

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1985
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Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot A DP 412396, 27 Waine Street FRESHWATER NSW 2096
Proposed Development:	Demolition works and construction of a residential flat building.
Zoning:	Warringah LEP2011 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Pyco At Greenslopes Pty Ltd
Applicant:	Pyco At Greenslopes Pty Ltd

Application Lodged:	25/11/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	21/07/2023 to 04/08/2023
Advertised:	21/07/2023
Submissions Received:	53
Clause 4.6 Variation:	4.3 Height of buildings: 15.1%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 3,985,000.00
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### EXECUTIVE SUMMARY

This development application seeks consent for the demolition of existing structures and construction of a four (4) storey residential flat building with basement carparking.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) for determination as the building is subject to *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* (SEPP 65), and due to the proposal breaching the maximum building height development standard of 11 metres by more than 10% (a 12.67 metres building height is proposed or 15.1% variation).

During the notification period, fifty-three (53) objections were received in response to the proposal. The submissions identified concerns relating to bulk and scale of the building, suitability of site, inadequacy of landscaped open space, solar access, privacy impacts, increased traffic, excavation, construction impacts and built form non-compliances. The issues identified within the submissions have been addressed individually within the report.

The height variation has been supported by a written Clause 4.6 variation request. It argues that despite the breach of the WLEP 2011's maximum building height. Council has considered the applicant's written request under Clause 4.6 WLEP 2011 and is not satisfied that the environmental planning grounds advanced by the application are sufficient environmental planning grounds to warrant a departure from the development standard.

Council's Design and Sustainability Advisory Panel (DSAP) reviewed the proposal at lodgement and recommended design amendments. In response to the issues raised by DSAP, the Applicant sought to amend and refine the proposal to directly address the matters raised by DSAP. It is considered that the development as amended adequately resolves the issues identified by DSAP. Notwithstanding this, as a result of the non-compliance with the built form controls and the resulting bulk and scale, the proposal is an overdevelopment of the site.

This report concludes with a recommendation that the NBLPP **refuse** the development application.

## **PROPOSED DEVELOPMENT IN DETAIL**

The application seeks consent for demolitions works and construction of a four (4) storey residential flat building and basement carparking.

Specifically, the proposal consists of:

- The demolition of the existing dwelling house and associated structures.
- The construction of a four storey residential flat building containing;
  - 4 x three - bedroom apartments
  - Single level basement containing parking 9 vehicles.
- Associated landscaping; and
- Site preparation works.

## **AMENDED PLANS**

Following a preliminary assessment of the application Council wrote to the applicant on 16 March 2023 outlining concerns that would not allow for Council to support the application in its current form.

The issues raised included:

- Building Height non-compliance
- Number of storeys
- Privacy
- Landscaping
- Built form non-compliance
- SEPP 65 non-compliance (Universal design, setbacks)
- Outstanding internal referral (Landscaping)
- Design and Sustainability Advisory Panel comments

The applicant lodged amended plans and additional information to address concerns on 11 July 2023.

The amended plans incorporated the following changes:

- Reduction of dwellings from 6 to 4.
- Basement reduction
- Internal alterations/reconfiguration level ground - level 3
- Communal open space to level 3
- Window alterations
- Landscaping alterations

On 21 July 2023, the application was re-notified and advertised to neighbouring properties in accordance with the Northern Beaches Community Participation Plan.

## **ASSESSMENT INTRODUCTION**

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

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

## **SUMMARY OF ASSESSMENT ISSUES**

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings

Warringah Local Environmental Plan 2011 - 6.2 Earthworks

Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land

Warringah Development Control Plan - B2 Number of Storeys

Warringah Development Control Plan - B3 Side Boundary Envelope

Warringah Development Control Plan - B7 Front Boundary Setbacks

Warringah Development Control Plan - C3 Parking Facilities

Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

Warringah Development Control Plan - D6 Access to Sunlight

Warringah Development Control Plan - D8 Privacy

Warringah Development Control Plan - D9 Building Bulk

## SITE DESCRIPTION

<b>Property Description:</b>	Lot A DP 412396 , 27 Waine Street FRESHWATER NSW 2096
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on a bend along Waine Street, Freshwater.</p> <p>The site is irregular in shape with a northern frontage of 18.14 metres, western frontage of 27.6 metres and southern frontage of 16.39 metres along Waine Street and a depth of 35 metres. The site has a surveyed area of 556.4m<sup>2</sup>.</p> <p>The site is located within the R3 Medium Density zone and accommodates a dwelling house.</p> <p>The site has a cross-fall of approximately 4 metres from the northern frontage to the southern frontage.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by residential development, dwelling houses to the north-east and residential flat buildings to the west, east and south.</p>

