PLANNING | DEVELOPMENT | URBAN DESIGN

JVUrban

Prepared for: Stefano Macri
Prepared by: D. McKenzie
Reviewed by: J. Vescio
Dated: November 2018

STATEMENT OF ENVIRONMENTAL EFFECTS
PROPOSED SHOPTOP HOUSING

91 McINTOSH ROAD, NARRAWEENA

44 Bay Vista Lane
EWINGSDALE NSW 2481

T: +61 (2) 6684 7999
M: +61 (0) 414 193399

E: joe@jvu.com.au

1.0 INTRODUCTION

This statement has been prepared on behalf of the applicant in support of a development application to Northern Beaches Council (the "Council") for the the demolition of the existing structures, construction of a shop top housing development comprising ground floor retail/commercial, nine (9) apartments and basement parking and strata subdivision of the development, at 91-93 McIntosh Road, Narraweena.

The proposal is submitted under the provisions of the Warringah Local Environmental Plan 2011 (WLEP 2011). The subject site is zoned B1 Neighbourhood Centre and the proposed use, which is defined as "Shop Top Housing", is permissible with consent. The proposal complies with the principal development standards and objectives of the LEP.

Of relevance to this application is a Deed of Agreement ("the Deed") that sets an agreed position between the Council and owner for the provision of floor space credit to be attributed to the redevelopment of the subject site. The bonus floor area is based on the site area lost to car parking and streetscape works for the neighbourhood centre. A copy of the Deed is attached at Appendix 1 of this Statement. The provisions and outcomes of the Deed are to be taken into consideration in the assessment of any development proposal for the site. The proposal seeks to attribute the prevailing bonus floor area to this application by way of the third level.

The development comprises ground floor retail shops and business premises (similar to the existing development) with two levels of apartments above (similar to the development to the south), including one additional level of apartments in accordance with the terms of the Deed. Vehicle parking is to be provided at basement level with access off McIntosh Road.

The site is currently occupied by a set of old retail and commercial premises (9 tenancies), predominantly single storey with one upstairs tenancy (facing McIntosh Road). The development has an existing GFA of 573sqm with four (4) vehicle parking spaces at the rear. An area calculated as 334sqm was taken from the site as part of the Deed.

The adjoining and adjacent development in the area comprises a mix of shop top housing to the south, B1 neighbourhood centre uses on the corner of Alfred Street and McIntosh Road and single storey detached dwellings to the east along McIntosh Road. The site has the opportunity to optimise outlooks to the south-east and south-west from the upper residential levels.

There are two schools in the immediate neighbourhood – St John's Catholic Primary School and Narraweena Public School (north west and heritage listed).

The proposal generally complies with the provisions of the WDCP 2011, both in terms of its objectives and prescriptive controls for development within a nominated neighbourhood centre. Some variations are sought to the provisions of the ADG for the residential component. In each case these are addressed within this Statement.

The design intent is to present a building which responds to its locational context in a contemporary manner but that respects the existing character of the area, particularly along Alfred Street and intersection with Mcintosh Road. The proposal seeks to provide a positive contribution to the future development and character of the area, as enunciated in Council's planning policies for neighbourhood centres such as Narraweena. The new building is designed to fit into the streetscape in terms of scale and bulk and will create a positive aesthetic form in its presentation to Alfred Street and McIntosh Road. Special attention has been given to provide a building which respects the built form in the vicinity of the site and fits in comfortably within the character of the immediate area.

The applicant and architects have attended a Pre-DA meeting with Council officers on the 2 June 2018. The keys issues covered in that meeting relate to building envelope controls, parking, flooding, stormwater, building height and general application of local planning provisions. The matters raised have been considered in the design and layout of the final DA plans. Where possible Council's comments have been adopted.

The height of the proposal does not comply with clause 4.3 Height of Buildings development standard under WLEP 2011. A clause 4.6 variation is submitted by the applicant seeking council's support to the non-compliance. This is the result of the bonus floor area permitted under the Deed of Agreement for the site. The assessment of the proposal under clause 4.6 concludes that the development, while over the prescribed height limit of 8.5m for the site, provides a comfortable fit for the area due to its corner location, provision of residential accommodation onsite, passive surveillance opportunities, upgrade of the area, use of recessive building materials, finishes and colours at the upper level and provision of residential parking at the basement level.

This statement has been prepared pursuant to Section 4.12(9) of the *EP&A Act 1979*, and cl 47 and Schedule 1, Part 1, Clause 2(c) of the Environmental Planning and Assessment Regulation 2000 and reviews the applicable environmental planning instruments and development control plans that apply to the subject property as well as the natural and built environmental impacts of the proposal with particular reference to the relevant heads of consideration listed under s4.15 of the *EP&A Act 1979*.

The proposal is acceptable and is worthy of approval on its merits having regard to the provisions of the *EP&A Act 19*79, the WLEP 2011 and WDCP 2011.

2.0 SITE AND SURROUNDS

The site is legally known as Lots 101 & 102 DP 868560, and commonly known as 91-93 McIntosh Road, Narraweena. The development site is 786.1sqm in area, generally rectangular in shape with frontages to McIntosh Road of 22.51m and Alfred Street of 28.455m and corner splay of 3.9m. The southern boundary is 25.315m and the rear boundary is 31.2m.

An extract from Council's files provides the background to the registration of the current land title on the two allotments known as No. 91 – 93 McIntosh Road, Narraweena. The land title changed in the late 1990's subject to the outcome of negotiations with the then property owner in relation to road widening works at the intersection of McIntosh Road and Alfred Street.

Background

The Narraweena Shopping Centre Urban Design Project is part of the 1995/96 Urban Design Program. The project involves the brick paving and landscaping of the footpaths about the shops in Alfred Street and McIntosh Road, improvements to the frontage of the car park on the north eastern corner of Alfred Street and McIntosh Road and footpaving/landscaping along the frontage of the Narraweena Public School in both McIntosh Road and Alfred Street. As part of the initial investigation of this project it was found that the footpath and part of the parking area about the shops on the eastern side of Alfred Street was constructed on private land. To regularise this issue negotiations were commenced with the owner with a view to gaining his agreement to dedicate the land as road reserve at no cost to Council (other than legal costs). It was intended that the Urban Design project would proceed on the western side of Alfred Street and adjacent to the school frontage in McIntosh Road, with the Urban Design works on the eastern side of Alfred Street being undertaken when funds are available after the owner of the land dedicates the necessary land as road reserve.

The Deed of Agreement with Council was signed on 9th April 1997 (Appendix 1 of this Statement) and was subject to the inclusion of the following condition, based on no monetary consideration to the property owners at the time, only a consideration at the time of future redevelopment.

NOW THIS DEED WITNESSETH as follows:-

1. In consideration of the Owners agreeing to dedicate to the Council for road reserve that area so shown on the plan annexed hereto, the council agrees that the area of land so dedicated shall be taken into consideration in determining the development potential of the remainder of the land in Certificate of Title Volume 13300 Folio 199 should any Development Application or Applications be made to the Council in respect of the said remainder of the land.

The amount of land dedicated to Council was 334sqm (See attached plan in Appendix 1 of this Statement). Based on an 8.5m height limit over two storeys, this would equate to 668sqm of potential gross floor area. For shop top housing with no front setbacks on two frontages, it is reasonable to apply say a 90% site coverage to allow for access and a setback to the adjoining residence to the east. This would equate to 601sqm additional GFA upon redevelopment.

The site is located on southern side of McIntosh Street and eastern side of Alfred Street. The site slopes from McIntosh Road south along Alfred Street and across the site from west to east. The intersection of McIntosh and Alfred Streets is a four-way signalised intersection. The site has primary frontage to Alfred Street with existing vehicle access to the site is from McIntosh Street.

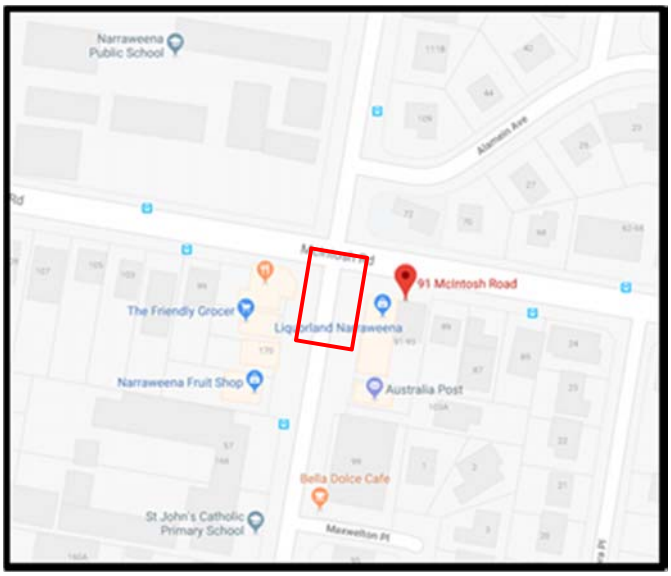


Figure 1: Location of subject site

Figure 2: Aerial of subject site

The subject site currently comprises a small neighbourhood set of shops including a 2 storey – chemist and deli with dentist above; single storey Liquorland (as corner shop); five single storey shops along Alfred St frontage. There is a total GFA of 573sqm. Parking for five vehicles is located at the rear of the shops, via driveway along eastern boundary off McIntosh Road.

Figure 3: Subject site – McIntosh Street frontage

Figure 4: Subject site – Alfred Street frontage

Figure 5: Adjoining shop to housing development on Alfred Street – south of the subject site

Figure 6: Neighbourhood shops opposite the site on Alfred Street

3.0 DESCRIPTION OF PROPOSAL

The proposal comprises the:

- demolition of all structures on site;
- site excavation for basement level;
- construction of shop top housing above basement car parking and services.

The shop top housing development is to comprise three storeys over basement parking. The ground floor is to contain retail shops and offices with nine (9) apartments over two levels above, in accordance with the bonus floor area terms of the Deed of Agreement.

DA plans, prepared by Benson McCormack Architecture, Project No. 1816A, dated xxx 2018 accompany this Statement. The plan set is submitted as part of the DA documentation.

A summary of the proposed development is as follows:

Level	**No. of tenancies**	**GFA (m^2)**
Ground Floor		
Retail	1	134.5
	2	42.25
	3	56.85
Commercial/office	1	56.9
	2	
Bin storage rooms (ground floor level)	1 x residential 1 x retail/commercial	49.6
Residential levels		
Level 1	2br	86.9
	2br	89.3
	1br	56.7
	1br	56.75
	2br	84.6
	3br	108.95
Level 2	3br	103.25
	2br + study	92.5
	3br + study	21.75
Basement		
Parking Residential spaces Commercial	 12 spaces 2 spaces	
Accessible spaces	Including 2 accessible	
Visitor spaces	2 visitor	
Bicycle parking	10	
Unit Storage	Cages at front of parking spaces	
Plant room/pump room		
Lift, stairs and ramp	2 x stairs 1 x lift	

Figure 9: 3D image of proposed development, viewed from Alfred Street

2.1 Supporting Documentation

The proposal is described in detail in the following plans and supporting documentation:

- Architectural Plans prepared by *Benson McCormack Architecture*, dated September 2018
- Landscape Plan prepared by *Melissa Wilson Landscape Architects*, dated 10 October 2018
- BASIX Certificate (No. 961455M) prepared by *GAT & Assoc*, 17 October 2018
- Site survey plan, no. 9485.
- Waste Management Plan dated 19 October 2018
- Traffic and Parking assessment by *Stanbury Traffic Planning, Project No. 18-076*
- Hydraulic Plans, prepared by *Dawes Consulting Engineers*, Project No. 18010, Rev 05
- Flood Study Report prepared by *Dawes Consulting Engineers*, dated 21 October, 2010
- Geotech Assessment, prepared by *STS GeoEnvironmental*, dated June 2018
- Access Report prepared by *Access Building Solutions*, dated October 2018
- ADG checklist, dated October 2018
- Pre-DA Minutes, prepared by Northern Beaches Council; meeting date 2 June 2018
- QS prepared by *Jonny Portelli, AAIQS*, dated 20 September 2018.
- BCA Compliance, prepared by *Certified Building Specialists*, dated 12 October 2018
- *Construction Management Plan, prepared by Dreambuild.*

