the application (up to the time of determination);
- 1 A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Local Environmental Plan 2011 - Zone B2 Local Centre
 Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Local Environmental Plan 2011 - 6.1 Acid sulfate soils
 Warringah Local Environmental Plan 2011 - 6.2 Earthworks
 Warringah Local Environmental Plan 2011 - 6.3 Flood planning
 Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
 Warringah Development Control Plan - B2 Number of Storeys
 Warringah Development Control Plan - B6 Merit Assessment of Side Boundary Setbacks
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - B10 Merit assessment of rear 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 - C7 Excavation and Landfill
 Warringah Development Control Plan - C9 Waste Management
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D9 Building Bulk
 Warringah Development Control Plan - D20 Safety and Security
 Warringah Development Control Plan - E6 Retaining unique environmental features
 Warringah Development Control Plan - E8 Waterways and Riparian Lands
 Warringah Development Control Plan - F1 Local and Neighbourhood Centres

SITE DESCRIPTION

Property Description:	Lot 8 DP 604034 , 255 Condamine Street MANLY VALE NSW 2093
Detailed Site Description:	<p>The site is slightly irregular in shape, with a 15.19m wide frontage to Condamine Street, a 15.24m wide rear boundary, a maximum depth of 57.75m and a total area of 863m². The site is dissected by Burnt Bridge Creek, which passes from the rear south-west corner of the site through to the front north-east corner of the site, where the creek is then piped under Condamine Street. The topography of the site undulates in response to the creekline, with a maximum fall to the creek bed of 6m from the north-western corner of the site and 5m from the south-eastern corner of the site.</p> <p>A partially demolished building is located in the south-eastern corner of the site, with the remainder of the site free of development and any significant vegetation.</p> <p>The site is surrounded by development of varying typology, density, age and character, with three and four storey shop</p>

top housing developments to the north, two and three storey bulky goods premises to the south and east, one and two storey low density residential development to the west and north-west, and a local reserve to the south-west.

Condamine Street is a six lane classified road, with limited parking along the frontage of the site to align with afternoon bus lane requirements. The site is in close proximity to the Manly Vale B1 bus stops, which are located approximately 150m to the north and north-east of the site, on either side of Condamine Street.

Map:



SITE HISTORY

Site History

On 19 July 2017, Development Application DA2017/0708 was lodged with Council, seeking consent for a five storey boarding house, comprising 63 boarding rooms.

On 7 March 2018, Development Application DA2017/0708 was refused by Council for a number of reasons, primarily in relation to:

- 1 encroachment over the creekline,
- 1 inconsistency with the provisions of SEPP ARH,
- 1 inconsistency with the provisions of SEPP Infrastructure,
- 1 inconsistency with the objectives of the B2 zone,
- 1 height non-compliance,
- 1 flooding,
- 1 non-compliant setbacks, and
- 1 waste management.

On 25 August 2020, a pre-lodgement meeting was held in relation to an amended boarding house development at the subject site. The amended proposal was limited to four storeys and comprised 47 boarding rooms. Council was not supportive of the amended proposal.

Application History

On 9 March 2021, the subject application was lodged with Council. The subject application further reduces the amount of proposed boarding rooms to 39, and introduces the central courtyard to break down the overall mass of the building.

On 22 April 2021, the application was referred to the Design and Sustainability Panel (**DSAP**) for comments and recommendations. Upon review of the proposal and after hearing from the applicant with regards to the design of the development, the DSAP concluded:

The Panel does not support the proposal.

The Panel does not consider the site suitable for residential development.

The site is so constrained that it will be very difficult to achieve adequate design quality and amenity for residential use.

*The site is more appropriate for commercial use consistent with the objectives of the zone
If the proposal does proceed in any form the Panel recommends significant reduction in the volumes of the building and the following measures:*

- *No rooms should have single aspect to the main road (AADT >40,000)*
- *The building mass should be reduced so that it does not extend past a line midway between the bottom and top of bank*
- *The building should be setback from the adjoining building by at least 3m at any point*
- *The courtyard alignment should more closely align with the courtyards to the north*
- *The height of the building on the eastern end may be increased as it would not have an adverse effect on any adjoining properties or on the character of the area*

On 13 May 2021, Council wrote to the applicant, outlining concerns in relation to:

- 1 inconsistency with the B2 zone objectives,
- 1 encroachment of the watercourse,
- 1 water management,
- 1 flooding,
- 1 encroachment of the road reserve,
- 1 vehicular access,
- 1 parking,
- 1 waste management,
- 1 urban design,
- 1 solar access,
- 1 site management, and
- 1 building height.

The applicant was provided with the opportunity to amend or withdraw the application, or to nominate for the application to be determined based on the information before Council.

On 31 May 2021, Council wrote to the applicant to ask how they wished to proceed, noting the absence of any response to Council's earlier correspondence.

On 1 June 2021, the applicant provided a response requesting the determination of the matter, and

advised of the lodgement of a Class 1 Appeal with the NSW Land and Environment Court with respect to the deemed refusal of the application.

On 4 June 2021, Council received notice of the appeal.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The proposed development was supported by a Detailed Site Investigation, which confirms that the site can be managed to ensure a suitable level of risk. See further discussion with regard to SEPP 55.
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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of consent.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent.</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.</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.</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.</p> <p>(ii) Social Impact</p>

Section 4.15 Matters for Consideration'	Comments
	<p>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 proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirements of SEPP ARH, WLEP 2011, WDCP 2011 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 from 22/03/2021 to 21/04/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 21 submission/s from:

Name:	Address:
John Koorey	36 Bower Street MANLY NSW 2095
Mr Ravi Bhushan Garg	5/24 Augusta Road MANLY NSW 2095
Mrs Kelly Forrest	2 / 251 Condamine Street MANLY VALE NSW 2093
Simon Laurance Waddington	10 Pitt Street MANLY VALE NSW 2093
Mr Stephen Graham Hancock	44 Quinlan Parade MANLY VALE NSW 2093
Mrs Kathryn Barbara Stevens	48 Sunshine Street MANLY VALE NSW 2093
Mr Michael Tsakiris	13 Highview Avenue MANLY VALE NSW 2093
Ms Tiziana Beninati	13 Nenagh Street NORTH MANLY NSW 2100
Gilbey Burgess Strata Management Pty Ltd	1/214 Condamine Street BALGOWLAH NSW 2093

Name:	Address:
Mrs Ann Frances Collins	41 Gordon Street MANLY VALE NSW 2093
Mr Malcolm John Fisher	37 King Street MANLY VALE NSW 2093
Ms Nicole Macleod	Address Unknown
Tracey Cook	Address Unknown
Ms Lauren Kelly	8 Sunshine Street MANLY VALE NSW 2093
Mr David Darnton Hunt	47 Gordon Street MANLY VALE NSW 2093
Mr Phillip Andrew Lambley	23 Innes Road MANLY VALE NSW 2093
Atlas Capital & Equities Pty Limited	43 Redman Road DEE WHY NSW 2099
Colco Consulting Pty Ltd	20 Amiens Road CLONTARF NSW 2093
Mr Francesco Lucia	C/- Atlas Capital & Equity Pty Ltd 43 Redman Road DEE WHY NSW 2099
Mr Kevin Henry Mascarenhas	28 Chandos Street MANLY VALE NSW 2093
Mr Matthew Koorey	12 Pitt Street MANLY VALE NSW 2093

The concerns raised in the submissions received can be generally summarised and addressed, as follows:

1 **Parking**

Comment: A number of submissions raise concern in regards to the shortfall of on-site parking and a lack of on-street parking in the vicinity of the site. These concerns are shared by Council's Traffic Engineer, and the application is recommended for refusal in this regard.

1 **Flooding**

Comment: Concerns have been raised in relation to the works within and around the creekline, and any potential impacts upon flood levels on adjoining sites. Council's Flood Engineers are not satisfied with the level of information provided in this regard, with specific concerns regarding additional impacts to adjoining properties during the PMF event. The application is recommended for refusal in this regard.

1 **Impacts upon the creek**

Comment: Submissions have been received raising concerns in relation to the impact upon the creekline. The level of disturbance of the creekline is not supported by NRAR or Council's Riparian Officer, and the application is recommended for refusal in this regard.

1 **Overshadowing**

Comment: Submissions have been received in regards to overshadowing arising from the development in relation to the adjoining property to the south and the adjoining property to the west. The application was supported by shadow diagrams to confirm that the proposal will not result in overshadowing of the adjoining dwelling to the west. However, the application does not provide sufficient detail with respect to the property to the south, noting that the shadow diagrams provided do not qualify the impact associated with the non-compliant built form compared to that of a compliant scheme. The lack of appropriate solar analysis is not nominated

as a reason for refusal of its own accord, but forms a contributing factor as to why the applicant's request to vary the building height development standard is not justified.

1 Setbacks & spatial separation

Comment: Submissions have been received in objection to the limited setback between the proposal and the rear boundary, resulting in unreasonable overlooking of adjoining and nearby properties. As discussed with regard to clause B10 of WDCP 2011, the proposed rear setbacks do not provide adequate spatial separation or an appropriate transition to the low density neighbouring properties to the rear, attributing to the refusal of the subject application.

Further submissions have been received in relation to the proximity of the proposal to properties to the north and south. As discussed with regard to clause B6 of WDCP 2011, portions of the development are also considered to be inappropriately sited in relation to these adjoining properties, resulting in adverse impacts and inconsistency with the objectives of the side setback control. The inadequacy of the side setbacks also attributes to the refusal of the subject application.

1 Impacts upon flora and fauna

Comment: Concerns have been raised in relation to potential impacts upon flora and fauna as a result of the works within and around the creekline. The proposed development has not been designed in accordance with Council's *Protection of Waterways and Riparian Land Policy*, and the application is recommended for refusal in this regard.