Map:



## SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

**PLM2022/0026** - Demolition Works and construction of a 4 storey residential flat building (6 Units) with basement carparking (6 cars). 7 April 2022

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters are capable of being addressed via a recommended condition of consent, in the event that the development is approved.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to building height, stormwater management, landscaped open space and amenity (privacy, solar access)</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter is capable of being addressed via a recommended condition of consent, in the event that the development is approved.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter is capable of being addressed via a recommended condition of consent, in the event that the development is approved.</p>

Section 4.15 Matters for Consideration	Comments
	<p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter is capable of being addressed via a recommended condition of consent, in the event that the development is approved.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the WDCP and ADG and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 21/07/2023 to 04/08/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and

Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 53 submission/s from:

<b>Name:</b>	<b>Address:</b>
Mr James Craig Samuel	12 A Wewak Place ALLAMBIE HEIGHTS NSW 2100
Ms Ailish Roseanne Robinson	9 / 19 - 23 Waine Street FRESHWATER NSW 2096
Samantha Jane Myers	1 / 7 Waine Street FRESHWATER NSW 2096
Mr Shaun Henry Alexander Sursok	9 / 17 Wheeler Parade DEE WHY NSW 2099
Mr Dzianis Lisich	9 / 7 Waine Street FRESHWATER NSW 2096
Christopher Fenwick	2 / 13 Waine Street FRESHWATER NSW 2096
Philip Grandison Hackston Brown	10 / 29 - 33 Waine Street FRESHWATER NSW 2096
Mr Neil Andrew Taylor	1 / 40 Waine Street FRESHWATER NSW 2096
Mrs Julie Reed	56 Waine Street FRESHWATER NSW 2096
Mr Christiaan Moynne Silva	23 / 19 - 23 Waine Street FRESHWATER NSW 2096
Miss Tania Katrina Marlin	23 / 19 - 23 Waine Street FRESHWATER NSW 2096
Mrs Niamh Mary Hutchison	58 Waine Street FRESHWATER NSW 2096
Ms Kristy Reed	56 Waine Street FRESHWATER NSW 2096
Mr Simon Peter Pratley	10 / 13 Waine Street FRESHWATER NSW 2096
Ms Kathryn Louise Werner	63 Whistler Street MANLY NSW 2095
Molly Goudie	20 / 32 Waine Street FRESHWATER NSW 2096
Mr Trevor Douglas Auld	17 / 29 - 33 Waine Street FRESHWATER NSW 2096
Mr Poh Koi So	5 / 38 Waine Street FRESHWATER NSW 2096
Nicholas James Graham	2 / 25 Waine Street FRESHWATER NSW 2096
Mr Graham Stephen Smith	19 / 32 Waine Street FRESHWATER NSW 2096
Mr Darren Bramwell	48 Corrie Road NORTH MANLY NSW 2100
Peter Sydney Culligan	22 A Innes Road MANLY VALE NSW 2093
Alessandra Dario La Cava	10 / 19 - 23 Waine Street FRESHWATER NSW 2096
Maurizio Flavio Tedesco	C/- The Novak Agency Po Box 1665 DEE WHY NSW 2099
Mr Ronald John Phillips	8 / 25 Waine Street FRESHWATER NSW 2096
Mrs Simona Rybar	6 / 32 Waine Street FRESHWATER NSW 2096
Mr Miroslav Rybar	4 / 85 West Esplanade MANLY NSW 2095
Amelia Minna Tanner	12 / 25 Waine Street FRESHWATER NSW 2096
Ms Simone Mansfield	4 / 29 - 33 Waine Street FRESHWATER NSW 2096
Henk Paulsen	20 / 29 - 33 Waine Street FRESHWATER NSW 2096
Mr John Vincent Ruszczyk	52 Waine Street FRESHWATER NSW 2096
Mark Thomas Whitton	9 / 38 Waine Street FRESHWATER NSW 2096
Karen Smith	Address Unknown
Ms Keli Jane Kwanten	5 / 25 Waine Street FRESHWATER NSW 2096