The DA plan set comprises the following drawings:

Drawing No.	Issue No.	Title	Drawn By	Date
DA001	A	Cover Sheet	Benson McCormack Architecture	September 2018
DA099	A	Basement	Benson McCormack Architecture	September 2018
DA010	A	Site Plan/site Analysis	Benson McCormack Architecture	September 2018
DA101	A	Basement	Benson McCormack Architecture	September 2018
DA102	A	Ground Level	Benson McCormack Architecture	September 2018
DA103	A	Level 1	Benson McCormack Architecture	September 2018
DA104	A	Level 2	Benson McCormack Architecture	September 2018
DA105	A	Roof Plan	Benson McCormack Architecture	September 2018
DA204	A	South Elevation	Benson McCormack Architecture	September 2018
DA203	A	East Elevation	Benson McCormack Architecture	September 2018
DA202	A	Alfred Street	Benson McCormack Architecture	September 2018
DA205	A	Sections	Benson McCormack Architecture	September 2018
DA201	A	McIntosh Road Elevation	Benson McCormack Architecture	September 2018
DA1304	A	Shadow Analysis Study	Benson McCormack Architecture	September 2018
DA1203	A	Solar Analysis	Benson McCormack Architecture	September 2018
DA1301	A	Finishes and Materials	Benson McCormack Architecture	September 2018
DA1305	A	Calculations – Parking Allocations	Benson McCormack Architecture	September 2018
DA1306	A	Calculations – Unit Storage Areas 1 of 2	Benson McCormack Architecture	September 2018
DA1307	A	Calculations – Unit Storage Areas 2 of 2	Benson McCormack Architecture	September 2018

4.0 SECTION 4.15 ASSESSMENT – HEADS OF CONSIDERATION

In accordance with s4.15 of the *EP&A Act 1979* the following matters shall be considered in determination of the development application.

4.15 Evaluation
(1) Matters for consideration—general
In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:
(a) the provisions of:
(i) any environmental planning instrument, and
(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
(iii) any development control plan, and
(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and
(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
(v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates,
(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
(c) the suitability of the site for the development,
(d) any submissions made in accordance with this Act or the regulations,
(e) the public interest.

4.1 Relevant Statutory Environmental Planning Policies (EPIs)

The following identifies the relevant EPIs applicable to the assessment of the application.

4.1.1 State Environmental Planning Policy BASIX

Relevant provisions require that all works over $50,000.00 must be certified as achieving BASIX.

The subject application is supported by a BASIX Certificate (No. 961455M) demonstrating that the alterations and additions achieve the relevant energy efficiency requirements.

4.1.2 State Environmental Planning Policy No. 55 - Remediation of Land

The aim of SEPP 55 is to ensure that a change of land use will not increase the risk to health particularly in circumstances where a more sensitive land use is proposed.

The site has a long-established history of small-scale retail/commercial development. The development plus the car parking along both street frontages covers the whole of the development site. It is therefore unlikely that any site contamination has occurred over the life of the development. Should asbestos be identified prior to the internal works and demolition of the building structure onsite, then its handling and disposal

will occur according to the Work Health and Safety Regulation 2011. It will be recommended that a site inspection be conducted post demolition, prior to commencement of building works on site, to ensure any friable material is cleared from the site.

4.1.3 SEPP 65 – Quality of Residential Flat Buildings

SEPP 65 Design Quality Principles provide an appropriate methodology for assessment of the residential component of the development. The design quality principles do not generate design solutions but provide a guide to achieving good design and the means of evaluating the merit of the proposed solutions. The proposal is defined as comprising three (3) storeys and more than four (4) dwellings and hence the application of SEPP 65 is triggered.

An assessment of the proposal in accordance with the SEPP 65 principles is provided below. An ADG compliance checklist, dated October 2018 which is Appendix 2 of this Statement.

Principle 1 Context & Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.
Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.
Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment: The proposed development is situated at 91-93 McIntosh Street, Narraweena. The site is located on the south-eastern corner of the intersection of Alfred Street and McIntosh Street. The site is part of the Narraweena Neighbourhood Centre. Existing on the site is an old set of retail/commercial premises, generally single storey, anchored by the larger corner shop – currently a Liquorland.

The intersection is signalised and is a busy centre between two local schools. Pedestrian access is along both street frontages and on-street parking is provided along McIntosh and Alfred Streets for the convenience of shoppers.

Opposite the site – to the west – are neighbourhood shops – generally older. Adjoining to the south of the site is a shop top housing development with secure basement parking, retail/commercial with one level

of residential above. There is low density residential development to the north and east along McIntosh Street with Beverly Job Park just two blocks east on McIntosh Street and Narraweena Community Centre on Ocean Street to the south. Warringah Road is approximately 550m south the subject site, providing good vehicular and public transport options in both directions.

Principle 2 Built Form & Scale

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

Comment: The proposed development seeks to utilise the terms of the Deed of Agreement and construct an additional level of residential living via the credit floor area afforded by the Deed. The resultant development while larger than the adjoining and adjacent buildings that make up the neighbourhood centre remains relevant and responds positively to its corner location and site context.

The upper level apartments are setback 3.4m, with corner splay, from the street boundaries. On the eastern façade, they are setback over 6m from wall to boundary with non-trafficable roof 3m from that boundary. This building separation to the adjoining low density residential is reasonable in terms of overlooking, privacy (visual and acoustic) and overshadowing. This recessed building envelope on the upper level reduces any perceived bulk of the overall building when viewed from public vantage points. The building therefore sits comfortably with the corner site and its function within this neighbourhood centre.

Discounting the newer shop top housing development to the south on Alfred Street, the shops and premises in this small local centre are generally original or been refurbished. They are showing signs of ageing and are generally outdated. Redevelopment of this type of building can be difficult due to economic viability. The proposed new building will activate and define the corner site but also provide a significant built form lift and presentation for the neighbourhood centre as one entity. It will also provide a positive bench mark to influence other redevelopment within the centre in contrast to the recently built incongruent and uninspiring building on the opposite corner.

The public domain of the centre will be improved with a new continuous street awning. Street trees are to be retained and improved pedestrian access, including disabled ramp is to be constructed along Alfred Street.

As described above, the three levels of the new development are different, creating a base, centre and top. The retail/commercial base with awning over predominates and creates a human scale to the everyday use of the centre. The first residential level sits above and setback from the awning with small POS balconies overlooking each street frontage. The second residential level is set well back from the street, the apartments below and the residences to the east along McIntosh Street.

Overall, the scale of development is not overwhelming for the site, fits comfortably into the existing neighbourhood centre and will create some building of interest in this locale.

Principle 3 Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.
Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment: The proposal is located in a B1 Neighbourhood Centre zone. There is no FSR applicable as the LEP does not adopt FSR as a development standard. Therefore, there is no density provision for compliance. The footprint of the development generally reflects the existing overall footprint onsite. The quantum of floor space and residential housing yield is consistent with what would be generated by a two storey building occupying the original allotment boundaries prior to dedication as per the Deed of Agreement.

Principle 4 Sustainability

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

Comment: The proposal meets the targets set out in the sustainability index (BASIX) and generally meets SEPP building design principles and guiding provisions. The development provides housing not currently available on the site or generally in the immediate area. The proposal introduces a variety of apartment

types and sizes across the two residential levels. 8 of the 9 apartments are oriented to the street frontages. Only Unit 6 is sited totally separate to a street frontage – however it has a pleasant easterly aspect with district views.

All units have access via a lift from the basement level and/or stairs.

The development meets the minimum requirement for cross ventilation, with all apartments naturally ventilated.

Although the development does not strictly comply with solar access requirements I.e 67% in lieu of 70% this is an arbitrary number and for intends and purposes complies. Objective 4A-1 of the ADG does note that achieving the minimum requirements of sunlight into habitable rooms may not be possible in some sites, such as this proposed development. The site is located on the southern and eastern side of the street frontages, thereby requiring apartments to face these frontages to activate the street and not impact on the privacy of residences immediately east. This restricts the opportunity for some sunlight penetration to the western facing units, particularly on Level 1.

Any redesign of the apartments to meet the solar access criteria would entail reconfiguration to increase the number of units by aggregating the floor space and providing smaller units or alternatively relocating the balconies and living areas to the rear/eastern side of the development, however this would significantly impact on the adjoining residences to the east. A balancing of impacts is required and the design solution, as presented in this application, is considered the better outcome in respect of potential environmental impacts.

Principle 5 Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.
Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.
Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long-term management.

Comment: The proposal incorporates a green edge of landscaping to upper level residential balconies. The landscaping will positively complement the residential development. The landscaped platforms and green edges will provide a buffer to the residents, providing privacy - contributing to the amenity of the residents and neighbours.

Principle 6 Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.
Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.

Comment: Apartment amenity is provided through appropriate room dimensions and layouts, access to outlooks from living areas, natural ventilation, visual and acoustic privacy, storage, as well as indoor and outdoor space to all apartments.

Each apartment has storage equal or in excess to the ADG requirements, with at least 50% being provided in the apartments and the remainder in the basement.

As discussed the proposal performs well in terms off cross ventilation, solar access, size of balconies, efficient layouts, generous room sizes and compliant ceiling heights.

Principle 7 Safety

Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.
A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment: The proposed scheme has been designed to minimise opportunities for crime in accordance with CPTED principles. Safety and security is promoted internally and for the external common areas with a clear, well-lit and identifiable entry point from Alfred Street. The street setback and height difference of the ground floor apartments to the street level allows for casual passive surveillance of both streets as well as maintaining privacy. Additionally, all apartments have balconies/terraces overlooking both streets, thereby maximising passive surveillance of public areas. Secure basement parking is provided, with access via direct lifts to each level and common lobby area. Common lobby areas allow for interaction encouraging a safe environment for the building users.

Principle 8 Housing Diversity and Social Interaction

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

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

Comment: The proposed development consists of a total of 3 retail and 2 commercial premises with 9 apartments above consisting of a mix of one, two and three-bedroom apartments. Each apartment, except U6 has a street frontage orientation. U6 has an easterly (rear of site) aspect.

The apartment areas are generously sized relative to the number of bedrooms provided in each unit. They range from 56sqm to 121sqm in area. Each has a small to large POS balcony ranging from 8sqm to 76sqm. All apartments comply with minimal internal areas, and minimum balcony and ground terrace areas. The mix is provided to suit the need of the future community and catering for a wide cross section of buyers. The proposal will provide a well-designed housing stock in an area where there is a strong demand for this type of development, especially from single, professional workers and down sizers. The proposed development is designed carefully to ensure easy access for all users, including provision for an adaptable apartment.

Principle 9 Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.
The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment: The architectural expression of the proposed developments responds positively to the existing streetscape along both Alfred and McIntosh Streets. Each level of the development is designed and presented as a separate visual element with a base, middle and recessed upper level. The roof is to be a non-trafficable, flat roof thereby not contributing to the overall bulk or scale of the development but providing an elegant capping. The articulated form and introduction of high-quality building materials replaces the existing outdated buildings and will provide a positive bench mark for any future redevelopment within the centre.

4.1.4 Warringah LEP 2011 (WLEP 2011)

1.2 Aims of Plan

(a) to create a land use framework for controlling development in Warringah that allows detailed provisions to be made in any development control plan made by the Council,
(b) to recognise the role of Dee Why and Brookvale as the major centres and employment areas for the sub-region,
(c) to maintain and enhance the existing amenity and quality of life of the local community by providing for a balance of development that caters for the housing, employment, entertainment, cultural, welfare and recreational needs of residents and visitors,
(d) in relation to residential development, to:
(i) protect and enhance the residential use and amenity of existing residential environments, and
(ii) promote development that is compatible with neighbouring development in terms of bulk, scale and appearance, and
(iii) increase the availability and variety of dwellings to enable population growth without having adverse effects on the character and amenity of Warringah,
(e) in relation to non-residential development, to:
(i) ensure that non-residential development does not have an adverse effect on the amenity of residential properties and public places, and
(ii) maintain a diversity of employment, services, cultural and recreational facilities,
(f) in relation to environmental quality, to:
(i) achieve development outcomes of quality urban design, and
(ii) encourage development that demonstrates efficient and sustainable use of energy and resources, and
(iii) achieve land use relationships that promote the efficient use of infrastructure, and
(iv) ensure that development does not have an adverse effect on streetscapes and vistas, public places, areas visible from navigable waters or the natural environment, and
(v) protect, conserve and manage biodiversity and the natural environment, and
(vi) manage environmental constraints to development including acid sulfate soils, land slip risk, flood and tidal inundation, coastal erosion and biodiversity,
(g) in relation to environmental heritage, to recognise, protect and conserve items and areas of natural, indigenous and built heritage that contribute to the environmental and cultural heritage of Warringah,
(h) in relation to community well-being, to:
(i) ensure good management of public assets and promote opportunities for social, cultural and community activities, and
(ii) ensure that the social and economic effects of development are appropriate.