1 Site management

Comment: Submissions received highlight discrepancies in the application in relation to the provision of a on-site manager. The SEE and POM confirm that an on-site manager is to be employed and that a manager's room is to be provided, however the Traffic Report states that a manager's room is not proposed. Should the application be approved, a condition of consent can be imposed to ensure the provision of an on-site manager.

1 Construction impacts (inc. vibration)

Comment: A submission has been received raising concern with regards to impacts associated with construction, including dust and vibration. Should the application be approved, conditions of consent can be imposed to ensure the appropriate management of the site during construction.

1 Overdevelopment

Comment: A number of submissions suggest the proposal is an overdevelopment of the highly constrained site. In light of the multiple areas and extent of non-compliance with the applicable plans and policies, it is agreed that the proposal is an overdevelopment of the site, and the application is recommended for refusal in this regard.

1 Height non-compliance

Comment: Submissions have been received in objection to the non-compliant height of the development. As discussed with regard to clause 4.3 of WLEP 2011, the extent of height non-compliance is not supported and the proposal is recommended for refusal in this regard.

1 Activation of street frontage

Comment: Submissions received raise concern with the lack of commercial/business floor space presenting to Condamine Street. The absence of any commercial or business floor space is inconsistent with the objectives of the B2 Local Centre Zone. Whilst the proposal is not recommended for refusal in this regard, inconsistency with the objectives of the zone is a contributory factor as to why the request to vary the maximum building height is not supportable in this instance.

1 Internal amenity

Comment: Submissions have been received that question the internal amenity of the proposed development. In particular, some submissions highlight the amount of single aspect rooms oriented towards Condamine Street and the choice occupants will need to make between fresh air and acoustic privacy. Further submissions relate the lack of parking to a sub-standard amenity, particularly if the development is occupied at capacity. The concerns raised in relation to the amenity of the proposal are echoed in this assessment, noting non-compliance with solar access requirements, limited spatial separation between buildings, and awkward access arrangements to the rear building. The application is recommended for refusal in this regard.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	<p>No objection, with conditions.</p> <p><i>Despite the SEE incorrectly stating the site is not classified as Acid Soil affected, Councils maps show the site as Class 4 and 5 Acid Sulfate Soils.</i></p> <p><i>The applicant has provided an assessment for acid soils by Martens Consulting Engineers Feb 2021 which makes a number of recommendations and this report and recommendations will form part of our conditions of approval.</i></p>
Environmental Health (Contaminated Lands)	<p>No Objection, with conditions</p> <p><i>Environmental Health reviewed the Detailed Site Investigation by Martens Consulting Engineers dated 28 January 2021 (Reference: P1605609JR04V02 – January 2021). The report:</i></p> <ul style="list-style-type: none"> 1 <i>Found fill material up to 1.4 mBG using boreholes (no asbestos found in the boreholes. However, a fragment of confirmed asbestos was found at the surface of the site during the detailed site investigation in 2017 and additional fragment identified at the surface during a recent site inspection in 2021.</i> 1 <i>The report advised: The asbestos SAC was exceeded due to material sample ACM01 containing Chrysotile and Amosite asbestos. This sample was located on the ground surface. However, we cannot confirm if this ACM sample is representative of ACM limited to the surface or near-surface, or whether ACM is also within fill material, which had a maximum depth of approximately 1.4 mBGL.</i>

Internal Referral Body	Comments
	<p>1 <i>The report recommended:</i> Due to asbestos SAC being exceeded, remedial advice is required for guidance of fill removal and certification. Following successful remedial implementation, we consider the site is suitable for the proposed residential development. Prior to any soil material being removed from site, a formal waste classification assessment is required in accordance with NSW EPA Waste Classification Guidelines (2014).</p> <p><i>From a review of the above Environmental Health provide the following comments regarding the contamination report:</i></p> <p>1 <i>The consultant has used boreholes in their assessment for contamination. However, if there is fill material onsite that is likely to contain asbestos bore holes are generally not adequate in assessing fill material for asbestos contamination. Typically tests pits or trenches would be used to identify/delineate asbestos confirmation.</i></p> <p>1 <i>Given the Geotechnical Report by Martens Consulting Engineers dated 10 February 2021 (Reference: P1605609JR06V01 – February 2021) indicates that there will be bulk excavation of up to approximately 1.5 meters below ground level (mBGL) it is important to determine if the fill material onsite contains asbestos.</i></p> <p>1 <i>The consultant however, has taken a conservative approach and recommended:</i> Due to asbestos SAC being exceeded, remedial advice is required for guidance of fill removal and certification. Following successful remedial implementation, we consider the site is suitable for the proposed residential development. Prior to any soil material being removed from site, a formal waste classification assessment is required in accordance with NSW EPA Waste Classification Guidelines (2014).</p> <p>1 <i>Council as the consent authority needs to be satisfied based on the available information that the land can be remediated prior to issuing consent. The main issue with Asbestos contamination will be costs to the applicant associated with its removal and/or cap and containment.</i></p> <p>1 <i>Environmental health however, can put conditions on to ensure that the data gaps be addressed and if necessary a remediation report prepared and subsequent validation of the site.</i></p>
Environmental Health (Industrial)	<p>No objection, with conditions.</p> <p><i>A development application proposing the demolition of the existing site structures and the construction of a boarding house containing 39 boarding rooms and car parking for 7 vehicles accessed from Condamine Street.</i></p>

Internal Referral Body	Comments
	<i>A Plan of Management has been submitted.</i>
Landscape Officer	<p>No objection, with conditions.</p> <p><i>This application is for the construction of a boarding house. The site incorporates a portion of Burnt Bridge Creek.</i></p> <p><i>Councils Landscape Referral section has considered the application against the Warringah Local Environment Plan, and the following Warringah DCP 2011 controls:</i> <i>D1 Landscaped Open Space and Bushland Setting</i> <i>E1 Preservation of Trees or Bushland Vegetation</i></p> <p><i>I would defer to comments from Council's Natural Environment section regarding treatment and revegetation of creek banks as proposed, however, from a landscape perspective, the proposal is not objected to.</i></p> <p><i>Within the site, planting is proposed for a central courtyard and front setback which is considered to be suitable for the proposal.</i></p> <p><i>No objections are raised to approval subject to conditions as recommended.</i></p>
NECC (Development Engineering)	<p>Objection.</p> <p><i>The subject site is flood affected and the exemption from OSD as requested by the applicant's Hydraulic Engineer is acceptable. The applicant has not included a stormwater drainage plan for the proposal which is required for assessment. If connection of stormwater from the site is proposed into the drainage pit in Condamine St, concurrence from Transport for NSW TfNSW will be required for the connection.</i></p> <p><i>It is noted that further information is required by TfNSW for the driveway crossing and Council's Traffic and Road Asset Teams regarding similar issues. Once their requirements have been satisfied the assessment can be completed with regard to this issue and the treatment of the footpath.</i></p> <p><i>Development Engineers cannot support the application due to insufficient information to address clause C4 of Warringah DCP.</i></p>
NECC (Riparian Lands and Creeks)	<p>Objection.</p> <p><i>The proposed building is covering extensively the creek and the floodplain.</i></p> <p><i>Approximatively 80% of the Burnt Bridge Creek Southern bank within the lot is located under the proposed building.</i></p> <p><i>The proposal also shows the building is overhanging the creek bed at two locations.</i></p> <p><i>6 piles are directly located in the creek bank, 7 piles are located on the floodplain.</i></p> <p><i>The extensive covering of the banks, the covering of the creek bed</i></p>

Internal Referral Body	Comments
	<p><i>and the piles locations are not consistent with Council Policy and are not supported.</i></p> <p><i>The Water way Impact Statement is missing from the documentation and must be supplied.</i></p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>Objection.</p> <p><i>The proposed development is for a multi-level boarding house. The flood modelling output, specifically Map 16 of the Attachment F in the Flood Assessment Report shows post-development increases in the PMF velocities on private property (lot to the south of the subject site) of greater than 10%. The development cannot result in potential adverse flood impacts of more than 10% increase of PMF velocity on private land.</i></p> <p><i>More information is required to show the flood model set up, this includes how existing buildings have been modelled in the lots to the north and south of the subject site. It appears the modelling conducted by the flood consultant does not include neighbouring existing buildings in the model. The flood impact assessment for the development should factor in buildings in the assessment. 1% AEP and PMF Water level and Velocity afflux mapping must be provided for a greater area around the site (extent of 100-150m upstream and downstream of the site to show proposed flood impacts on surrounding properties).</i></p> <p><i>The Air Conditioning condensers must be positioned completely above the 1% AEP due to risk of damage in a 1% AEP flood. Justification must be provided as to why the base of the western lift must be located below the 1% AEP flood level. Without adequate justification it must be raised above the 1% AEP flood level.</i></p> <p><i>The above are required to reduce the risks and impacts of flooding and to adequately assess the proposed development.</i></p>
NECC (Water Management)	<p>Objection.</p> <p><i>The MUSIC model must be supplied for Council review.</i></p> <p><i>The bio-swale details is not showing extended detention depth and is lacking details.</i></p> <p><i>The location of the biofiltration is too close to the creek flow path (elevation and location) with risk of damages (erosion of filter material and deposition of sediment from the creek).</i></p> <p><i>Access for maintenance is also an issue including risk of falls with 1.25m from top of wall to bio retention base.</i></p>
Road Reserve	<p>Objection.</p> <p><i>There is limited impact on Council's existing road infrastructure, however, the sub-ground floor plan and ground floor plan indicates the building structures encroach on the public road reserve. Past DA's have been required to address the existing retaining structure that traverses the frontage of the site. The building shall not be permitted to encroach on the public road reserve. Development Engineering to</i></p>