<b>Name:</b>	<b>Address:</b>
Mr Johann Schmelzer	Suite 1 470 Sydney Road BALGOWLAH NSW 2093
Ms Edwina Maida Shenton Annand	4 / 25 Waine Street FRESHWATER NSW 2096
Mr Michael James Brown	1511 Tugalong Road CANYONLEIGH NSW 2577
Ms Katherine Margaret Knipe Andrew Peak	44 Waine Street FRESHWATER NSW 2096
Mrs Jacqueline Mary Ross	35 Waine Street FRESHWATER NSW 2096
Mr Paul Ewan Metcalfe	35 Waine Street FRESHWATER NSW 2096
Eve Marinina	8 / 42 Waine Street FRESHWATER NSW 2096
Ann Elizabeth Sharp	77 Brighton Street CURL CURL NSW 2096
Withheld	FRESHWATER NSW 2096
Councillor Kristyn Glanville (Councillor)	Northern Beaches Council 725 Pittwater Road DEE WHY NSW 2099
Ms Jessica Claire Brown	5 / 26 Waine Street FRESHWATER NSW 2096
Withheld	FRESHWATER NSW 2096
Joanne Susan Wear	22 / 19 - 23 Waine Street FRESHWATER NSW 2096
Ms Rhonda Anne Morley	14 / 29 - 33 Waine Street FRESHWATER NSW 2096
Dylan John Cashman	3 / 25 Waine Street FRESHWATER NSW 2096
Jan Maree McKenna	C/- LJ Hooker Dee Why PO Box 1905 DEE WHY NSW 2099
Michael Paul Blount	3 / 32 Waine Street FRESHWATER NSW 2096
Gwenda Joan Davies	15 / 15 Kooloorra Avenue FRESHWATER NSW 2096
Lucy Doolan	7 / 25 Waine Street FRESHWATER NSW 2096

The following issues were raised in the submissions:

- **Building Height non-compliance**
- **Bulk and Scale/ Overdevelopment**
- **Traffic and safety**
- **Solar Access**
- **Privacy**
- **Outlook**
- **Traffic/ Access**
- **Parking**
- **Excavation/Construction impacts**
- **Tree retention**
- **Built-form non-compliance**
- **Wildlife**
- **Property value**
- **Increase density**
- **Stormwater management**
- **Legal options**

The above issues are addressed as follows:



- **Building Height non-compliance**

The submissions raised concerns with the height of the proposed development.

Comment:

The application proposed a maximum height of 12.67 metres, representing of a 15.1% departure from the 11 metres maximum building control. The proposed development is not supported and recommended for refusal due to the non-compliance with the built form controls and resulting scale of the building. The matter of non-compliance with the Height of Buildings Development Standard is addressed in detail elsewhere in this report (refer to Clause 4.6 Exceptions to Development Standards under the WLEP 2011 section of this report).

- **Bulk and Scale/Overdevelopment**

Concern is raised in regard to the overall bulk of the residential flat building.

Comment:

The bulk and scale of the residential flat building is unsatisfactory given the size and constraints of the site. The proposed built form non-compliance and resultant bulk and scale are inappropriate in this residential context and does not satisfy the requirements and objectives of the WLEP and WDCP 2011.

- **Traffic and Safety**

Concern is raised in regard to traffic and potential dangers in regards to pedestrian safety, with residents noting the existing traffic issues which currently occur on the street.

Comment:

A traffic report was lodged as part of this application and reviewed by Council Traffic and Development Engineers. In summary, the proposed development will allow for the safe pedestrian and vehicular access during construction and future use, subject to conditions of consent if the application is to be approved. This matter does not warrant the refusal of the application.

- **Solar Access**

The submissions raised concerns around the shadowing impacts of the proposed development.