Comment: The proposed development is consistent with the above listed aims, in particular it redevelops the old shops with a new neighbourhood centre development, including a range of retail, business and residential uses. The ground floor premises will attract a variety of small businesses instead of being dominated by the larger liquor outlet on the corner. The apartment will introduce new dwelling stock in the area, diversifying the range and quality of accommodation, in a new, high quality, contemporary set of apartments with district outlooks. The site is located in a very accessible area, being close to shops, employment, local services, schools and recreational areas.

The applicant has been mindful of the natural attributes of the site including the landform, outlook, neighbouring development, existing and future development of the area. These elements are integrated into and considered in the overall design.

Zoning of land and Landuse Permissibility

The site is zoned B1 Neighbourhood Centre pursuant to WLEP 2011.

Zone B1 neighbourhood Centre

1 1 Objectives of zone

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

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

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

2 Permitted without consent

Home-based child care; Home occupations

3 Permitted with consent

Boarding houses; Business premises; Centre-based child care facilities; Community facilities; Food and drink premises; Medical centres; Neighbourhood shops; Respite day care centres; Roads; ***Shop top housing;*** *Shops; Any other development not specified in item 2 or 4.*

4 Prohibited

Advertising structures; Agriculture; Air transport facilities; Amusement centres; Animal boarding or training establishments; Boat building and repair facilities; Boat sheds; Camping grounds; Car parks; Caravan parks; Charter and tourism boating facilities; Cemeteries; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Entertainment facilities; Environmental facilities; Exhibition villages; Extractive industries; Forestry; Freight transport facilities; Function centres; Heavy industrial storage establishments; Highway service centres; Home occupations (sex services); Hospitals; Industrial retail outlets; Industrial training facilities; Industries; Information and education facilities; Marinas; Mooring pens; Moorings; Open cut mining; Passenger transport facilities; Port facilities; Pubs; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Research stations; Residential accommodation; Retail premises; Rural industries; Service stations; Sex services premises; Storage premises; Tourist and visitor accommodation; Transport depots; Vehicle body repair workshops; Vehicle repair stations; Waste or resource management facilities; Water recreation structures; Wharf or boating facilities; Wholesale supplies

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

neighbourhood shop *means premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people*

who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include restricted premises.

Note. *See clause 5.4 for controls relating to the retail floor area of neighbourhood shops. Neighbourhood shops are a type of shop—see the definition of that term in this Dictionary.*

Clause 2.7 Demolition requires development consent

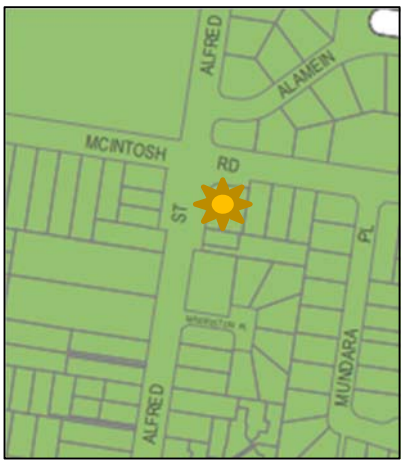
The demolition of a building or work may be carried out only with development consent. Demolition of the existing structures is part of this application.

Clause 4.1 Minimum lot sizes

As the completed development is to be strata titled (as per the draft strata plan submitted as part of this application), this clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.

Clause 4.3 Height of buildings

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



"I" = 8.5m

Comment: The proposed development is non-compliant with the WLEP maximum height limit due to the additional gross floor area available to the site, as per the Deed of Agreement (outlined previously).

The building height lines are shown on the DA plan set.

A clause 4.6 request for variation is submitted with the DA with reliance inter alia on the Deed of Agreement and also other planning criteria within the clause. A request for variation is addressed in Appendix 3 of this Statement.

Clause 4.4 Floor space ratio

Not adopted by WLEP 2011.

Clause 4.6 Exceptions to development standards

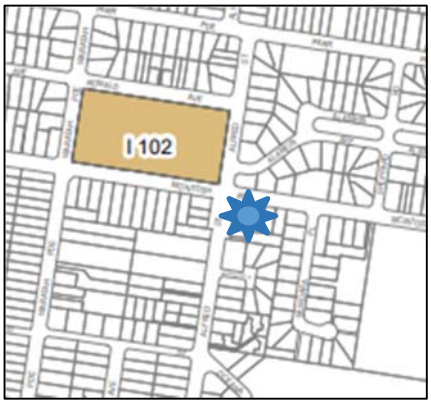
Comment: A clause 4.6 request for variation to clause 4.3 Height of buildings development standard is submitted for the proposed development. This is addressed is Appendix 3 of this Statement. The predominant reason for the non-compliance with the local planning instrument is the site-specific Deed of Agreement between Council and the land owner which established a bonus floor area for development of the subject site. The considerable amount of site area foregone by the property owner for the community benefit of providing the neighbourhood centre with practical car parking along both street frontages provides the redevelopment of site with an additional residential apartment on Level 2. The development does not seek to take up the whole of the bonus floor area available to it, rather the designers have added some 80% of the available space and provided a development that is not overbearing and fits comfortably into its location and site context. The development is not antipathetic to the objectives of the development standard or the B1 zone. On this basis the requested variation is considered reasonable on environmental planning grounds.

Clause 5.4 Controls relating to miscellaneous permissible uses

(7) Neighbourhood shops
If development for the purposes of a neighbourhood shop is permitted under this Plan, the retail floor area must not exceed 80 square metres.

The size of two of the three proposed shops within the development would comply with this clause, noting that 'shops' (without floor area restrictions) are also permissible in the zone. The proposal complies.

5.10 Heritage conservation



The subject site is not a heritage listed item, is not located within a heritage conservation area. It is located opposite the locally listed heritage item No. 102 – Narraweena School.

Narraweena	***Narraweena Primary School McIntosh Road***	***Lot 741, DP 752038***	***Local I102***

Comment: A Heritage Impact Statement is not proposed to be submitted with the DA as the proposal will not have any undue impact on the historical significance or thematic reading of the history of the site or its buildings.

Clause 6.3 Flood planning

(1) The objectives of this clause are as follows:
(a) to minimise the flood risk to life and property associated with the use of land,
(b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,
(c) to avoid significant adverse impacts on flood behaviour and the environment.
(2) This clause applies to land at or below the flood planning level.
(3) 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.
(4) A word or expression used in this clause has the same meaning as it has in the Floodplain Development Manual (ISBN: 0 7347 5476 0), published in 2005 by the NSW Government, unless it is otherwise defined in this clause.
(5) In this clause:
flood planning level means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.

Comment: *Dawes Consulting Engineers* have prepared a flood management report for the proposal. They report that the site is potentially affected by overland flows during extreme rainfall. The southwestern and southeastern corners of the site have a maximum flooded depth of 0.75m with zero velocity in the 1% Annual Exceedance Probability (AEP) flood event.

(Refer to the *Dawes* report for a copy of the Flood Information Request from Council, dated 13 April 2018).

- Proposed finished ground level: 74.22mAHD.
- Entrance/exist of underground carpark on northern side: 74.07mAHD (natural ground level).

Clause 6.4 Development on sloping land
(1) The objectives of this clause are as follows:
(a) to avoid significant adverse impacts on development and on properties in the vicinity of development sites resulting from landslides originating either on or near sloping land,
(b) to ensure the impacts of storm water runoff from development on or near sloping land are minimised so as to not adversely affect the stability of the subject and surrounding land,
(c) to ensure subsurface flows are not adversely affected by development so as to not impact on the stability of existing or adjoining land.
(2) This clause applies to land shown as Area A, Area B, Area C, Area D and Area E on the Landslip Risk Map.
(3) 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.

Comment: The subject site is mapped within Area A – less than <5 degrees.

No specific requirements for this development. Council can be satisfied that the site is a low risk area. Notwithstanding, a geotechnical report is submitted with the DA documentation addressing site soils due to the proposed excavation of the basement level.

4.2 Draft Planning Instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority

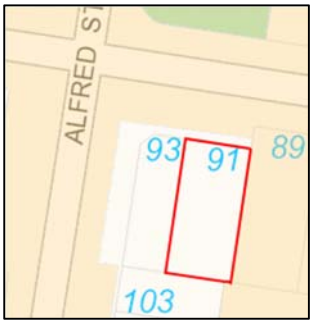
There are no known draft environmental planning instruments of relevance to the proposed development.

4.3 Non-Statutory Development Control Plans

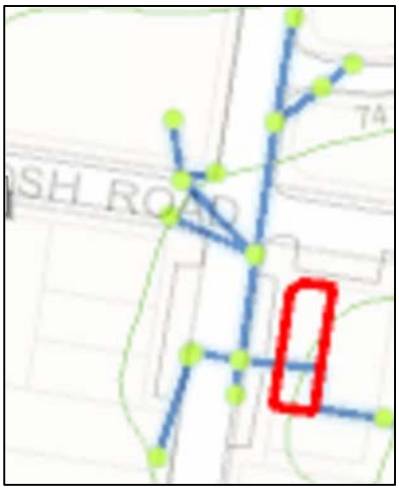
4.3.1 Warringah Development Control Plan 2011 (WDCP 2011)

WDCP 2011 (@ 20.10.18) is the latest version of Council's local planning guidelines. An assessment of relevant provisions of the DCP is provide below:

Table 1: WDCP 2011 Assessment

Relevant DCP provisions	Preliminary Proposal
PART A INTRODUCTION	
A.5 Objectives *The overriding objective of the DCP is to create and maintain a high level of environmental quality throughout Warringah. Development should result in an increased level of local amenity and environmental sustainability.*	Addressed throughout this Statement. The proposal achieves a high level of amenity and sustainability for the Narraweena Neighbourhood Centre area.
PART B BUILT FORM CONTROLS	
B1 Wall Heights	N/A. Does not apply to B1 zone.
B2 Number of Storeys	Not mapped. N/A
B3 Side Boundary Envelope  	Not mapped. N/A
B4 Site Coverage	Not mapped. N/A
B5 Side Boundary Setbacks	Mapped "N" Merit Assessment
B6 Merit Assessment of side boundary setbacks **Requirements** 1. Side boundary setbacks will be determined on a merit basis and will have regard to: • streetscape; • amenity of surrounding properties; and • setbacks of neighbouring development 2. Generally, side boundary setback areas are to be landscaped and free of any above or below ground structures, car parking or site facilities other than driveways and fences.	The site contains two street frontages, one side boundary which joins with No. 99 Alfred St (B1 zone) and one boundary with R2 zone (single dwelling). Proposal: Front setbacks: Ground, L1: nil L2: 3.4m to edge of wall, including balconies and splay corner at intersection. Eastern side setback: Ground – commercial premises at rear – 2.4m L1 – Unit 1 & 6: 2.8m

	L2 – 6.6m to wall of Unit 7 and Unit 9 Southern side setback (noting 1.5m easement to southern boundary): Ground: 1.5m L1: part 1.5m (rear) and part nil (cantilevered over easement) L2: Part 1.5m; part nil (cantilevered over easement)
B7 Front Boundary Setbacks	Mapped "A" – nil.
B8 Merit Assessment of front boundary setbacks	N/A
B9 Rear Boundary Setbacks	Mapped "N" Merit Assessment
B10 Merit assessment of rear boundary setbacks **Applies to Land** This control applies to land shown coloured as 'Merit Assessment' on DCP Map Rear Boundary setbacks. **Requirements** 1. Rear boundary setbacks will be determined on a merit basis and will have regard to: • streetscape; • amenity of surrounding properties; and • setbacks of neighbouring development	The site does not have a rear setback. Refer to merit assessment of side boundary setback provision above.
B14 Main Roads Setback	Not mapped. N/A
PART C SITING FACTORS	
C2 Traffic, Access and Safety • **Vehicular Access** • **On-site loading and unloading**	Refer to Parking and Traffic Impacts report, prepared by Stanbury Traffic Planning, dated October 2018. Report includes review and assessment of access arrangements from Mcintosh Road, existing -v- proposed parking onsite and onstreet, traffic generation from the site and garbage collection.
C3 Parking Facilities	No laneway access. Access is proposed from McIntosh Road. Resident parking is proposed at basement level. Retail/commercial parking on street – as existing.