Internal Referral Body	Comments
	<i>provide further assessment and improvements to existing footpaths as per Council's public space design guidelines.</i>
Strategic and Place Planning (Urban Design)	<p>Objection.</p> <p><i>The proposal should address the following additional issues:</i></p> <ol style="list-style-type: none"> <i>1. The boarding rooms around the middle courtyard are facing each other directly at 9m apart. The courtyard width should be increased to 12m to improve room amenity. Boarding rooms should also be reorientated to prevent direct overlooking as a priority and use appropriate privacy screening as a secondary solution. The proposal should consider reducing room numbers to achieve the above suggestion. The middle courtyard should be aligned with the courtyard of the adjacent northern neighbour as much as possible to maximise solar access.</i> <i>2. Building height breach of 11m should be supported with solar analysis as compared with a complying 11m development to ensure no additional shadows are casted to surrounding neighbours. As such, setting back the top floor might be required on the common southern boundary.</i> <i>3. The bottom balcony proposed that breach the rear setback should be deleted to maintain adequate building separation distances to neighbouring sites.</i> <p>Previous PLM comments:</p> <p><i>The 37 rooms proposal has more potential provided the following issues are considered:</i></p> <ol style="list-style-type: none"> <i>1. Setback of the boarding rooms/balconies to the northern side boundary is increased to 6m as a minimum. Consider applying 9m setback to rooms 4,5, 15,16,23 & 24 as they will be facing directly onto the balconies and private open spaces of the next door residences. The 9m setback will also create an indent to break up the long linear northern façade proposed.</i> <p>Response: <i>The current scheme proposes a central courtyard to break up the building into two blocks.</i></p> <ol style="list-style-type: none"> <i>2. The top floor proposed will completely breach the 11m building height control. It will also diminish sunlight access to the southern neighbouring property future development potential. Considering the constrained site condition and the neighbouring developments (approved and future), the fourth storey should be broken up to have a 12m wide gap to line up with the courtyard of the approved DA to the north. The southern facade of the top storey should also be set backed 3m to allow the 11m building height transition to potential development to the south.</i> <p>Response: <i>The central courtyard should be widened to 12m and the top floor be setback as required on the south boundary to not cast additional shadow compared to a complying scheme.</i></p> <ol style="list-style-type: none"> <i>3. The residential development to the north will be expecting a similar</i>

Internal Referral Body	Comments
	<p><i>residential proposal on the subject site to continue the concept of the 12 wide courtyard which ideally should be continued to the Freedom furniture site to the south. The proposal should investigate this option of re-orientating boarding rooms into a central courtyard, Condamine street and rear boundary. The issue of 24 rooms potentially overlooking the residential development to the north can be minimised with this approach.</i></p> <p>Response: <i>The rooms looking into the central courtyard can be supported but they should be 12m apart (balcony to balcony). Privacy screens to prevent direct line of sight should also be incorporated.</i></p> <p><i>4. The front façade facing Condamine Street should consider the ground floor opening height reduced to 2.7m (subject to service vehicle requirement) to avoid the cavernous look proposed. It should be treated as part of the public domain footpath and ideally should have shopfront spaces activating the public footpath. Nonetheless, it should be a fitting space with quality finishing and treatment for a front lobby majority of the time while also acting as a service area.</i></p> <p>Response: <i>The proposal could be improved further with an awning to lower the scale at the pedestrian entry point. This will help to lessen the impact of the hostile environment created by the high traffic flow on Condamine Street.</i></p> <p><i>5. Awning on the street facade should be considered to provide some street amenity/ shelter. New awnings to be setback minimum 1000mm from the face of the kerb to accommodate utility poles and traffic /parking in the kerbside lane. Where street trees are required, the minimum awning to setback from the kerb is 1500mm.</i></p> <p>Response: <i>Consider the awning suggestion in point 4 above.</i></p> <p><i>6. Access to the creek bed and riparian area could be considered as part of the recreation area for the residents. Fern garden with shade plantings could be a unique recreation opportunity.</i></p> <p>Response: <i>A staircase to access the creek bed and riparian area has been provided.</i></p>
Traffic Engineer	<p>Objection.</p> <p><i>The development is for demolition of the existing building on the site and construction of a 39 room boarding house with no manager's room. The development also proposes off-street parking for 7 cars (including 1 disabled space), 8 motorcycles and 8 bicycles in a ground floor carpark. 3 of the parking spaces are proposed to be designated as car share spaces with those car share vehicles also to be available to the general public. A new vehicle crossing on 5.5m in width will be constructed on the property's Condamine Street frontage.</i></p> <p><u>Traffic:</u></p> <p><i>In terms of traffic generation the traffic and parking assessment report has estimated the traffic generation of the development to be 3-4 vehicle trips per hour. The traffic generated by the development may differ slightly from this figure and is likely to be less than other</i></p>

Internal Referral Body	Comments
	<p><i>potential development types on the site and as the site fronts Condamine Street a State Road, the traffic generation from the developed site is acceptable and considered unlikely to significantly impact on conditions in the surrounding road network.</i></p> <p><u><i>Parking:</i></u> <i>The development proposes off-street parking for 7 cars.</i></p> <p><i>The Warringah DCP does not nominate a parking rate for boarding house developments but advises that comparisons must be drawn with developments for a similar purpose.</i></p> <p><i>The SEPP Affordable Rental Housing advises that a consent authority may not refuse a development if it provides parking in excess of 0.5 spaces per boarding room plus no more than 1 space for a manager that is resident on the site. In this instance, there is no resident manager so the SEPP requirement is 19.5 spaces (rounded up to 20)</i></p> <p><i>The developer proposes that three of the parking spaces be designated as car share spaces with such spaces to be managed by the car share company GoGet. The traffic and parking assessment report proposes that each carshare space can be assessed as being equivalent to 10 car spaces. Using this figure the traffic consultant asserts that the 7 car spaces are equivalent to 34 car spaces. The traffic consultant also asserts that Council had agreed at the prelodgement meeting that a car share space could be considered equivalent to 5 car spaces.</i></p> <p><i>The prelodgement advice actually was that although consideration would be given to a car space being equivalent to 5 spaces "Council's preference is to provide no more than 2% or 2 car share spaces, whichever is greater." If a maximum of 2 car share spaces were provided the 39 bed boarding room would therefore require a total of 12 parking spaces. It is also noted that the plans presented at the Prelodgement meeting also proposed a service vehicle bay. This bay has been deleted from the plans now presented for consideration.</i></p> <p><i>In addition, the car share spaces are also to be made available to the general public. While this is understandable in terms of GoGets business model this would render the spaces unsuitable for use by boarding house tenants for much of the time as the car would often be in use by the general community and not available for those they are supposed to be serving.</i></p> <p><i>Given the above, the proposed car parking supply is considered inadequate to meet the needs of the development</i></p> <p><i>The SEPP also requires one bicycle space for every 5 boarding rooms and one motorcycle space for every five boarding rooms. This equates to 8 motorcycle and 8 bicycle parking spaces. As the development provides parking for 8 bicycles and 8 motorcycles, these requirements, which are mandatory, are met.</i></p>

Internal Referral Body	Comments
	<p><i>In terms of the parking layout. Parking space No.19 is undersized with AS2890.1 section 2.4.1(b) requiring that a space adjacent to a wall or fence be no less than 2.7m in width</i></p> <p><i>Swept path plots have not been provided with the traffic and parking assessment report to demonstrate that access for B85 vehicles to each of the spaces without encroachment on other spaces is possible.</i></p> <p><u><i>Vehicular Access:</i></u> <i>The development proposes to remove the existing vehicle crossing serving the site and construct a new vehicle crossing which is of 5.5m in width. Concurrent entry/exit to the driveway by B85 vehicle and B99 vehicle has not been demonstrated by way of turning path plots to/from the kerbside lane of Condamine. These should be provided to demonstrate compliance with the requirements of A2890. 1 and also to address concerns by TfNSW</i> <i>The driveway continues at a width of 5.5m inside the property as required by AS2890.1 which allows for an entering vehicle to pass and exiting vehicle.</i> <i>It is noted that the construction of the new driveway will require relocation of a power pole. That work will need to be completed to Ausgrid requirements and at no cost to Council or Transport for NSW.</i></p> <p><u><i>Pedestrian access:</i></u> <i>The development provides an appropriately graded accessible path of travel from the carpark although as outlined below. If the turning bay is being used by a service vehicle access to the lift and lobby area, particularly for those with a disability is blocked. Access from the street for those with a disability relies upon the use of a wheel chair which is not ideal.</i></p> <p><u><i>Servicing:</i></u> <i>It is noted that the service bay that was proposed as part of the prelodgement plans has been deleted from the plans with servicing now intended to be conducted from within the turning bay in the basement carpark. This is considered unsuitable as use of the service bay by delivery drivers would a) impede access to the motorcycle cycle and bicycle parking bays b) prevent vehicles parked in parking bay No.s 18 and 19 from turning forcing such vehicles to reverse from the site onto a busy State Road to turn around which is unacceptable. c) impede pedestrian access to the Lift and foyer area.</i> <i>It is considered that a service bay is necessary to cater for deliveries, small moving vans, property maintenance purposes etc however this should be catered for by a designated service bay capable of accommodating at least a small rigid vehicle.</i></p> <p><i>The turning path plots provided with the traffic and parking assessment report are inadequate as they do not demonstrate that small rigid vehicles can enter and exit the site from the kerbside lane of Condamine Street. This has also been noted in TfNSW comments.</i></p>