	A comprehensive assessment of the existing parking and traffic generation for the site versus the proposed development is provided in the Stanbury Traffic Planning report. Overall, parking and traffic generation is reduced from current levels, predominantly due to the reduced retail/commercial floor space proposed and onsite parking provision for residents and their visitors.
C3(A) Bicycle Parking and End of Trip Facilities	8 bicycle spaces are provided at basement level – adjacent the lift and stairs.
C4 Stormwater 	A stormwater drainage line traverses the site. This is not subject to any easement. It will be necessary to relocate this pipe outside of the building envelope – that is, along the southern boundary within a 1.5m registered easement. Refer to the Concept Stormwater Management Plan for the development.
C6 Building over or adjacent to Constructed Council Drainage Easements **Requirements** 1. All development on land containing or adjacent to or proposing to reconstruct/relocate a public drainage system, must comply with Council's Water Management Policy and Building Over or Adjacent to Constructed Council Drainage Systems and Easements technical specifications. 2. Any Council drainage line located within the property may require upgrading and easements created in favour	As above.

of Council over the drainage line at the applicant's expense.	
C7 Excavation and Landfill	The proposal will involve site excavation works for the basement level. A Geotechnical Report is submitted as part of the DA documentation. Dilapidation reports will also be prepared prior to commencement of any works, as part of the CC documentation. Standard DA conditions can be applied to ensure these reports are compliant.
C8 Demolition and Construction **Requirements** All development that is, or includes, demolition and/or construction, must comply with the appropriate sections of the Waste Management Guidelines and all relevant Development Applications must be accompanied by a Waste Management Plan.	A Waste Management Plan, in accordance with Council's policy, is submitted as part of the DA documentation.
C9 Waste Management	A Waste Management Plan, in accordance with Council's policy, is submitted as part of the DA documentation. Two bin rooms located at ground floor level – separate residential and retail/commercial waste. Kerbside collection on McIntosh Road.
PART D DESIGN	
D9 Building Bulk **Requirements** 1. Side and rear setbacks are to be progressively increased as wall height increases. 2. Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief. 3. On sloping land, the height and bulk of development	The site is a locally prominent signalised corner property. It is currently underdeveloped in terms of built form and structure and presents poor form to the intersection. The proposed development is a modern contemporary building that is designed to create a strong corner

(particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular: - The amount of fill is not to exceed one metre in depth. - Fill is not to spread beyond the footprint of the building. - Excavation of the landform is to be minimised. 4. Building height and scale needs to relate to topography and site conditions. 5. Orientate development to address the street. 6. Use colour, materials and surface treatment to reduce building bulk. 7. Landscape plantings are to be provided to reduce the visual bulk of new building and works. 8. Articulate walls to reduce building mass.	statement while providing a mix of landuses permissible and encouraged by Council's local planning policy. The south-eastern corner (commercial units) are setback 2.8m - 3m from the residential boundary with landscaping along the boundary. The upper residential accommodation levels are setback 6m from the residential boundary – reducing the perceived bulk and scale of the building from the adjoining residences.
D10 Building Colours and Materials	The use of colour, materials and façade treatments are proposed to reduce the building bulk and articulate the appearance of the building from both street frontages. Refer to the photomontage submitted with the DA plan set and the schedule of materials and finishes.
D11 Roofs	All mechanical equipment and lift overruns have been designed to integrate into the overall building, not appearing as separate or added onto the top of the building.
D18 Accessibility	An Accessibility Report is submitted with the DA documentation.
D21 Provision and Location of Utility Services	The site is fully serviced. Any services requiring augmentation are detailed in the DA documentation. Relocation of stormwater and new easement as outlined in the Engineering Report submitted with the DA documentation. Overhead power lines run along the Alfred Street frontage. Referral to Ausgrid under SEPP (Infrastructure) - clause 45 as site is within 5m of exposed overhead electricity power line.

PART E THE NATURAL ENVIRONMENT	
E10 Landslip Risk **Applies to Land** This control applies to land identified on the Warringah Local Environmental Plan 2011 - Landslip Risk Map as Area A, Area B, Area C, Area D or Area E. **Requirements** 1. The applicant must demonstrate that: • The proposed development is justified in terms of geotechnical stability; and • The proposed development will be carried out in accordance with good engineering practice. 2. Development must not cause detrimental impacts because of stormwater discharge from the land.	Mapped as Area A <5 degrees. A geotechnical report, including hydrological assessment of the site is submitted with the DA documentation.

4.4 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality. Suitability of the site for the development

For redevelopment purposes the site presents with its own particular opportunities and constraints. The proposal seeks to optimise the development potential of this site while addressing constraints such as orientation, sun penetration, views, building separation and landscaping that are not capable of strict compliance with the numerical requirements of Council's guidelines.

The design and layout of the new shop top housing development has limited the extent of impacts to the confines of the site without causing significant impact to the adjoining properties, particularly to the east along McIntosh Road. It presents as a high quality contemporary response within an area characterised by a mix of development typologies without any contributing positive defining character.

Having regard to the site's location and the existing built form character of the surrounding area, the applicant has adopted a complementary approach in terms of height, scale and floor space so that the building will provide an appropriate street presentation to the Alfred/McIntosh Street intersection. There is a strong focus on the quality of the internal spaces of the units and a variety of apartment types and sizes.

The design, whilst requiring excavation for the basement level, is limited to the building footprint generally, responding to the topographic conditions of the site and neighbouring properties. Dilapidation reports will be prepared during construction phases of the development.

The height of the development is justified with the Clause 4.6 variation requested, ensuring a high level of amenity is achieved, satisfying the objectives of both the development standard and the B1 zone.

Private open space area and living windows face both street frontages, increasing the opportunity for passive surveillance of the neighbourhood centre and busy intersection. This will increase the perception of safety for children, families and the residents of the area, particularly after dark. To avoid privacy impacts, windows are strategically sited. Window orientation has also had consideration for the existing locations of adjacent and adjoining habitable windows to ensure direct overlooking opportunities are avoided.

The proposal provides for the orderly and economic development of the land, in accordance with the terms of the Deed of Agreement for the redevelopment of the site. The development will result in positive social outcomes including the provision of increased housing and choice in an ideally situated area close to all services. In this regard, the proposal for apartments within the development affords an opportunity for a desirable form of housing within the Narraweena area.

4.5 Any submissions made in accordance with this act or the regulations

Council is responsible for the referral of the application to relevant Government bodies and to adjoining owners. Any submissions will be reviewed by the applicant and Council during the assessment process, and duly considered.

4.6 The public interest

Given that the relevant issues have been addressed with regard to the public interest as reflected in the relevant planning policies and codes, the development is unlikely to result in any adverse impact to the public interest in the circumstance of the case, particularly noting the compliant and sympathetic nature of the proposal.

The proposal is consistent with the zoning of the site, the floor space bonus afforded by the Deed and in accordance with both the State Governments and Council's adopted urban housing policies as reflected in its LEP & DCP. The proposal is also importantly consistent with the design principles enunciated in SEPP 65. Where compliance is unable to be achieved with the guiding provisions of the ADG (due to known site constraints), acceptable solution solutions are proposed.

The redevelopment of the site and resultant GFA is pre-empted by the terms of the Deed of Agreement, the outcome of which the local community has had the benefit of for many years – safe and convenient parking at their local neighbourhood shops. The proposal provides ongoing public interest benefits for the local community via new shops, increased housing supply, a variety of apartment types and sizes, onsite parking and rejuvenation of the tired neighbourhood shops on a busy and active intersection. The benefits of the Deed back to the property owner are now sought via the credit of floor area of the proposed redevelopment of the site.

5.0 CONCLUSION

The proposal, a shop top housing development, represents a development based on sound and established urban design principles, generally in accordance with Council's planning policies and uptake of the terms of the existing and valid Deed of Agreement. It is established that the development satisfies the objectives of the relevant environmental planning instruments and local planning provisions.

The site is zoned B1 Neighbourhood Centre under WLEP 2011. The proposal maintains and enhances the built and natural values of the Narraweena Neighbourhood Centre, seeking to construct a contemporary shop top housing development, thereby rejuvenating the local centre with new shops, a fresh fabric and vibe to the centre and upper level residential living. The development will renew and rejuvenate the retail/commercial offer onsite. Combined, the uses will activate the Neighbourhood Centre further and importantly, provide opportunities for passive surveillance of the centre, particularly after dark. Onsite parking is provided together with the existing on-street parking along both street frontages.

The building is designed and orientated to both street frontages with respect to the urban morphology of the adjoining and adjacent development. The execution of the design with attention to detail, and high-quality materials and textures enables the development to be complementary in terms of its height, bulk,

scale and proportioning and responds to its site specifics and essential characteristics of the area in a contemporary interpretation.

The proposed development generally complies with the relevant planning policies, codes and requirements of the *EP&A Act 1979* including the WLEP 2011 and WDCP 2011. Variations to controls have been justified in the circumstances, and do not create undue adverse impacts on neighbouring properties, the streetscape or create any undesirable built form precedent.

Having regard to the above assessment, it is concluded that there are no identifiable grounds of such gravity that would in our opinion warrant refusal of the application as submitted.

APPENDIX 1

Deed of Agreement

BETWEEN:

WARRINGAH COUNCIL

of the One Part

AND:

MARGARET RUTH PFANNER

SUZANNE FELICITY SCOTT-ORR

WALTER ANTHONY VERNON HARRIS

of the Other Part

D E E D

O'BRIEN CONNORS & KENNETT
Solicitors
22-26 Fisher Road
DEE WHY 2099

Telephone: 9982 1655
Facsimile: 9982 1066

DX: 9101 Dee Why

THIS DEED made the 9th day of APRIL One thousand nine hundred and ninety-seven BETWEEN **WARRINGAH COUNCIL** (hereinafter called "the Council") of the One Part AND **MARGARET RUTH PFANNER, SUZANNE FELICITY SCOTT-ORR** and **WALTER ANTHONY VERNON HARRIS** (hereinafter called "the Owners") of the Other Part

WHEREAS the owners are the Registered Proprietors of the land in Certificate of Title Volume 13300 Folio 199 being the Shopping Complex known as No. 91 McIntosh Road, Narraweena ("the property") AND WHEREAS the Council has requested the Owners to dedicate to it part of the land as road reserve at no cost (other than the Owner's legal costs) AND WHEREAS the Owner is agreeable to such dedication on the conditions hereinafter set out.

NOW THIS DEED WITNESSETH as follows:-

1. In consideration of the Owners agreeing to dedicate to the Council for road reserve that area so shown on the plan annexed hereto, the council agrees that the area of land so dedicated shall be taken into consideration in determining the development potential of the remainder of the land in Certificate of Title Volume 13300 Folio 199 should any Development Application or Applications be made to the Council in respect of the said remainder of the land.

2. No consideration is payable by the Council to the Owners for consent to dedication of land as aforesaid but the Council agrees to meet all expenses in connection with the dedication including, but without limiting the generality thereof, the Owners; reasonable legal costs in respect to the preparation of this Deed, correspondence and negotiations with the Council, stamp duty payable on this Deed, Survey costs, costs of producing relevant Certificate of Title at Land Titles Office to permit registration of the plan and all fees payable to the Land Titles Office.

3. The parties agree to do all things reasonably necessary to execute all documents to effect the dedication of the said land and to give effect to the obligations of each party under this Deed.

SIGNED for and on behalf of
WARRINGAH COUNCIL in
the presence of:

WARRINGAH COUNCIL

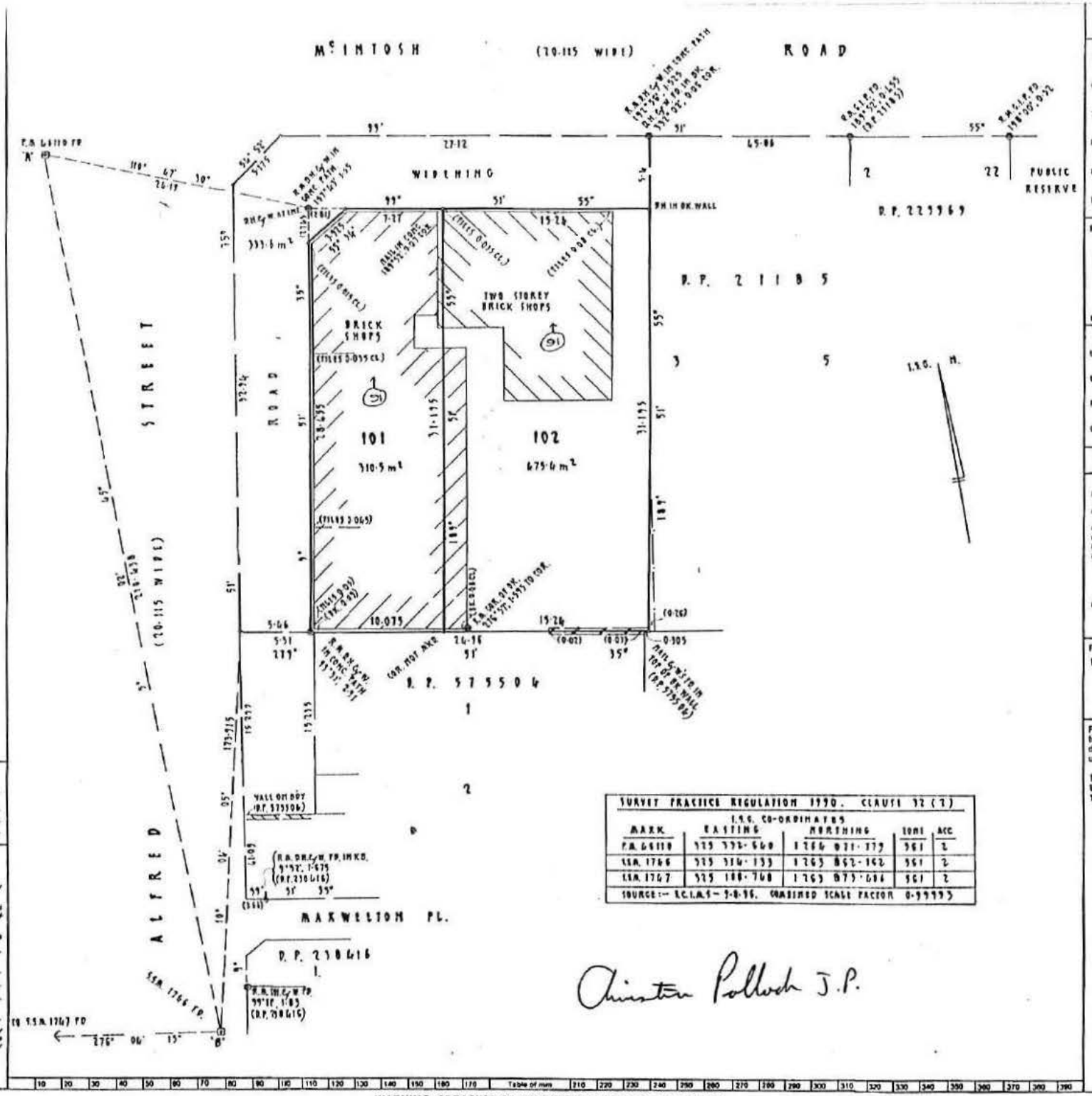
.....
General Manager

SIGNED in my presence by
WALTER ANTHONY VERNON HARRIS in the presence of:

Margaret Ruth Pfanner by her
Attorney Walter Anthony Vernon
Harris pursuant to Power of
Attorney Registered Book 3704
No. 519

.....

SIGNED in my presence by
SUZANNE FELICITY SCOTT-ORR in the presence
of:



SURVEY PRACTICE REGULATION 1990. CLAUSE 32 (2)				
I.S.G. CO-ORDINATES				
MARK	EASTING	NORTHING	ZONE	ACC
P.A. 66119	325 332·660	1766 831·777	561	2
S.S.M. 1766	325 316·133	1763 862·162	561	2
S.S.M. 1767	325 188·768	1763 873·684	561	2
SOURCE:— I.C.I.A.S — 5-8-96. COMBINED SCALE FACTOR 0·99993				

Christian Pollock J.P.

Registered:

C.A.

Title System:

Purpose:

Ref. Map:

Last Plan:

PLAN OF SUBDIVISION OF LOTS 1 & 2 D.P. 21185

Lengths are in metres. Reduction Ratio 1 : 200

LGA: WARRINGAH

Locality: MARRAWEENA

Parish: MANLY COVE

County: CUMBERLAND

This is sheet 1 of my plan in ____ sheets (Delete if inapplicable).

I, WARREN L. BEE of P.O. BOX 330 FORESTVILLE 2087 a surveyor registered under the Surveyors Act 1929, hereby certify that the survey represented in this plan is accurate, has been made in accordance with the Survey Practice Regulation 1990 and was completed on 3.12.1996

(Signature) Surveyor registered under the Surveyors Act 1929

Datum Line of Azimuth 'A – B'

Plans used in preparation of survey/compilation.
D.P.'s 21185
238616
575504
223969

PANEL FOR USE ONLY for statements of intention to dedicate public roads, to create public reserves, drainage reserves, easements, restrictions on the use of land or positive covenants.

IT IS INTENDED TO DEDICATE THE LAND MARKED 'ROAD WIDENING' TO THE PUBLIC AS ROAD.

Crown Lands Office Approval

I AN APPROVED ..... Authorised Officer

Land District .....

Paper No. .....

Field Book ..... pages .....

Council's Certificate

I hereby certify that –

(a) the requirements of the Local Government Act, 1919 (other than the requirements for the registration of plans), and

(b) the requirements of (Part 3 Division 2 of the Water Board Act 1987, as of Part 6 Division 2 of the Hunter Water Board (Corporatisation) Act 1991.

have been compiled with by the applicant in relation to the proposed Subdivision

(Insert "new road", "subdivision" or "consolidation" as set out herein)

Dated 9939

January 1997

(General Manager/Authorised Person)

Ref. 8906

(To be deleted where the application is only for the opening of a new road or where the land to be subdivided is in the areas of operations of the Water Board (Corporation) Ltd.)

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

APPENDIX 2

SEPP 65 - ADG Compliance Table

STATE ENVIRONMENTAL PLANNING POLICY No 65 – APARTMENT DESIGN GUIDE ASSESSMENT

STANDARD	OBJECTIVE	COMPLIANCE
Site Analysis	**3A-1** - Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context.	Yes
Orientation	**3B-1** - Building types and layouts respond to the streetscape and site while optimising solar access within the development.	Yes
	3B-2 - Overshadowing of neighbouring properties is minimised during mid-winter.	Yes
Public Domain Interface	**3C-1** – Transition between private and public domain is achieved without compromising safety and security.	Yes
	3C-2 – Amenity of the public domain is retained and enhanced.	Yes
Communal and Public Open Space	**3D-1** – An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping *Design guidance:* *Where developments are unable to achieve the design criteria, such as small lots, sites within business zones, or in dense urban areas, they should :* o *Provide communal open spaces elsewhere such as a landscaped roof terrace or common room* o *Provide larger balconies or increased private open space for apartments* o *Demonstrate good proximity to public open space and facilities and/or provide contributions to public open space.*	Non-compliant. The site is located within a B1 Zone and in close proximity to quality public open space being Beverley Job Park and the facilities existing within the Narraweena Centre. Units within the proposal have also been provided oversized balconies wherever possible.
	3D-2 – Communal open space is design to allow for a range of activities, respond to site conditions and be attractive and inviting.	See above
	3D-3 – Communal open space is designed to maximise safety.	See above
	3D-4 – Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood.	NA
Deep Soil Zones	**3E-1** - Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality. *Design guidance:* *Achieving the design criteria may not be possible on some sites including where :*	Non-compliant. The subject site is located within a Neighbourhood Centre where the provision of deep soil panting is not achievable.

	o *The location and building typology have limited or no space for deep soil at ground level (e.g. central business district, constrained sites, high density areas, or in centres)* o *There is 100% site coverage or non-residential uses at ground floor level* *Where a proposal does not achieve deep soil requirements, acceptable storm water management should be achieved and alternate forms of planting provided such as on structure.*	The proposal provides for retail commercial uses only at ground floor. The proposal looks to provide alternate planting on structure both at ground and level 2.
Visual Privacy	**3F-1** - Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy *Design criteria:* *Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances between building to the side and rear boundaries are as follows:* *Minimum separation distances for buildings are:* *Up to four storeys (approximately 12m):* *12m between habitable rooms/balconies* *9m between habitable and non-habitable rooms* *6m between non-habitable rooms* *Five to eight storeys (approximately 25m):* *18m between habitable rooms/balconies* *12m between habitable and non-habitable rooms* *9m between non-habitable rooms* *Nine storeys and above (over 25m):* *24m between habitable rooms/balconies* *18m between habitable and non-habitable rooms* *12m between non-habitable rooms* *Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2)*	Adequate building separation has been provided to neighbouring sites and achieves reasonable levels of external and internal visual privacy. Windows located on the eastern elevation of the proposal and adjacent to the lower density development on this boundary, are adequately screened and assisted at ground with planting on structure.

	3F-2 - Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space.	NA
Pedestrian Access and Entries	**3G-1** - Building entries and pedestrian access connects to and addresses the public domain.	Complies
	3G-2 - Access, entries and pathways are accessible and easy to identify.	Complies
	3G-3 - Large sites provide pedestrian links for access to streets and connection to destinations	N/A
Vehicle Access	**3H-1** - Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.	Complies
Bicycle And Car Parking	**3J-1** - Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas *Design criteria:* *For development in the following locations:* *on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or* *on land zoned, and sites within 400 metres of land zoned, b# Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre* *the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating* *Developments, or the car parking requirement prescribed by the relevant council, whichever is less* *The car parking needs for a development must be provided off street.*	The site is in close proximity to local bus routes on both McIntosh Road and Alfred Street. A traffic and parking impact assessment report accompanies the application concluding that the proposal is acceptable.
	3J-2 – Parking and facilities are provided for other modes of transport	Complies
	3J-3 – Car park design and access is safe and secure.	Complies
	3J-4 – Visual and environmental impacts of underground car parking are minimised.	Complies
	3J-5 – Visual and environmental impacts of on-grade car parking are minimised.	N/A
	3J-6 – Visual and environmental impacts of above ground enclosed car parking are minimised	Complies
Solar And Daylight Access	**4A-1** - To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.	Complies
	Design criteria:	Complies

	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas *In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid-winter* *A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter*	6 of the proposed 9 units comply with the required 2 hours, being 66.7% of units. All units proposed receive direct solar access to private open space in mid-winter.
	4A-2 – Daylight access is maximised where sunlight is limited.	Complies
	4A-3 – Design incorporates shading and glare control, particularly for warmer months.	Complies
Natural Ventilation	**4B-1** – All habitable rooms are naturally ventilated.	Complies
	4B-2 – The layout and design of single aspect apartments maximises natural ventilation.	Complies
	4B-3 - The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents *Design criteria:* *At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed* *Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.*	6 of the proposed 9 units achieve natural cross ventilation, being 66.7% of units.
Ceiling Heights	**4C-1** - Ceiling height achieves sufficient natural ventilation and daylight access Design criteria:	Complies
	Measured from finished floor level to finished ceiling level, minimum ceiling heights are:	

<table>
<tr><td></td><td>
<table>
<tr><th colspan="2">Minimum ceiling height
for apartment and mixed use buildings</th></tr>
<tr><td>Habitable rooms</td><td>2.7m</td></tr>
<tr><td>Non-habitable</td><td>2.4m</td></tr>
<tr><td>For 2 storey apartments</td><td>2.7m for main living area floor
2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr>
<tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr>
<tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr>
</table>
These minimums do not preclude higher ceilings if desired
</td><td></td></tr>
<tr><td></td><td>4C-2 - Ceiling height increases the sense of space in apartments and provides for well proportioned rooms.</td><td>Complies</td></tr>
<tr><td></td><td>4C-3 - Ceiling heights contribute to the flexibility of building use over the life of the building.</td><td>Complies</td></tr>
<tr><td>Apartment Size and Layout</td><td>4D-1 - The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.