Internal Referral Body	Comments
	<p><i>Finally, It is also noted that Council's Waste Services team have raised concerns about the waste servicing arrangements proposed and these concerns should also be addressed as part of a review of the design.</i></p> <p><u>Summary:</u> <i>The development in its current form is considered inadequate in terms of its parking supply, parking layout, lack of service vehicle parking. additional information and some design review is required prior to further consideration of the proposal</i></p>
Waste Officer	<p>Objection.</p> <p><i>The proposal does not comply with Councils' Waste Management Design Guidelines.</i> <i>Specifically:</i></p> <ol style="list-style-type: none"> <i>1. The waste storage room is too small to accommodate the required number of bins. Councils' waste generation rates calculate that 31 x 240 litre bins would be required for a weekly service of the 39 boarding rooms. The applicant is proposing a room large enough to contain just 6 x 240 litre bins for both garbage and recycling. This would require the bins to emptied a minimum of five days per week, resulting three trucks entering and leaving the site on an almost daily basis.</i> <i>2. The waste storage area is too far from the front property boundary with the street and is only accessible via the vehicular driveway. Council does not require onsite servicing of the waste and recycle bins. Council will provide kerbside collection from a binroom designed and constructed to comply with Councils' Waste Management Design Guidelines.</i> <i>3. There is no bulky goods storage room shown on the plans. A bulky goods storage room must be provided that complies with Councils' Waste Management Design Guidelines.</i>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>No objection, with conditions.</p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>
NSW Roads and Maritime Services (Traffic Generating Development)	<p>Objection, Concurrence not granted.</p> <p>The application involves works within the road reserve. Condamine Street is a classified road, and as such, the application was referred to</p>

External Referral Body	Comments
	<p>TfNSW for concurrence in accordance with the provisions of s138 of the Roads Act. TfNSW provided the following response:</p> <p><i>TfNSW has reviewed the development application and is unable to provide concurrence due to the following reasons:</i></p> <ol style="list-style-type: none"> <i>1. Swept path plans of SRV entering and exiting the site from the kerbside lane of Condamine Street were not submitted for review. Lane allocation of Condamine Street should be included on plans to demonstrate manoeuvres from the kerbside lane such that traffic flows on adjacent lanes are not impacted.</i> <i>2. Submitted plans only indicate the driveway within the property boundary. The driveway crossover, kerb and gutter should be included in all submitted plans. This includes requested swept path plans, which should include the driveway crossover to demonstrate movements from/into the kerbside lane.</i> <i>3. Swept path plans demonstrating forward entry and exit of passenger vehicles from the kerbside lane into each proposed car space were not submitted for review. Adequate turnaround space should be provided onsite and cars should also be able to exit the site in a forward direction when all car spaces are occupied.</i>
<p>Nominated Integrated Development – Natural Resources Access Regulator - Water Management Act 2000 (s91 Controlled Activity Approval for works within 40m of watercourse)</p>	<p>Objection, General Terms of Approval not issued.</p> <p>The application involves works within and over the creekline, constituting integrated Development under the provisions of s91 of the <i>Water Management Act 2000</i>. The application was referred to NRAR, who advised that additional information is required before NRAR can issue General Terms of Approval, as follows:</p> <p><i>The proposal shows the building overhanging the low flow of the watercourse. The north west corner area is over nearly all of the water flow. The proponent has made the low flow channel of the watercourse much larger than it actually is to make their proposal seem like less of an impact. The area below is all bank and doesn't go over the water as their proposal plans to.</i></p> <p><i>The adjacent building has replaced itself as it previously was and taken no more room than it did before except in height. The bank works on the adjacent building, or this site, would normally not be supported by NRAR but the previous building was already there and could have remained, and the watercourse is then piped under the road and shopping centre.</i></p> <p><i>I have spoken to the proponent about this site in the past and told them that the building is not to overhang any water, meaning the low flow. The adjacent building is not a justification for their building, as they have tried to show, and they need to show their building is not</i></p>

External Referral Body	Comments
	<i>overhanging the watercourse as submitted to us.</i>
	<i>Please show plans in keeping with the above advice.</i>

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. The application was supported by a Detailed Site Investigation, which identifies that the site contains asbestos. The Detailed Site Investigation includes measures to ensure that any contaminants can be disposed of safely, ensuring that the risk to workers on site, neighbouring properties and the environment can be minimised.

The Detailed Site Investigation has been reviewed by Council's Health Officer, who confirms that the measures identified can be incorporated into conditions of consent, should the application be approved. As such, Council can be satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out.

SEPP (Affordable Rental Housing) 2009

The application seeks consent for a boarding house and the provisions of SEPP ARH are applicable. The relevant provisions of this policy are considered as follows:

Division 3: Boarding houses

Clause 26: Land to which this Division applies

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone B1 Neighbourhood Centre, or	Consistent. The site is located within the B2 Local Centre zone and the proposed use is permissible with consent under WLEP 2011.

(f) Zone B2 Local Centre, or (g) Zone B4 Mixed Use.	
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Clause 27: Development to which this Division applies

(1) This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.

Requirement	Comment
<p>(2) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone in the Sydney region unless the land is within an accessible area.</p> <p>Note: Accessible area means land that is within:</p> <p>(c) 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.</p>	<p>Consistent.</p> <p>The site is located within the B2 Local Centre zone and is situated not more than 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.</p> <p>Specifically, the site is located within approximately 150m from the Manly Vale B1 bus stops, which are serviced not only by the B1 bus route but many other routes that travel along Condamine Steet.</p>
<p>(3) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use or within a land use zone that is equivalent to any of those zones.</p>	<p>Not applicable.</p> <p>The site is located within the Sydney region.</p>

Clause 28: Development may be carried out with consent

Requirement	Comment
Development to which this Division applies may be carried out with consent.	The development constitutes the construction of a boarding house, as defined by the Standard Instrument. Therefore, the development may be considered under this Division of the SEPP as development which may be carried out with consent.

Clause 29: Standards that cannot be used to refuse consent

Not applicable.

Standard	Requirement	Proposed	Compliant/Comment
(1) Density and scale A consent authority	(a) the existing maximum floor space	Floor space ratios are not applied in WLEP	Not applicable.

must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:	ratio for any form of residential accommodation permitted on the land, or	2011 or WDCP 2011.	
	(b) if the development is on land within a zone in which no residential accommodation is permitted - the existing maximum floor space ratio for any form of development permitted on the land, or	Floor space ratios are not applied in WLEP 2011 or WDCP 2011.	Not applicable.
	(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register - the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus: (i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or (ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.	Residential flat buildings are not permitted on the land and floor space ratios are not applied in WLEP 2011 or WDCP 2011.	Not applicable.
(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:			
(a) building height	if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land,	The proposal reaches a maximum height of 19.58m, being 8.58m greater than the 11m height limit prescribed by WLEP 2011.	Noted. As the proposal exceeds the 11m height limit, Council may refuse the application in relation to building height.

(b) landscaped area	if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,	WDCP 2011 does not prescribe a minimum landscaped area calculation for the site.	Noted.
(c) solar access	where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,	Both the ground floor and upper floor communal areas are oriented to the east and will not receive solar access after 10:30am.	Noted. As neither of the communal living rooms receive a minimum of 3 hours of direct sunlight between 9am and 3pm in midwinter, Council may refuse the application in this regard.
(d) private open space	if at least the following private open space areas are provided (other than the front setback area): (i) one area of at least 20m ² with a minimum dimension of 3.0m is provided for the use of the lodgers, (ii) if accommodation is provided on site for a boarding house manager—one area of at least 8.0m ² with a minimum dimension of 2.5m is provided adjacent to that accommodation,	The application provides a communal roof terrace for use of the lodgers, with an area of 20m ² and no dimension less than 3.0m. The application is inconsistent with respect to whether a manager's room is proposed. Nonetheless, the proposal incorporates boarding rooms (7, 29, and 30) with outdoor spaces with an area of at least 8.0m ² with a minimum dimension of 2.5m.	Noted.
(e) parking	if: (i) in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and (ii) in the case of development carried out by or on behalf of a	The development is not carried out for or on behalf of a social housing provider. Based on the proposed 39 room boarding house, the development may be refused on the grounds of parking if 20 car spaces are not provided. Only 7 spaces are proposed in the subject application.	Noted. As the proposal does not provide 20 car spaces, the application may be refused in relation to parking.

	<p>social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and</p> <p>(iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and</p> <p>(iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,</p>		
(f) accommodation size	<p>if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:</p> <p>(i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or</p> <p>(ii) 16 square metres in any other case.</p>	Each of the boarding rooms have a gross floor area of at least 16m ² .	Noted.
	(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.	Each boarding room has both private kitchen and bathroom facilities.	Noted.
	(4) A consent authority may consent to development to which this Division applies		Noted.

	whether or not the development complies with the standards set out in subclause (1) or (2).		
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Clause 30: Standards for boarding houses

Standard requirement	Proposed	Compliant/Comment
(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:		
(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,	Two communal living rooms are proposed.	Compliant.
(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25m ² ,	The gross floor area of the proposed boarding rooms range from 17m ² to 25m ² , with no room exceeding 25m ² .	Compliant.
(c) no boarding room will be occupied by more than 2 adult lodgers,	In accordance with the POM, no boarding room will be occupied by more than two adults.	Compliant.
(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,	Private bathroom and kitchen facilities are provided within each room. The communal areas also include bathroom and kitchen facilities.	Compliant.
(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,	The application is inconsistent with regard to the provision of an on site boarding house manager.	Inconsistent. However, if approved, a condition of consent can be imposed in this regard.
(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,	The site is zoned B2 Local Centre, being land zoned primarily for commercial purposes. Boarding houses are permissible with consent within the B2 zone.	Compliant. The proposal comprises residential purposes on the ground floor. Whilst this results in inconsistency with the objectives of the B2 zone, which is problematic with regard to the application's reliance upon a clause 4.6 variation, WLEP 2011 permits boarding houses within the zone, with no limitation upon the inclusion of residential development at the frontage of the ground floor.
(h) at least one parking space will be provided for a bicycle, and	Required bike racks: 8 racks Proposed bike racks: 8 racks	Compliant.

one will be provided for a motorcycle, for every 5 boarding rooms.	Required motorbike spaces: 8 spaces Proposed motorbike spaces: 8 spaces The proposed development meets the minimum requirements of this clause.	
(2) Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.		Not applicable.

Clause 30A: Character of the local area

A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.

The site is zoned B2 Local Centre and immediately adjoins land zoned R2 Low Density Residential to the rear (west). The four-storey front facade of the development is generally compatible with the character of Condamine Street. However, clause 30A is not limited to the streetscape, but requires consideration of the wider local area. In this regard, concern is raised in relation to the four-storey form at the rear of the site. The scale and proximity of the proposed development does not provide an appropriate transition in relation to the one and two storey low density development to the rear, specifically noting the reduced height of other development at the rear of adjoining B2 zoned sites.

The proposal also fails to appropriately respond to the natural character of the creekline, which is a contributory element of the surrounding locality.

SEPP ARH Conclusion

The proposal meets, or is capable of meeting, the development standards for boarding house development prescribed by this policy. However, the development does not appropriately respond to the character of the wider local area, and the proposal is recommended for refusal in this regard.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1177271 dated 17 February 2021).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	53
Thermal Comfort	Pass	Pass
Energy	35	38

Should the application be approved, a condition can be included to require compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

The site is situated on Condamine Street, which is a classified road, and as such, the provisions of clause 101 of SEPP Infrastructure are applicable. Clause 101(2) of SEPP Infrastructure prescribes that the consent authority must not grant consent to development on land fronting a classified road unless it is satisfied that:

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

The consent authority cannot be satisfied of these matters, as follows:

- a. Access to the site via an alternate road is not an option for this site.
- b. The application is yet to demonstrate that the use of the proposed boarding house will not adversely impact upon the safety, efficiency and ongoing operation of Condamine Street. TfNSW and Council's Engineers are not satisfied with the level of detail provided in relation to the driveway design, with further concerns regarding servicing of the site.
- c. DSAP raised concerns regarding the amount of single aspect rooms oriented towards Condamine Street. Whilst the application was supported by an Acoustic Report to ensure that noise levels within all rooms will be acceptable, this assumes that all windows are closed, which results in over reliance upon mechanical ventilation.

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:	11m	19.58m	8.58m or 78%	No

Compliance Assessment

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

Detailed Assessment

Zone B2 Local Centre

The application seeks consent for the construction of a boarding house, which is permissible within the B2 Local Centre zone under the provisions of both SEPP ARH and WLEP 2011. However, the proposed development is not consistent with the objectives of the B2 zoning, as follows:

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

Comment: The proposal is for residential use and no component of the development is designated for retail, business, entertainment or community use.

- 1 *To encourage employment opportunities in accessible locations.*

Comment: The proposal does not provide or encourage employment opportunities, with no portion of the development to be used as employment generating land.

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

Comment: The proposal is sited in close proximity to the Manly Vale B1 bus stops, and noting the shortfall of parking provided on site, occupants of the development will be highly reliant upon public transport and walking and cycling infrastructure. However, this should not be used as justification for the on-site parking shortfall proposed.

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

Comment: The application lacks sufficient information to ensure that the pedestrian environment along Condamine Street will maximise safety for pedestrians. Furthermore, the proposal lacks any meaningful street activation, with no retail or business premises on the ground floor.

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

Comment: The scale of the streetscape facade is generally compatible with that of surrounding built form. However, concern is raised in relation to the way in which the proposal responds to the creekline that dissects the site, noting that the proposed encroachments of the creekline are antipathetic to Council's Riparian Management Policy.

- 1 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 application has not demonstrated that the proposed residential development is appropriate on such a constrained and hostile site, or that the density of the proposed development has adequate regard to the amenity and use of adjoining sites.

4.3 Height of buildings

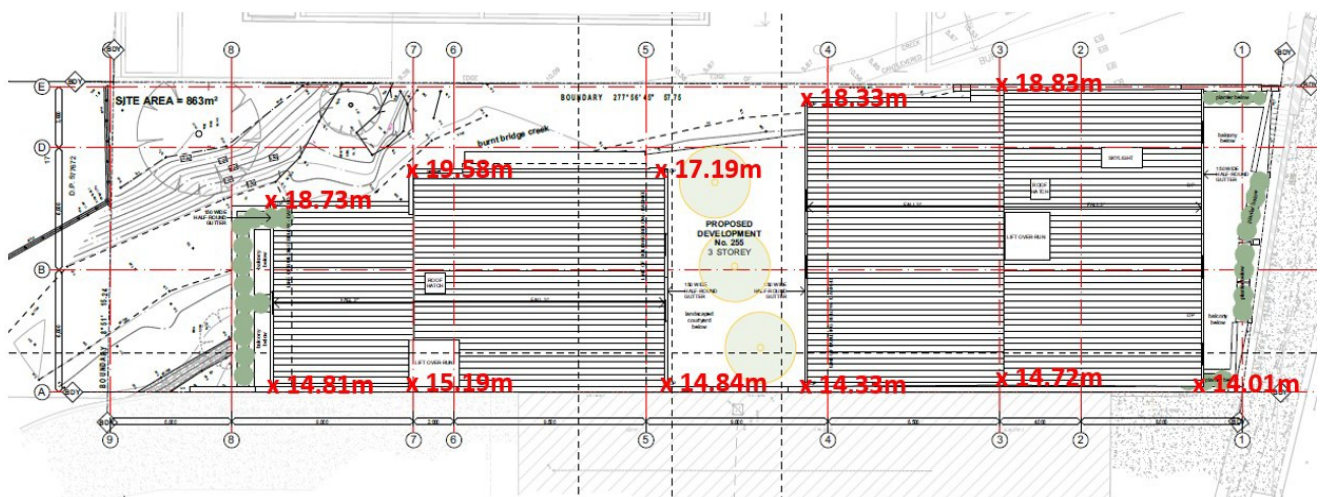
and 4.6 Exceptions to development standards

With a maximum building height of 19.58m, the proposed development is inconsistent with the 11m maximum building height prescribed by clause 4.3 of WLEP 2011. The maximum building height is a development standard, as defined by the EP&A Act, and as such, the provisions of clause 4.6 of WLEP 2011 can be applied.

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

What is the extent of the breach?

The proposed development reaches a maximum height of 19.58m, representative of a 8.58m or 78% variation to the 11m maximum building height development standard. The maximum height occurs in the central roof form of the rear building, where the development overhangs the creekline. Whilst the extent of non-compliance decreases across the remainder of the building, the entire top floor protrudes beyond the 11m height plane, with a minimum non-compliance of 3.01m at the front south-east corner of the front building. The height of varying parts of the building is best illustrated in the diagram below.



It is noted that Council's calculations differ from those nominated in the applicant's 4.6 submission by up to 3.23m or 29%. Upon review of the clause 4.6 submission, it appears that the applicant has measured the height of the development from the 11m height plane shown on the northern elevation (see Diagram 2, below). However, as evident in Diagram 2, the 11m height plane does not relate to the

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

- Comment:** In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council [2007] NSWLEC 827*, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard. The applicant's submission has not satisfactorily demonstrated that the proposed development will achieve consistency with the objectives of the building height development standard, particularly with regards to the following objectives:

- Comment:** The submission from the applicant emphasises the proposal's compatibility with other development along the streetscape, and in this regard, the four storey nature of development presenting to Condamine Street is not denied. However, the submission fails to acknowledge the height of buildings towards the rear of the site, where the development adjoins the R2 zone. Similar to the proposed development, the adjoining building to the north at 259 Condamine Street is broken into two buildings. Whilst the front building is four storeys in height, the building to the rear is only three storeys in height, and sits a full storey lower than the rear building proposed. With only a 6m setback to the rear boundary, the applicant's 4.6 submission also fails to demonstrate how the non-compliant 4 storey rear building is compatible with the height and scale of the one and two storey dwellings to the rear.

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

Comment: The applicant's claims that the visual impact of the non-compliant portions of the development have been appropriately minimised are not supported. The non-compliant upper floor of the proposal sits forward of the 5m minimum front setback and will be highly visible from Condamine Street, particularly noting the comparatively undeveloped nature of the site to the south. Furthermore, the application relies upon a canopy tree in the front setback to soften the visual impact of the development. However, despite being shown to reach the height of the proposed development, the subject tree is proposed within a planter box that is covered by the level above, such that the tree will never extend beyond the first floor.

With regard to solar access, the application has failed to undertake any comparative analysis in relation to the proposed scheme and a compliant built form, such that any impact arising from the height non-compliance cannot be qualified. Whilst solar access to the solar panels of the adjoining bulky goods premises may not hold determining weight, the adjoining site may ultimately be developed for shop top housing development, and as evident in the subject application, the obtainment of solar access from the north-east is of upmost importance.

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

Comment: As above, the applicant has not demonstrated that the visual impact of the non-compliant upper floor has been appropriately managed as viewed from Condamine Street. The application is also silent in regards to the visual impact of the development from the adjacent public reserve.

It is also questioned as to how the applicant can be satisfied that the non-compliant portions of the development can achieve the objectives of the control in circumstances where the extent of non-compliance has not been accurately identified.

Overall, the applicant has not demonstrated that strict compliance with the 11m height limit is unreasonable and unnecessary in the circumstances of this application.

b. That there are sufficient environmental planning grounds to justify contravening the development standard.