Design criteria:
Apartments are required to have the following minimum internal areas:
Studio / 35m²
1 Bedroom / 50m²
2 Bedroom / 70m²
3 Bedroom / 90m²

The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by
5m2 each.
A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m2 each.
Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms</td><td>Complies</td></tr>
</table>

	4D-2 – Environmental performance of the apartment is maximised. Design criteria: Habitable room depths are limited to a maximum of 2.5 x the ceiling height In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Complies
	4D-3 – Apartment layouts are designed to accommodate a variety of household activities and needs *Design criteria:* *Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space) Bedrooms have a minimum dimension of 3m (excluding wardrobe space)* *Living rooms or combined living/dining rooms have a minimum width of:* *3.6m for studio and 1 bedroom apartments* *4m for 2 and 3 bedroom apartments* *The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.*	Complies
Private Open Space and Balconies	**4E-1 –** Apartments provide appropriately sized private open space and balconies to enhance residential amenity. *Design criteria:* *All apartments are required to have primary balconies as follows:* *Studio / 4m²* *1 Bedroom / 8m² min. depth of 2m* *2 Bedroom / 10m² min. depth of 2m* *3 Bedroom / 12m² min. depth of 2.4m* *The minimum balcony depth to be counted as contributing to the balcony area is 1m.* *For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m2 and a minimum depth of 3m.*	Complies
	4E-2 - Primary private open space and balconies are appropriately located to enhance liveability for residents.	Complies
	4E-3 - Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.	Complies

	4E-4 - Private open space and balcony design maximises safety	Complies
Common Circulation and Spaces	**4F-1** - Common circulation spaces achieve good amenity and properly service the number of apartments *Design criteria:* *The maximum number of apartments off a circulation core on a single level is eight.* *For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.*	Less than 8. Complies.
	4F-2 - Common circulation spaces promote safety and provide for social interaction between residents	Complies
Storage	**4G-1** - Adequate, well designed storage is provided in each apartment Design criteria: In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: Studio apartments / 4m³ 1 Bedroom apartments / 6m³ 2 Bedroom apartments / 8m³ 3+ Bedroom apartments 10m² At least 50% of the required storage is to be located within the apartment.	Complies
	4G-2 - Additional storage is conveniently located, accessible and nominated for individual apartments.	Complies
Acoustic Privacy	**4H-1** - Noise transfer minimised through the siting of building and layout	Complies
	4H-2 - Noise impacts are mitigated within apartments through layout and acoustic treatments.	Complies
Noise And Pollution	**4J-1** - In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings.	Complies
	4J-2 - Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.	Complies
Apartment Mix	**4K-1** - A range of apartment types and sizes is provided to cater for different household types now and into the future.	Complies
	4K-2 - The apartment mix is distributed to suitable locations within the building.	Complies
Ground Floor Apartments	**4L-1** - Street frontage activity is maximised where ground floor apartments are located	NA

	4L-2 - Design of ground floor apartments deliver amenity and safety for residents	NA
Facades	**4M-1** - Building facades provide visual interest along the street while respecting the character of the local area.	Complies
	4M-2 - Building functions are expressed by the façade.	Complies
Roof Design	**4N-1 –** Roof treatments are integrated into the building design and positively respond to the street.	Complies
	4N-2 - Opportunities to use roof space for residential accommodation and open space are maximised	Complies
	4N-3 – Roof design incorporates sustainability features.	None proposed.
Landscape Design	**4O-1 –** Landscape design is viable and sustainable	Complies
	4O-2 – Landscape design contributes to the streetscape and amenity.	Complies
Planting On Structures	**4P-1 –** Appropriate soil profiles are provided.	complies
	4P-2 – Plant growth is optimised with appropriate selection and maintenance.	Complies
	4P-3 - Planting on structures contributes to the quality and amenity of communal and public open spaces	Complies
Universal Design	**4Q-1** - Universal design features are included in apartment design to promote flexible housing for all community members.	Complies. Unit 01 has been designed to Silver Level standard.
	4Q-2 - A variety of apartments with adaptable designs are provided.	Complies. Unit 08 has been designed as adaptable.
	4Q-3 - Apartment layouts are flexible and accommodate a range of lifestyle needs.	Complies
Adaptive Reuse	**4R-1** - New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	N/A
	4R-2 - Adapted buildings provide residential amenity while not precluding future adaptive reuse.	N/A
Mixed Use	**4S-1** - Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement.	Complies
	4S-2 - Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents.	Complies
Awnings And Signage	**4T-1** - Awnings are well located and complement and integrate with the building design.	Complies
	4T-2 - Signage responds to the context and desired streetscape character.	Complies
Energy Efficiency	**4U-1** - Development incorporates passive environmental design.	Complies

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

APPENDIX 3

Clause 4.6 Variation to clause 4.3 Height of Buildings – Warringah LEP 2011

PLANNING | DEVELOPMENT | URBAN DESIGN

JVUrban

CLAUSE 4.6 VARIATION REQUEST TO CLAUSE 4.3 OF THE WARRINGAH LEP 2011

PROPOSED SHOPTOP HOUSING DEVELOPMENT

91 McINTOSH ROAD NARRAWEENA

44 Bay Vista Lane
EWINGSDALE NSW 2481

P : +61 (2) 6684 7999
M : +61 (0)414 193399

E : joe@jvu.com.au

PLANNING | DEVELOPMENT | URBAN DESIGN

JVUrban

CLAUSE 4.6 VARIATION REQUEST TO CLAUSE 4.3 OF THE WARRINGAH LEP 2011

PROPOSED SHOPTOP HOUSING DEVELOPMENT

91 McINTOSH ROAD NARRAWEENA

44 Bay Vista Lane
EWINGSDALE NSW 2481

P : +61 (2) 6684 7999
M : +61 (0)414 193399

E : joe@jvu.com.au

1 Introduction

1.1 Commission

JVUrban Pty Ltd has been commissioned by *DreamBuild Pty Ltd* ("the Applicant"), to prepare a written request ('Variation Request') pursuant to cl4.*6 of Warringah Local Environmental Plan 2011* (the LEP) in respect of a proposed development for shop top housing development comprising ground floor retail/commercial and nine (9) residential apartment, at 91 – 93 McIntosh Street, Narraweena (the Site).

The Proposal is described in detail in Section 3 of the Statement of Environmental Effects (SEE) prepared by *JVUrban Pty Ltd* dated November, 2018 and generally comprises:

- demolition of all structures on site;
- site excavation for basement level;
- construction of shop top housing above basement car parking and services.

The Proposal exceeds the 8.5m maximum Height of Buildings (HOB) development standard under cl4.3 of the WLEP having a maximum building height of 12.15m in the south east corner.

Notwithstanding the contravention of the development standard, the proposal and the requisite variation to the height standard is considered to be consistent with the objectives of the development standard and the objectives of the zone within which the development is to be carried out and there are sufficient environmental planning grounds to justify the contravention in this instance including the lack of adverse amenity impacts and positive social and economic considerations as a result of the development.

This written request has been prepared to provide a detailed assessment in accordance with the statutory requirements of cl4.6 so that the consent authority can exercise its power to grant development consent, notwithstanding the contravention to the HOB development standard.

1.2 Material Relied Upon

This Variation Request has been prepared based on the Architectural Drawings prepared by *Benson McCormack Architecture* dated September 2018 and also relies upon a Deed of Agreement between the owner and Council which is appended to the Statement of Environmental Effects

This Variation Request should be read in conjunction with the detailed environmental planning assessments contained in the DA documentation submitted with the DA and documents appended thereto.

2.1 Warringah Local Environmental Plan 2011

2.1.1 Clauses 2.2-2.3 – Zoning and Permissibility

Clause 2.2 and the Land Zoning Map of the LEP provide that the entire Site is zoned B1 Neighbour Centre Zone and the Land Use Table in Part 2 of the LEP specifies the objectives of this zone as follows:

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

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

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

The proposed land use is defined as a shop top housing which is permissible with development consent in the B1 Zone pursuant to the WLEP 2011.

2.1.2 Clause 4.3 – Height of Buildings (HOB)

Clause 4.3 of the W LEP 2011 sets out the HOB development standard as follows:

> *"(1) The objectives of this clause are as follows:*
>
> *(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
>
> *(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
>
> *(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
>
> *(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*
>
> *(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map."*

The Height of Buildings Map designates a maximum 8.5m height limit for the Site (see **Figure 1**).

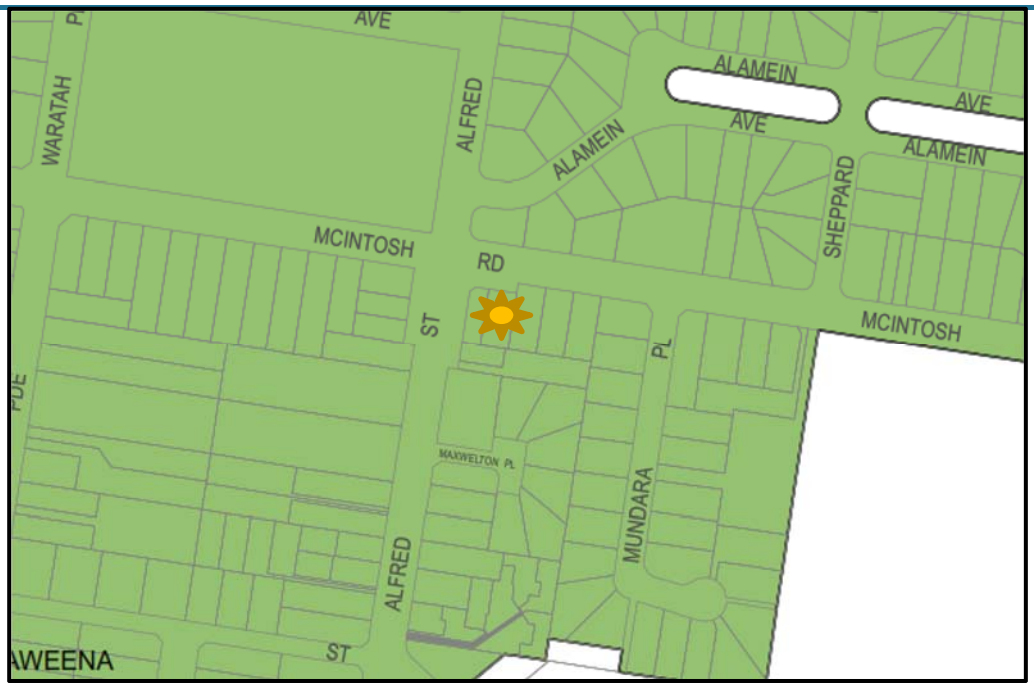


Figure 1 Extract of WLEP 2011 Map (HOB_10A)

The WLEP Dictionary contains the following definitions:

Height of Buildings Map *means the Warringah Local Environmental Plan 2011 Height of Buildings Map.*

building height *(or* ***height of building****) means:*

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

2.1.3 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of the LEP states the objectives of the clause as follows:

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

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ("Initial Action") (see Section 4.7), Preston CJ ruled that there is no provision that requires the applicant to demonstrate compliance with these objectives for the consent authority to be satisfied that the development achieves these objectives. Furthermore, neither cl4.6(3) nor cl4.6(4) expressly or impliedly requires that development that contravenes a development standard "*achieve better outcomes for and from development*".