Comment: In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC118*, "environmental planning grounds" were found to be grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects prescribed by clause 1.3 of that Act. The applicant's submission highlights the a number of reasons/grounds for the proposed departure from the building height development standard, the most pertinent being:

- The proposal is consistent with the height of other development along the streetscape, and the non-compliance ensures that the building achieves an appropriate contextual fit with the 4 storey character of the western side of Condamine Street,
- The depression through the site created by the creek distorts any reasonable assessment of height when expressed in metres above ground level (existing),
- The height limit has been effectively abandoned along this section of Condamine Street in favour of a consistent and cohesive streetscape,
- Strict compliance would require the deletion of the upper 2 floors of the development and

result in a two storey built form that would appear inconsistent with the height and cohesive streetscape established by recently approved and constructed shop top housing development along this section of Condamine Street.

- The building is of exceptional design quality with the variation facilitating a height and floor space that provides for contextual built form compatibility, the delivery of affordable housing and the orderly and economic use and development of the land consistent with the objects 1.3 (c), (d) and (g) of the Act.

Similar to that said in relation to the objectives of the building height control, the applicant's grounds presented to justify the proposed building height variation place excessive weight on the height of buildings fronting Condamine Street to the north of the site, with no consideration of buildings behind the street facade. The applicant's statement ignores the reduced height of the rear building on the site to the north, and the height of existing development to the south and west.

Whilst the effect of the depression associated with the creekline has an obvious impact upon the measurement of height, this is not considered to warrant variation of the building height to the extent proposed, particularly in circumstances where the maximum height breach occurs in the location where the development overhangs the centreline of the creek, inconsistent with Council's *Protection of Waterway and Riparian Land Policy* and the position of NRAR.

The proposed development has a considerable shortfall with respect to on-site vehicular parking, which would be resolved if the non-compliant upper floor was reduced or removed. Whilst it is appreciated that the additional floor space will provide additional boarding rooms, the proposal presents as an over development of the site, and the applicant has not demonstrated that the site is suitable for the density proposed.

The applicants submission is not considered to establish sufficient environmental planning grounds to justify the contravention of the building height proposed.

Therefore, the consent authority cannot be satisfied that the applicant's request has satisfactorily addressed the matters required by clause 4.6(3) of WLEP 2011.

Is the proposal in the public interest?

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

The proposal is not considered to be consistent with the objectives of the building height development standard, as follows:

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

Comment: The height and scale of the building fronting Condamine Street is considered to be compatible with the height and scale of buildings to the north. However, the four storey height of the development will be visually jarring as seen from the south and west, and when viewed in conjunction with the three storey rear building on the site to the north.

- 1 *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*

Comment: The proposed development will not result in any unreasonable impacts upon views. However, as above, the application has not satisfactorily demonstrated that the visual impact of the development has been minimised, or that the non-compliant development as a whole will not result in adverse solar access impacts. The application is also unresolved with regard to visual privacy, with inadequate setbacks between the two buildings proposed on the site.

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

Comment: Whilst not specifically a 'bush' environment, it is important to note that the proposal will have a significant impact upon the scenic quality of the creekline, inconsistent with Council's *Protection of Waterway and Riparian Land Policy*.

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

Comment: As above, the applicant has not demonstrated that the visual impact of the non-compliant upper floor has been appropriately managed as viewed from Condamine Street. The application is also silent in regards to the visual impact of the development from the adjacent public reserve.

Furthermore, as discussed separately above, the proposal is not considered to be consistent with the relevant objectives of the B2 Local Centre zone, primarily due to the fact that the proposal does not provide any business/retail floor space or street activation.

Therefore, the consent authority cannot be satisfied that the proposal is in the public's interest.

Has concurrence been obtained?

Pursuant to clause 4.6(4) of WLEP 2011, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with correspondence from the Deputy Secretary dated 30 June 2020, the Northern Beaches Local Planning Panel may assume the Secretary's concurrence in relation to the proposed development.

Conclusion

Overall, the consent authority cannot be satisfied of the matters prescribed by clause 4.6 of WLEP 2011, and the proposed building height variation cannot be supported.

6.1 Acid sulfate soils

The proposed development involves disturbance of at least 1 tonne of soil. As such, clause 6.1 of WLEP 2011 requires council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 4 and 5, as indicated on Council's Acid Sulfate Soils Planning Map.

Works at depths beyond 2.0m below the natural ground surface and/or works by which the watertable is likely to be lowered more than 2.0 metre below the natural ground surface within a Class 4 acid sulfate

soil area are required to be assessed to determine if any impact will occur.

The Preliminary Geotechnical and Acid Sulfate Soils Assessment and Acid Sulfate Soils Management Plan (prepared by Martens Consulting Engineers dated February 2021) identifies the presence of alluvial soils and includes recommendations to be complied with during construction and a treatment plan.

The Preliminary Geotechnical and Acid Sulfate Soils Assessment and Acid Sulfate Soils Management Plan was referred to Council's Environmental Health Officer who concurred with the findings and provided a series of conditions of consent, to be imposed if the application was to be approved.

6.2 Earthworks

Clause 6.2 of WLEP 2011 requires the consent authority to have consideration of the following matters before granting consent for earthworks:

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality*
- (b) the effect of the proposed development on the likely future use or redevelopment of the land*
- (c) the quality of the fill or the soil to be excavated, or both*
- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties*
- (e) the source of any fill material and the destination of any excavated material*
- (f) the likelihood of disturbing relics*
- (g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area*

The proposal involves excavation and fill below the building and along/within the creekline. As addressed in more detail by the relevant referral bodies, the application is yet to demonstrate that these works will not unreasonably impact upon the watercourse or adjoining properties (with respect to flooding).

6.3 Flood planning

and E11 Flood Prone Land of WDCP 2011

In accordance with the provisions of clause 6.3(3) of WLEP 2011, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

- (a) is compatible with the flood hazard of the land, and*
- (b) is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) incorporates appropriate measures to manage risk to life from flood, and*
- (d) is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

Furthermore, in accordance with clause E11 of WDCP 2011, the proposal must be designed in

accordance with the design Matrix, to ensure the protection of people, the natural environment and private/public infrastructure and assets.

As addressed by Council's Flood and Riparian Officers, the proposed development will result in adverse impacts upon adjoining properties during the PMF event and unacceptable impacts upon the creekline, contrary to both the design Matrix of WDCP 2011 and Council's Protection of Waterway and Riparian Land Policy. Furthermore, the application has not been supported by sufficient information to confirm the basis of the conclusions reached in the Flood Report, such that the consent authority cannot be satisfied that the proposal will not result in additional impact during the more frequent flood events.

As such, the consent authority cannot grant consent to the proposal, and the application is recommended for refusal in this regard.

6.4 Development on sloping land

and E10 Landslip Risk of WDCP 2011

Clause 6.4(3) of WLEP 2011 prescribes that development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and*
- (b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and*
- (c) the development will not impact on or affect the existing subsurface flow conditions.*

Further, clause E10 of WDCP 2011 requires the preparation of a geotechnical report, in addition to the preparation of a hydrological assessment of stormwater discharge and subsurface flow conditions, prepared by a suitably qualified geotechnical/hydrological engineer.

The proposed development was supported by a geotechnical report which assesses the risk associated with landslides in relation to both property and life, and considers the proposal's impacts upon existing subsurface flow conditions, and as such the consent authority can be satisfied of the matters listed in points a and c, above. However, despite the provision of a detailed Stormwater Management Report, the application was not supported by a Stormwater Management Plan. The report provides multiple options for the dispersion and treatment of stormwater, however without a concept plan, Council cannot confirm the option/s ultimately relied upon. Furthermore, it is unclear as to whether the proposal intends to drain to the creekline or whether the proposal will connect to the stormwater infrastructure in Condamine Street, which will necessitate concurrence from TfNSW.

Whilst it is considered that an engineering solution can be developed to ensure against any adverse impacts associated with stormwater discharge, in the absence of a stormwater plan, council cannot be satisfied in this regard.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	Variation	Complies
B2 Number of storeys	3	4	1 storey	No
B5 Side Boundary Setbacks	North - Merit	Nil - 6.7m	See discussion.	No
	South- Merit	Nil.	See discussion.	No

B7 Front Boundary Setbacks	Ground - Maintain Level 1 - Maintain Level 2 - 5m Level 3 - 5m	Nil. Nil. Nil. 3.5m	See discussion.	No
B9 Rear Boundary Setbacks	West - Merit	6m	See discussion.	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B2 Number of Storeys	No	No
B6 Merit Assessment of Side Boundary Setbacks	No	No
B7 Front Boundary Setbacks	No	No
B10 Merit assessment of rear boundary setbacks	No	No
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	No	No
C4 Stormwater	No	No
C7 Excavation and Landfill	No	No
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	No	No
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	No
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	No	No
D20 Safety and Security	No	No
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	No	No
E8 Waterways and Riparian Lands	No	No
E10 Landslip Risk	No	No
E11 Flood Prone Land	No	No
F1 Local and Neighbourhood Centres	No	No

Detailed Assessment

B2 Number of Storeys

The application seeks consent for a four storey development, inconsistent with the three storey height limit prescribed by this control. The applicant justifies this non-compliance by advising that a DCP control cannot derogate from the provisions of the LEP (11m height limit), however the entirety of the proposal also exceeds the 11m height limit prescribed.

Whilst it is acknowledged that Council has approved four storey development along Condamine Street, the application cannot rely upon precedence alone, and must demonstrate consistency with the objectives of the number of storeys control. Furthermore, whilst four storey elements may be supported at certain parts of the site (such as the Condamine Street facade), 4 storeys may not be appropriate across the site as a whole.

The proposed four storey development is not supported in this instance, as consistency with the objectives of the control are not achieved, as follows:

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

Comment: The proposal has not satisfactorily demonstrated that four storey development will not visually dominate the surrounding properties, particularly those to the south and west. The proposal cannot rely upon precedence in relation to the rear building, noting that the rear building of the development to the north is compliant with the three storey development control.

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

Comment: The statement of environmental effects suggests that the proposal presents as a three storey development to Condamine Street. The fourth storey is readily apparent in each of the street views prepared to support the application, particularly when viewed from the south where a four storey wall presents with a nil setback to the southern boundary. The application does not address the visual impact of the four storey development as viewed from the low density development to the west or the public reserve to the south-west.

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

Comment: The proposed development is unlikely to impact upon views from adjoining or nearby properties.

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

Comment: The fourth storey is not considered to unreasonably impact upon the amenity of adjoining and nearby properties, particularly noting the increased setback at the rear. However, the upper floor may impact upon the development potential of the adjoining site to the south.

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

Comment: The design of the roof does not impact upon the design of the fourth floor or non-compliance with the three storey height control.

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

Comment: The proposal is both inconsistent with the height of buildings development standard

and the three storey height limit.

B6 Merit Assessment of Side Boundary Setbacks

Clause B6 of WDCP 2011 prescribes that side boundary setbacks will be determined on a merit basis with regard to streetscape, amenity of surrounding properties, and setbacks of neighbouring development.

The application proposes varied side setbacks, with nil to 6.7m setbacks along the northern side boundary and nil setbacks along the entire length of the southern facade. Particular concern is raised in relation to the setbacks of the following aspects of the proposal:

- 1 The northern side setback of the front four storey building: The majority of the front building is sited with a nil setback to the northern side boundary. This results in an awkward relationship with the building to the north, which is angled to follow the creekline with openings presenting to the south (towards the proposed development). The alignment of the proposal creates a pinch point, with only 1.3m between the adjoining buildings. As discussed in the recommendations from DSAP, a minimum 3m setback should be achieved between buildings. This would require additional setbacks between the stair of the front building and boarding rooms 10, 23 and 34 of between 0.2m - 1.8m.
- 1 The southern side setback of both buildings at the upper floor: The application proposes nil setbacks along the entire southern facade, carried up on each four storeys. Noting that the entire top floor exceeds both the height and number of storeys standards/controls, the reasonableness of the nil setback to the southern side boundary at the upper floor is questioned. The application has not demonstrated the impacts associated with the additional floor upon the development potential of the site to the south, nor has it considered the impacts of overshadowing of the roof mounted solar panels. Furthermore, the lack of a setback at the upper floor is a blunt transition to the adjoining two storey development to the south, with no attempt to minimise the visual impact of the non-compliant fourth storey from the public domain. The impact of the nil side setback is exacerbated by the reduced break between the proposed buildings and the non-compliant front setbacks on the second and third floor.

Overall, the proposal is not considered to achieve consistency with the following objectives of the side setback control, as follows:

- 1 *To ensure that development does not become visually dominant.*

Comment: The lack of any setback along the southern side of the top floor actively increases the visual prominence of the non-compliant fourth storey, such that it will be highly visible from the south. The reduced setbacks to the north also impact upon what should be a consistent channel between buildings, correlating with the creekline below. The proximity of the proposed development will also have unacceptable visual dominance as seen from the adjoining development to the north, that is oriented with openings to the south.

- 1 *To ensure that the scale and bulk of buildings is minimised.*

Comment: The bulk and scale of the proposal overwhelms the creekline, creating a pinch point between buildings of only 1.3m. Extending the upper floor to the southern boundary, where the height non-compliance will be most visually evident, is also counter-productive to this objective,

which seeks to minimise the bulk and scale of development.

- 1 *To provide adequate separation between buildings to ensure a reasonable level of amenity and solar access is maintained.*

Comment: The spatial separation between the proposed development and the existing development to the north is unacceptable. Furthermore, the applicant has not demonstrated the impact of the non-compliant fourth storey in relation to solar access to the site to the south. To ensure the development potential for the site to the south, the proposal should not cast any additional overshadowing when compared to a compliant built form.

B7 Front Boundary Setbacks

Clause B7 of WDCP 2011 prescribe that existing front setbacks at the ground and first floor should be maintained, with 5m setbacks at the second floor. Noting that the DCP does not anticipate a third floor, it is reasonable to assume that the 5m setback for the second floor should also be carried up to any third floor (as a minimum).

The dominant facade of the ground, first and second floor is sited with a nil setback to Condamine Street, with minor portions of the building encroaching within the public road reserve. Council and TfNSW object to any encroachment of the public road reserve, and owners consent will not be granted for these works.

Despite non-compliance with the 5m minimum prescribed, the nil setback on the second floor is supported in these circumstances, as it responds to the form of development approved along the remainder of the street, consistent with the objective of this control which aims to maintain the visual continuity and pattern of buildings.

However, the 3.8m (minimum) setback of the third floor is not supported due to inconsistency with the objectives of the front setback control, as follows:

- 1 *To create a sense of openness.*

Comment: The policy does not anticipate a third floor. To ensure a sense of openness is achieved, and third floor should be setback such that it is not visible from the street.

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

Comment: The proposed 3.8m setback is inconsistent with the alignment of other upper floors in the vicinity of the site. The adjoining two storey development to the south has considerably greater setbacks, and the third floor of the adjoining building to the north is setback at a minimum distance of 5m from the front boundary.

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

Comment: The proposal does not appropriately respond to its context, and in particular, the prominence of the upper floor does not act to protect or enhance the streetscape.

- 1 *To achieve reasonable view sharing.*

Comment: The proposal is unlikely to impact upon views from adjoining or nearby residences.

B10 Merit assessment of rear boundary setbacks

The application has a predominant setback of 6m from the rear boundary, with a ground floor balcony extending within 4.5m from the rear boundary. Whilst SEPP 65 and the ADG do not apply in relation to the proposal, it is relevant to note that an apartment building of the same scale would require a setback in excess of 6m, in acknowledgement of the R2 Low Density zoning to the rear. The proposed setback to the rear boundary is not considered to be appropriate with respect to the scale of the development for the following reasons:

- 1 the proposal does not provide an appropriate transition to the low density residential development to the rear,
- 1 whilst the 6m setback aligns with the adjoining development to the north, the resultant setback area is constrained by the creek such that no screen planting can be introduced between the building and the rear setback, and
- 1 the proposal places an over-reliance upon landscaping on the adjacent low density site to ensure privacy, with no privacy measures proposed as part of the development.

As such, the rear setback is not consistent with the objectives of the rear setback control, and the proposed setback is not supportable on merit.

C2 Traffic, Access and Safety

The application has not demonstrated that the driveway design will ensure safe egress to/from the site, and the development does not include appropriate provision for service vehicles. See further discussion with regard to feedback from TfNSW and Council's Traffic Engineer, above.

C3 Parking Facilities

WDCP 2011 does not prescribe a minimum parking rate for boarding houses, but rather turns to the provision of parking in other boarding house developments. In this respect, Council notes that clause 29 (2)(e) of SEPP ARH prescribes that the consent authority must not refuse a development on the grounds of parking if at least 0.5 parking space per room are provided.

Based on the minimum 'must not refuse' standards of SEPP ARH, the proposal generates demand for 20 carparking space. The application proposes seven parking spaces, three of which are car share spaces.

The applicant's Traffic and Parking Report identifies that each car share should be considered to be equivalent to 10 parking spaces. This position is not supported by Council's Traffic Engineer, who considers the car share spaces to be equivalent to five parking spaces. There is also concern regarding the provision of three such spaces, noting that in accordance with the nature of the business model of such companies, these spaces would need to be dedicated solely to car share use and permanently available for use by members of the public. With this in mind, Council's Traffic Engineer would only support a maximum of two such spaces on any development site.

With reliance upon two car share spaces, the proposal is five spaces short of the 20 space requirement.

Whilst the proximity of the site to the B1 Manly Vale bus stops is appreciated, it seems highly unlikely that the five remaining spaces (noting that the two car share spaces must remain solely dedicated to

car spare) will meet the parking demand arising from a boarding house with 39 rooms and a total maximum occupancy of 78 people. The limited amount of on-site parking is of particular concern given the lack of on-street parking available in the vicinity of the site.

The proposal also fails to provide parking for a service vehicle, which is required on a site that has a high frequency turn over of occupants, and noting the on-going maintenance requirements associated with the development.

The correlation of what presents as an overdevelopment of the site and a shortfall of on-street car parking spaces cannot be ignored, and the application is recommended for refusal in this regard.

C4 Stormwater

See clause 6.4 (Development on sloping land) of WLEP 2011 and the referral response from Council's Development Engineer for comments in this regard.

C7 Excavation and Landfill

See clauses 6.2 (Earthworks) and 6.4 (Development on sloping land) of WLEP 2011 for further discussion in this regard.

C9 Waste Management

and D14 Site Facilities

As discussed by Council's Waste Officer above, the proposal fails to provide the necessary area for the amount of bins required in consideration of the density of the site. Furthermore, the storage area has not been designed in accordance with Council's Waste Management Policy and is too far from the street.

Noting that the Plan of Management is silent with respect to waste management relating to the site as a whole, it is assumed that the site intends to rely upon Council's weekly collection. However, Council will not service the site unless the development is amended to achieve consistency with Council's Waste Management Policy. This cannot be conditioned in this instance, as compliance will result in considerable changes to the design and layout of the ground floor.

In the alternate view, the site may be serviced independently. However, this would need to be detailed in the Plan of Management, and the car park would need to be designed to ensure that all waste collection vehicles can enter and exit the site, as collection from Condamine Street will not be permitted in consideration of the nature of the street.

The proposal is recommended for refusal in this regard.

D8 Privacy

The proposal fails to provide appropriate spatial separation between the two buildings on the site. Whilst it is acknowledged that the provisions of SEPP 65 and the ADG are not applicable in relation to the proposal, the ADG prescribes the need for 12m minimum spatial separation for buildings of the height and density proposed, as opposed to the 9m typically required between individual dwellings and lower density development. The spatial separation between the two buildings was raised as an area of concern by DSAP and Council's Urban Designer, who both expressed the need for greater spatial separation at the site.