Accordingly, the remaining subclauses of cl4.6 provide the operational provisions and preconditions which must be satisfied before a consent authority may grant development consent to a development that contravenes a development standard imposed by an environmental planning instrument.

Clause 4.6(2) provides that:

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

The HOB development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted.

Clause 4.6(3) relates to the making of a written request to justify an exception to a development standard and states:

> *(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
>
> *(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
>
> *(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

The proposed development does not comply with the HOB development standard pursuant to cl4.3 of the WLEP2011. However, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as detailed in Section 5.1.

In addition, there are considered to be sufficient environmental planning grounds to justify contravening the development standard as detailed in Section 5.2.2.

Clause 4.6(4) provides that consent must not be granted for development that contravenes a development standard unless:

> *(4) Development consent must not be granted for development that contravenes a development standard unless:*
>
> *(a) the consent authority is satisfied that:*
>
> *(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
>
> *(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
>
> *(b) the concurrence of the Secretary has been obtained.*

Sections 5.2 and 5.3 of this written request address the matters required under cl4.6(4)(a) of the LEP and Section 5.4 addresses cl4.6(4)(b).

Clause 4.6(5) provides that:

> *(5) In deciding whether to grant concurrence, the Secretary must consider:*
>
> *(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
>
> *(b) the public benefit of maintaining the development standard, and*
>
> *(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Section 5.5 of this written request addresses the matters required under cl4.6(5) of the LEP.

Clauses 4.6(6) and (8) are not relevant to the proposed development and cl4.6(7) is an administrative clause requiring the consent authority to keep a record of its assessment under this clause after determining a development application.

The proposed shop top housing development will result in a maximum height above existing ground level of 12.15m at the south east corner, constituting a non-compliance of up to 3.65m. The following figures show the 8.5m LEP height line across the main street frontage elevations and section plan of the building.

Figure 2: Extract of Elevation – McIntosh Elevation - showing LEP 8.5m height line (Source: Benson McCormack Architecture, September 2018)

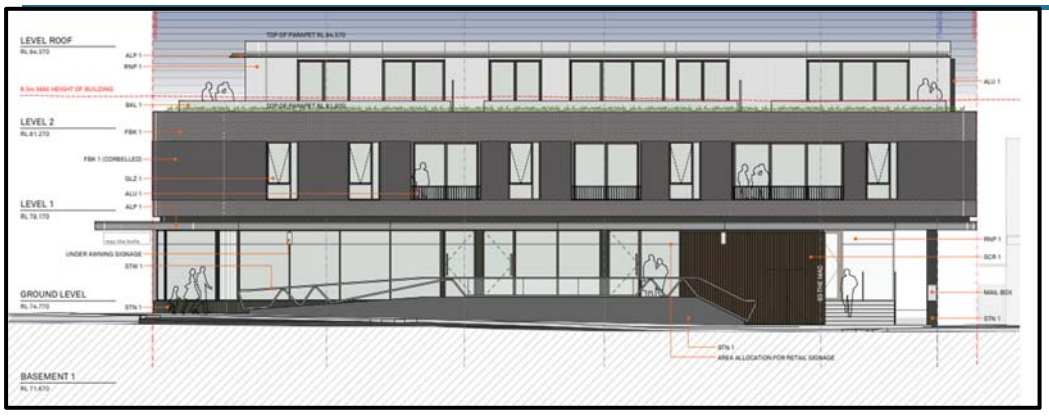


Figure 3: Extract of Elevation – Alfred Street Elevation - showing LEP 8.5m height line (Source: Benson McCormack Architecture, September 2018)

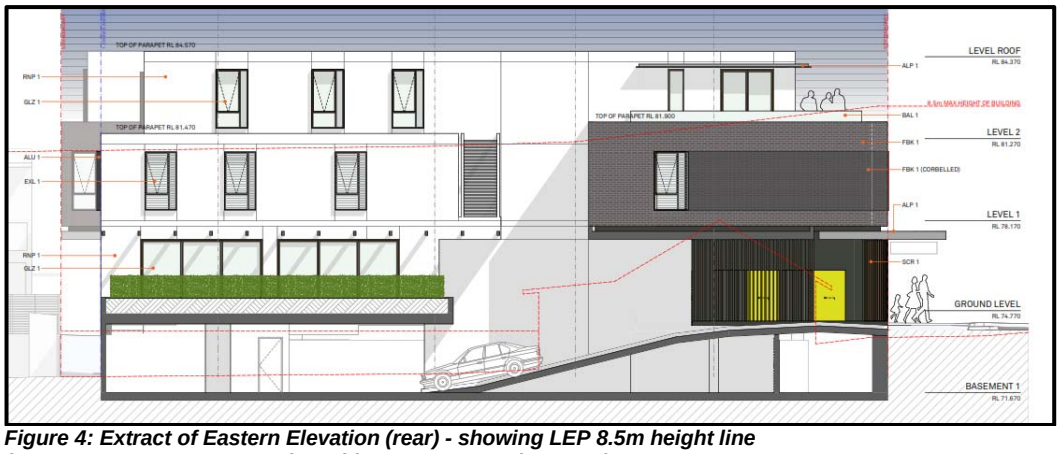


Figure 4: Extract of Eastern Elevation (rear) - showing LEP 8.5m height line (Source: Benson McCormack Architecture, September 2018)

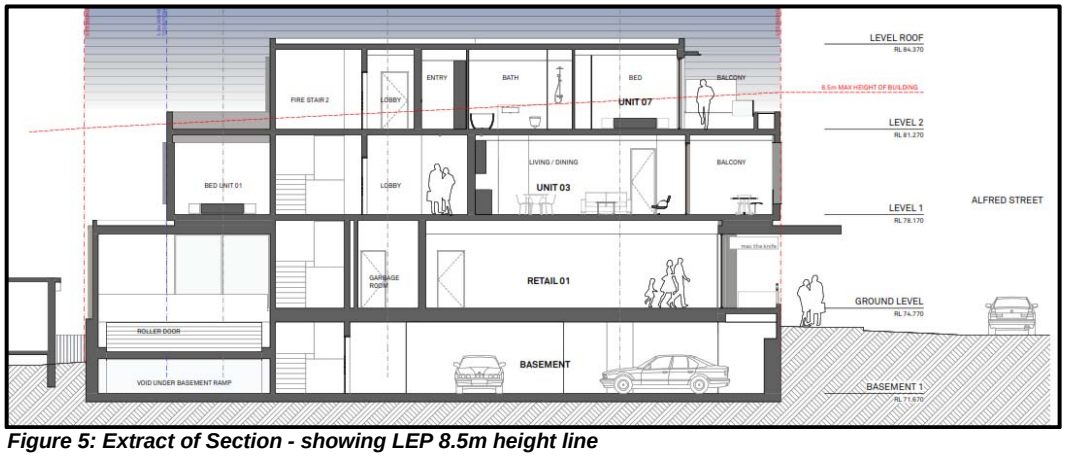


Figure 5: Extract of Section - showing LEP 8.5m height line (Source: Benson McCormack Architecture, September 2018)

4.1 Introduction

The proposed variation to the development standard has been considered in light of the evolving methodology and "tests" established by the NSW Land & Environment Court (the Court) and the following subsections provide a brief summary of key Judgments in regard to variations under the former SEPP 1 and cl4.6 of the SILEP.

4.2 Winten Developments Pty Ltd v North Sydney Council [2001]

Through the Judgment in *Winten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46* ("Winten") the Court established a '5-part test' for considering whether strict compliance with a development standard is unreasonable or unnecessary in a particular case. The elements of this test can be summarised as:

- Is the planning control a development standard?
- What is the underlying object or purpose of the standard?
- Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979*?
- Is compliance with the development standard unnecessary or unreasonable in the circumstances of the case?
- Is the objection well founded?

The 1st 'test' continues to be relevant and is a precondition for the application of cl4.6 – see Section 5.1.

The 2nd 'test' is required to be demonstrated under cl4.6(4)(a)(ii) – see Section 5.2.1.

The 3rd 'test' was specific to cl3 of SEPP 1 and has not been transferred to cl4.6 of the SILEP. Notwithstanding, in Initial Action (see below), Preston CJ indicated that it is reasonable to infer that "environmental planning grounds" as stated in under cl4.6(3)(b), means grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s1.3 of the EP&A Act – see Section 5.2.2.

The 4th 'test' is required to be demonstrated under cl4.6(3)(a) - see Section

5.1. The 5th 'test' is analogous to cl4.6(4)(a) – see Section 5.3.

4.3 Wehbe v Pittwater Council [2007]

The 5-part test under Winten was later supplemented by the Judgment in *Wehbe v Pittwater Council [2007] LEC 827* ("Wehbe") where Chief Justice Preston expressed the view that there are 5 different ways in which an objection to a development standard may be assessed as being well founded and that approval of the objection may be consistent with the aims of SEPP 1. These included:

1. Notwithstanding the non-compliance, is the proposal consistent with the relevant environmental or planning objectives?
2. Is the underlying objective or purpose of the development standard not relevant to the development with the consequence that compliance is unnecessary?
3. Would the underlying objective or purpose of the development standard be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable?
4. Has the development standard been virtually abandoned or destroyed by the consent authority's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable?
5. Is the zoning of the particular land unreasonable or inappropriate such that the development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and therefore, compliance with the standard would be unreasonable or unnecessary?

4.4 Four2Five Pty Ltd v Ashfield Council [2015]

In the Judgment of *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* ("Four2Five") Pearson C expanded on the earlier Judgments of Winten and Wehbe, indicating that whilst consistency with zoning and standard objectives of the development standard is addressed specifically in cl4.6(4)(a)(ii), there remains an onus of also demonstrating that there are *"sufficient environmental planning grounds"* such that compliance with the development standard is unreasonable or unnecessary. Furthermore, that the environmental planning grounds must be particular to the circumstances of the proposed development rather than public benefits that could reasonably arise from a similar development on other land.

The environmental planning grounds that support the proposed variation to the standard in this circumstance are detailed in the SEE submitted with the DA, and S5.2.2 below.

4.5 Randwick City Council v Micaul Holdings Pty Ltd [2016]

In his Judgment of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* ('Micaul') Preston CJ made it clear that development consent cannot be granted for a development that contravenes a development standard unless the consent authority:

(a) has considered a written cl 4.6 objection seeking to vary the development standard as required by cl4.6(3) of the SILEP;

(b) is satisfied that the cl4.6 objections adequately addressed the matters required to be demonstrated by cl4.6(3) (as required by cl4.6(4)(a)(i));

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

by cl4.6(4)(a)(ii).

In addition, Preston CJ elucidated that the consent authority does not have to be directly satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case – only that it be indirectly satisfied that the applicant's written request adequately addresses the matters in cl4.6(3) that compliance with the development standard is unreasonable or unnecessary.

Furthermore, Preston CJ confirmed that an established means of demonstrating that compliance with a development standard is unreasonable or unnecessary is to establish that a development would not cause environmental harm and is consistent with the objectives of the development standard.

4.6 Moskovich v Waverley Council [2016]

Providing further guidance on the interpretation of cl4.6 compared to its predecessor SEPP 1, the Judgment in *Moskovich v Waverley Council [2016] NSWLEC 1015* ('Moskovich') outlines that cl4.6(3)(a) is similar to cl 6 of SEPP 1 and the ways of establishing that contravention of a development standard is well founded expressed in Wehbe (e.g. "achieving" the objectives of the development standard) are equally appropriate for the consideration of cl4.6(3)(a).

However, cl4.6(4)(a)(ii) has different wording to SEPP 1 and requires the consent authority to be satisfied that the proposed development is in the public interest because it is "consistent" with objectives of the development standard and objectives for the zone rather than "achieving" the objectives. Consequently, the considerations of cl4.6(3)(a) and cl4.6(4)(a)(ii) are different with the achievement test being more onerous and requiring justification in 'ways' such as those expressed in Wehbe.