DSAP also expressed the need for greater spatial separation between the proposal and the rear boundary, noting that the ADG identifies the need for >6m setbacks to boundaries where there is a transition to a lower density zoning.

The proposal does not ensure appropriate levels of privacy for future occupants of the development or adjoining properties, and is inconsistent with the requirements and objectives of this control.

D9 Building Bulk

The proposed development is inconsistent with the following requirements of clause D9 of WDCP 2011:

- 1 *Side and rear setbacks are to be progressively increased as wall height increases,*

Comment: There is no change or variation in the side setbacks on any level. The lack of increased side setbacks is of particular concern in relation to the top level, which exceeds both the building height development standard and the maximum number of storeys development control by a full storey.

- 1 *Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief,*

Comment: There is no variation to the four storey wall plane along the southern elevation where the building abuts a two storey built form.

- 1 *Building height and scale needs to relate to topography and site conditions,*

Comment: The proposal essentially acts to ignore the presence of the creekline that dissects the site.

- 1 *Landscape plantings are to be provided to reduce the visual bulk of new building and works,*

Comment: The application is reliant upon landscaping that cannot physically be accommodated by the proposal. As the proposal builds to and over the creekline, the application is unable to provide necessary plantings to the rear of the site to soften the transition to the low density residential neighbour.

D20 Safety and Security

The proposed development has been designed to overhang the creekline, to sit above the relevant flood levels and to facilitate the clear passage of flood water below the building. Because of the proposed proximity to the adjoining development to the north, the proposal has also been designed to turn away from the creekline, oriented towards the front and rear of the site, and the internal courtyard.

As a result, the proposal incorporates a large undercroft area that is open to the creekline, with no opportunities for casual surveillance and awkward access and maintenance arrangements, inconsistent with the CPTED design principles.

The proposal is also unresolved with regard to access arrangements to the car park, noting that the proposal incorporates 3 car share spaces, that must be accessible to members of the general public at all times. Access is proposed to be restricted by virtue of the roller door, which is necessary for security of the wider ground floor car park, but is counter-productive to the incorporation of car share spaces.

E6 Retaining unique environmental features

Clause E6 of WDCP 2011 requires development to be designed to address any distinctive environmental features of the site and on adjoining nearby land and that development should respond to such features through location of structures, outlook, design and materials.

The proposed development is not considered to appropriately respond to the creekline that dissects the site, with unreasonable encroachment over and within the low flow channel. See further concerns expressed in comments from NRAR and Council's Flooding and Riparian Officers.

E8 Waterways and Riparian Lands

Clause E8 of WDCP 2011 requires the development to be designed in accordance with Council's *Protection of Waterway and Riparian Land Policy*. The proposed development, which includes piers within the creekbed, stormwater infrastructure within the bank and development overhanging the low flow channel, is inconsistent with the provisions of this policy that aim to ensure:

- 1 that the natural characteristics of the waterway are maintained and enhanced, with the promotion of naturalistic bank protection works when stabilisation is required (ie: soft engineering outcomes),
- 1 that new development is appropriately setback from the creekline, and
- 1 that development within waterways and riparian land should be avoided.

F1 Local and Neighbourhood Centres

The site is located within the Manly Vale Local Centre and is subject to the provisions of clause F1 of WDCP 2011, which prescribes more general design requirements for development within a local centre and one requirement specific to Manly Vale. The proposal is inconsistent a number of general design requirements and the Manly Vale specific requirement, as follows:

- 1 *The built form of development in the local or neighbourhood retail centre is to provide a transition to adjacent residential development, including reasonable setbacks from side and rear boundaries, particularly above ground floor level.*

Comment: The proposed development is not considered to provide an appropriate transition to the low density development at the rear. The 6m setback proposed is not considered to provide appropriate spatial separation, particularly in circumstances where plantings are limited by the creekline that runs between the building and the rear boundary. The ADG prescribes 6m setbacks to boundaries between land with the same zoning, with the need for greater separation to lower density sites to ensure an appropriate transition. Whilst it is acknowledged that the ADG is not applicable, it does provide an adopted industry standard for development of the same scale and density as that proposed.

- 1 *Buildings greater than 2 storeys are to be designed so that the massing is substantially reduced on the top floors and stepped back from the street front to reduce bulk and ensure that new development does not dominate existing buildings and public spaces.*

Comment: The proposal slightly reduces the footprint of the fourth storey, with no reduction at the third storey. Noting that the policy does not anticipate a fourth storey on the subject site, the lack of reduction at the third storey is inconsistent in this regard.

- 1 *Applicants are to demonstrate how the following significant considerations meet the objectives of this control:*

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

Comment: The proposal does not appropriately respond to the massing of adjoining development. In particular, the proposal is at odds with the pattern of established courtyards to the north. The reduced setback between buildings on the site will also unreasonably restrict the development potential of the site to the south, and their ability to also benefit from the established pattern of courtyards.

As above, the height of the building at the rear of the site fails to respond to the height established by the adjoining development to the north and south, or that of the low density development to the west.

- 1 ***Manly Vale:*** *Condamine Street will be enhanced by ensuring the design of buildings and use of land maintains activity at street level and creates a cohesive and attractive streetscape. Vehicle access will be provided from streets other than Condamine Street.*

Comment: The site does not provide an active street front, with no retail or business premises addressing Condamine Street. No alternate access arrangements are feasible in relation to this site, and as such, entrance via Condamine Street is unavoidable.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$50,847 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$5,084,700.

CONCLUSION

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

- 1 Environmental Planning and Assessment Act 1979;
- 1 Environmental Planning and Assessment Regulation 2000;
- 1 All relevant and draft Environmental Planning Instruments;
- 1 Warringah Local Environment Plan;
- 1 Warringah Development Control Plan; and
- 1 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:

- 1 Inconsistent with the objectives of the DCP
- 1 Inconsistent with the zone objectives of the LEP
- 1 Inconsistent with the aims of the LEP
- 1 Inconsistent with the objectives of the relevant EPIs
- 1 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 WLEP 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.

The proposal cannot be approved in the absence of general terms of approval from NRAR and concurrence from TfNSW. However, even if these legislative hurdles were able to be overcome, there are still a plethora of issues relating to areas of non-compliance that warrant the refusal of the subject application.

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 DA2021/0179 for the Construction of a boarding house development on land at Lot 8 DP 604034, 255 Condamine Street, MANLY VALE, for the reasons outlined as follows:

1. In accordance with the provisions of s.4.47(2) of the *Environmental Planning and Assessment Act*, consent cannot be granted as general terms of approval have not been obtained the Natural Resources Access Regulator for Activity Approval required under s91 of the *Water Management Act*.
2. The extent of development over and within the waterway is inconsistent with Council's *Protection of Waterway and Riparian Land Policy*, and the requirements and objectives of clauses E6 (Retaining unique environmental features) and E8 (Waterways and Riparian Lands) of *Warringah Development Control Plan 2011* (WDCP 2011).
3. The proposed development is not reflective of the character of the local area, specifically in relation to the treatment of the creekline and the relationship with the adjoining low density development at the rear, resulting in inconsistency with clause 30A of *State Environmental Planning Policy (Affordable Rental Housing)* (SEPP ARH).
4. The proposed development is inconsistent with the maximum building height development standard and objectives of clause 4.3 of *Warringah Local Environmental Plan 2011* (WLEP 2011) and the three-storey height control of clause B2 (Number of Storeys) of WDCP 2011.
5. The proposed development is inconsistent with the provisions of clause 4.6 (Exceptions to Development Standards) of WLEP 2011.
6. The proposed development will result in adverse flood impacts upon adjoining properties, inconsistent with the provisions of clause 6.3 (Flood planning) of WLEP 2011 and clause E11 (Flood Prone Land) of WDCP 2011.
7. The proposed development is inconsistent with the minimum requirements and objectives of the front, rear and side setback controls, as prescribed by clauses B6 (Merit Assessment of Side Boundary Setbacks), B7 (Front Boundary Setbacks) and B10 (Merit Assessment of Rear Boundary Setbacks) of WDCP 2011. The bulk and scale of the built form does not appropriately respond to the pattern of adjoining development and is excessive, with unreasonable impacts upon adjoining properties and the streetscape, inconsistent with the provisions of clause F1 (Local ad Neighbourhood Centres) of WDCP 2011.
8. The application proposes works within the road reserve of a classified road and concurrence from Transport for NSW has not been obtained, inconsistent with the provisions of s138(2) of the *Roads Act*.
9. The application has not demonstrated safe vehicular movement to/from or within the site, inconsistent with the provisions of clause 101 of *State Environmental Planning Policy (Infrastructure)* and the requirements and objectives of clause C2 (Traffic, Access and Safety) of WDCP 2011.
10. The proposed development results in an unacceptable shortfall (five spaces) of on-site car parking, inconsistent with the requirements and objectives of clause C3 (Parking Facilities) of WDCP 2011.
11. The application has not demonstrated a suitable stormwater management solution for the site, resulting in inconsistency with the requirements and objectives of C4 (Stormwater) of WDCP 2011. The absence of an appropriate stormwater solution also attributes to inconsistency with the provisions of clauses 6.3 (Earthworks) and 6.4 (Development on sloping land) of WLEP 2011, in addition to

clause E10 (Landslip Risk) of WDCP 2011 noting that the subject site is identified as being prone to landslip.

12. The proposed development is inconsistent with *Northern Beaches Council's Waste Management Guidelines*, resulting in inconsistency with the requirements and objectives of clause C9 (Waste Management) of WDCP 2011.
13. The proposed undercroft area is inconsistent with the Crime Prevention through Environmental Design principles and the requirements and objectives of clause D20 (Safety and Security) of WDCP 2011.