Notwithstanding the Judgments in Winten and Wehbe related to variation requests under SEPP 1, the methodology and reasoning expressed in those Judgments continues to be the accepted basis upon which to assess variation requests pursuant to cl 4.6.

4.7 Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ('Initial Action'), Preston CJ indicated that cl4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and the objectives of the development standard.

In addition, Preston CJ ruled that cl4.6 does not directly or indirectly establish a "test" that a development which contravenes a development standard results in a "*better environmental planning outcome*" relative to a development that complies with the development standard. In fact, there is no provision in SILEP that gives substantive effect to the objectives of cl4.6 stated in cl4.6(1)(a) and (b). That is to say, neither cl4.6(3) nor

(4) expressly or impliedly requires that development that contravenes a development standard "*achieve better outcomes for and from development*".

Furthermore, Preston CJ ruled that it is incorrect to hold that the lack of adverse amenity impacts on adjoining properties is not a sufficient ground justifying the development contravening the development standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.

4.8 Summary of the Case Law Methodology and Tests

The collective methodology and tests described above has been applied to the assessment at Section 5 and can be summarised in the following steps:

1. Step 1 - Is the planning control that the applicant seeks to contravene a development standard?
2. Step 2 - Is the consent authority satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required by cl 4.6(3) by demonstrating that:
   (a) compliance is unreasonable or unnecessary; and
   (b) there are sufficient environmental planning grounds to justify contravening the development standard?
3. Step 3 - Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out?
4. Step 4 - Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Step 5 - Where the consent authority is the Court, has the Court considered the matters in cl4.6(5) when exercising the power to grant development consent for development that contravenes a development standard.

5.1 Step 1 - Is the planning control a development standard?

This question is the 1st 'test' in Winten. The HOB control in cl4.3 of the WLEP 2011 is a development standard, defined in Section 1.4 of the EP&A Act as follows:

> *"**development standards** means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:*
>
> *…*
>
> *(d) the cubic content or floor space of a building"*

The development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted pursuant to cl4.6.

5.2 Step 2 – Pursuant to cl4.6(4)(a), is the consent authority satisfied that the written request adequately addresses the matters in Clause 4.6(3)?

5.2.1 Clause 4.6(3)(a) – compliance is unreasonable or unnecessary in the circumstances of the case

To demonstrate that compliance with the height of buildings development standard is unreasonable or unnecessary, this written request relies upon:

1. The 2nd 'test' in Winten and the 1st and 2nd 'ways' in Wehbe – i.e. the underlying objectives or purpose of the standard is satisfied or the objectives are not relevant; and
2. The 4th 'way' in Wehbe - the development standard has been virtually abandoned or destroyed by the consent authority's own actions.

These aspects are discussed in the following paragraphs.

The underlying objectives or purpose of the standard

Clause 4.3(1) of the LEP states the objectives of the Height development standard as follows:

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

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

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

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

Comments

Objective (a) is to ensure building is compatible with height and scale surrounding and nearby development.

The proposed is considered to achieve this objective as the upper level has increased setbacks from the boundaries, creating a significant step and making the upper level recessive and non intrusive to most vantage points. The building does not draw attention to itself beyond that reasonably expected of a corner site within a neighbourhood precinct. It reads as a two storey building at the street frontages, consistent with the existing and likely future scale of buildings as defined by the 8.5m height controls. It should be noted that most of the sites in the centre are generally flat and hence will achieve closer compliance to standard albeit a 3rd storey with recessed 3rd level is feasible and generally supported by Council in other similarly zoned land. The development is respectful of its locational context and surrounding development and hence the non compliant element is benign.

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

The design and layout of the building address each of these elements and achieves a development that respects the adjoining and adjacent development. The additional height does not create unreasonable adverse effects. There is no view impact. The windows in the upper level facing east are restricted to bedroom windows only and are setback 5m from the boundary. These windows look over and not into adjoining properties. Shadow diagrams similarly confirm that no living areas or private open space areas of adjoining properties are unreasonably overshadowed by the non compliant elements.

Objective (c) is to to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments.

The subject site is located within a highly urbanized environment. There will be no impact on the coastal or bush environment. The proposal is neutral in terms of this objective.

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

The proposal is located on a busy intersection within a designated neighbourhood centre. The development will be visible from the surrounding street system. The proposal is a fresh, contemporary building that will rejuvenate the small neighbourhood centre. The addition of residential accommodation on this site is considered a positive outcome in terms of passive surveillance of both street frontages and activation of the centre through more residential activity during and outside of business hours. The external appearance of the new development is modern, varied and interesting. The palette of materials, colors and finishes , together with the strong podium and recessed upper level ensure that the visual impact when viewed from surrounding public places is not intrusive.

5.2.2 Clause 4.6(3)(b) – There are sufficient environmental planning grounds to justify contravening the development standard

As set out in Four2Five, when a development standard is sought to be varied, there is an onus on the Applicant to demonstrate that there are "*sufficient environmental planning grounds"* such that compliance with the development standard is unreasonable or

unnecessary and these environmental planning grounds must be particular to the circumstances of the proposed development rather than grounds that could reasonably apply a similar development on any other land.

The site-specific environmental planning grounds that support the proposed variation to the height of building development standard in this circumstance include the existing and valid Deed of Agreement between Council and the property owners that affords redevelopment of the subject site a credit of floor area addition over and above any planning policies and controls that apply to the site in compensation for the development potential excised by the dedication of land to Council. This is a site-specific Deed that only applies to this land and can only reasonably to the development of this land under current planning provisions. The result of the application of additional floor area to the development of the site is one additional floor level and three (3), good sized two- and three-bedroom apartments.

The available and assumed credit has not been fully maximized by the proposal, and the applicant has been conscious to still respect the amenity of the neighbourhood with a limited upper level.

It should also be stressed that the dedication of land for a public purpose including carparking and streetscape improvements need to be considered as part of the benefits and environmental planning grounds that justify the variation in the circumstances.

In addition, Preston CJ clarified in *Micaul* and *Initial Action*, that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts.

As outlined in Section 5.2.1, there is considered to be a lack of adverse amenity impacts arising from the proposal as it will not result in adverse overshadowing, overlooking, acoustic impacts or lack of parking for the development.

The height variation along Alfred Street varies between 1.27m – 2.0m and is well setback from the building alignment below making the upper level and variation not readily apparent or offensive on the streetscape when viewed from surrounding road network or public places.

In summary, the contravention of the HOB development standard is considered to have positive social and economic outcomes for the Site and the locality and positive residential amenity outcomes for existing residences in the immediate area, whilst minimising adverse amenity impacts to an acceptable level.

5.3 Step 3 - Pursuant to cl4.6(4)(b), is the consent authority satisfied that the development will be in the public interest because it is consistent with the objectives of the development standard and the objectives of the zone?

As outlined in Section 5.2.1, the Proposal achieves and is therefore consistent with the relevant objectives of the height of buildings development standard.

However, the consent authority must also be satisfied that the development will be consistent with the objectives of the B1 Neighbourhood Centre Zone which are expressed in the Land Use Table to cl2.3 of the LEP as follows:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- *To ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians.*
- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*

The Proposal is consistent with the objectives of the B1 Zone for the following reasons:

The first objective is to provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood. The development includes 3 retail outlets and 2 commercial premises. Each is sized to

focus on small community services and the needs of locals. The objective is achieved.

The second objective is to ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians. The proposal seeks to maintain and improve the activation of the corner of the Narraweena Neighbourhood Centre. Both street frontages have active frontages, improved pedestrian access is provided (including disabled access to the ground floor premises), a continuous awning is to be provided along each street frontage for the comfort of pedestrians, street trees are to be retained, the upper level units will provide passive surveillance of both street frontages thereby achieving CPTED of the area. The objective is achieved.

The third objective is minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses. The design, layout, materials and finishes of the building have taken into account the adjoining and adjacent landuses, addressing each element of amenity – privacy, overlooking, overshadowing to a satisfactory level.

Accordingly, it follows that the proposed development is in the public interest because it is consistent with the objectives of the HOB development standard under the WLEP 2011 and the objectives of the B1 Neighbourhood Centre Zone under the WLEP 2011.

5.4 Step 4 - Clause 4.6(4)(b) – The Concurrence of the Secretary has been obtained

On 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice ('the Notice') under cl64 of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) providing that consent authorities may assume the Secretary's concurrence for exceptions to development standards for applications made under cl4.6 of the SILEP or SEPP 1 subject to certain conditions.

As WLEP 2011 adopts cl4.6 of the SILEP and the conditions of the Notice are not relevant in this instance, the consent authority for the Proposal may assume concurrence in respect of the variation requested to the HOB development standard under the LEP.

In addition, the Court has power to grant development consent to the proposed development even though it contravenes the HOB development standard, without obtaining or assuming the concurrence of the Secretary by reason of s39(6) of the *Land and Environment Court Act 1979* (the Court Act).

5.5 Step 5 - Clause 4.6(5) - Concurrence Considerations

In the event that concurrence cannot be assumed pursuant to the Notice, cl4.6(5) of the LEP provides that in deciding whether to grant concurrence, the Secretary must consider:

> *(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
>
> *(b) the public benefit of maintaining the development standard, and*
>
> *(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Furthermore, in *Initial Action*, Preston CJ clarified that, notwithstanding the Court's

powers under s39(6) of the Court Act, the Court should still consider the matters in cl4.6(5) when exercising the power to grant development consent for development that contravenes a development standard:

Accordingly, the proposed contravention of the HOB development standard has been considered in light of cl4.6(5) as follows:

- The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed development for this particular Site and this design is not directly transferrable to any other site in the immediate locality, wider region or the State and the scale of the proposed development does not trigger any requirement for a higher level of assessment;

- As indicated in Section 5.3, the proposed contravention of the development standard is considered to be in the public interest because it is consistent with the objectives of the zone and the objectives of the development standard. In this regard it should be noted that the dedication of land for public purpose including carparking and streetscape improvements need to be considered as part of the benefits.

The proposed development contravenes the Height of Building development standard under cl4.3 of Warringah LEP 2011.

The height of building control under cl4.3 of the WLEP is a development standard and is not excluded from the application of cl4.6.

This written request to vary the development standard has been prepared in accordance with cl4.6(3) of the LEP and demonstrates that strict compliance with the development standard is unreasonable and unnecessary for the following reasons:

- Notwithstanding the contravention of the development standard, the proposed development is consistent with the relevant objectives of the development standard pursuant to cl4.3 of the WLEP 2011 and is consistent with the relevant objectives of the B1 Neighbourhood Centre Zone and therefore, the proposed development is in the public interest;
- Notwithstanding the contravention of the development standard, the proposed shop top housing development will not result in adverse environmental harm in that the amenity of neighbouring properties will be reasonably maintained and there will be no adverse impacts on the landscape or scenic amenity of the locality;
- The Narraweena residents of the local area have benefitted from the original terms of the Deed of Agreement for a number of years as the on-street parking has been in place and available for many years and the property owner has not taken up their part of the Deed - the bonus floor area – till now.
- There are direct social and economic benefits for the property owner and the local residents with new shops replacing old, tired premises, activation of the street frontages, an attractive contemporary development, increased passive surveillance

and the opportunity for small businesses in the area to occupy new, fresh and modern premises.

In addition, this written request outlines sufficient environmental planning grounds to justify the contravention of the HOB development standard including:

- a lack of adverse environmental amenity impacts;
- the sustainable management of the Site's redevelopment by not seeking to maximise the amount of floor area credit and providing a variety of unit types and sizes at the upper levels and allowing for generous setbacks;
- constructing a new contemporary building on a corner site that will enhance the built form and appearance of both streetscapes; and
- the provision of high quality residential living within the small centre which will increase surveillance and perceived safety in the area.
- provision of basement parking for residents and commercial premises – not seeking to consume on-street areas for the development (except as existing retail credits).
- Allowing for streetscape improvement works and on street carparking to benefit the general public.

Accordingly, this written request can be relied upon by the consent authority in accordance with cl4.6 of the LEP to grant development consent to the proposed development notwithstanding the contravention of the development standard.

Joe Vescio

6.11.18