Comment:

The revised shadow diagrams, detail the shadowing impacts upon No. 25 Waine Street. A detailed assessment has been undertaken against the solar access provisions of SEPP 65 within this report. In summary, the development does not unreasonably overshadow adjoining properties living room windows and private open space of adjoining properties. The proposal complies with the requisite provisions of SEPP 65. This matter does not warrant the refusal of the application.

- **Outlook**

The submissions raised concerns that proposal results in an unacceptable visual impact, which detracts from the southerly outlook obtained from adjoining properties.

Comment:

The submission raises concern that the proposed development would disrupt existing views through the subject site. Any redevelopment of this site would compromise the outlook over the subject site. Nonetheless, this has a minimal impact on the adjacent properties to the south. The affected outlook resulting from the proposed development is best described as an aspect over adjoining properties. Consequently, altering the design isn't considered reasonable, given that the buildings largely is of a reasonable bulk and scale, effectively mitigating any undue visual impacts. This matter does not warrant the refusal of the application.

- **Privacy**

Concern was raised about privacy impacts (acoustic and visual) from the proposed building including the eastern side windows and level 3 communal open space.

Comment:

A detailed assessment has been undertaken against the provisions of SEPP 65 within this report. In summary, the proposal generally complies with the relevant provisions of SEPP 65 where reasonable and adequate privacy is retained, subject to conditions if the application is to be approved.

- **Parking**

Concern was raised with regard to the number of parking proposed on site.

Comment:

The proposed development achieves compliance with Part C3 of the WDCP (Parking Facilities) with regard to minimum parking requirements. This matter does not warrant the refusal of the application.

- **Excavation/Construction impacts**

Concern was raised in regard to the extent of the proposed basement and the potential impacts from excavation.

Comment:

Significant development of any site will undoubtedly cause disruption to adjoining properties. In order to reduce the potential disruption, standard conditions could be included as part of any recommendation for approval to ensure compliance with the relevant Australia standards and to allow for respite for neighbouring properties by imposing set operation/construction hours. In relation to excavation specifically this matters have been considered against Clause 6.2 (Earthworks) and 6.4 (Development on sloping land) of the WLEP 2011. In summary, the proposal is consistent with the relevant underlying objectives of each of these clauses, subject to recommended conditions. Further, the recommendations proposed under the Geotechnical report (prepared by Capital Engineering Consultants dated 15 August 2022) may be imposed.

Further, dilapidation reports pre and post construction may be conditioned if the application is to be approved.

- **Tree retention**

The submissions raised concern with the proposed tree removal on site.

Comment:

The proposal seeks to remove a number of tree on site and to allow for the orderly development of the subject site. The removal of the existing trees and proposed replanting is supported by Council's Landscape Officer.

- **Built-form non-compliance**

Concern is raised in regard to general non-compliance with controls under the WLEP 2011 and SEPP 65.

Comment:

This matter is addressed in detail elsewhere within this report (refer to the respective assessments in relation to SEPP 65 and WDCP 2011 section of this report). With specific regard to the WDCP 2011, Clause 4.15(3A) of the EP&A Act requires Council to be flexible in the application of DCP provisions and allow reasonable alternative solutions that achieve the objects of those standards dealing with that aspect of the development. As such, where the proposal does not achieve strict compliance with an aspect of the DCP, an assessment of the proposal against the objectives of the control has been undertaken. Non-compliance with the landscaped open space control and building envelope under the WDCP 2011 are listed as reasons for refusal.

- **Wildlife**

Concern is raised in regards to the potential impact of the development on threatened species and general wildlife.

Comment:

The subject site is not as an identified area of significance for any threatened species. As such, additional information to address concerns surrounding biodiversity is not required. To offset the loss of existing trees on site, new tree planting is proposed and may be conditioned to mitigate the loss of existing trees.

- **Property value**

Concern is raised that the development would have an adverse impact on neighbouring property value.

Comment:

The issue of property value is not one which can be considered under the provisions of Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*. This issue does not warrant the refusal of the application.

- **Increased density**

The submissions raised concerns around the number of new apartments proposed.

Comment:

The proposed development is zoned R3 Medium Density Residential and as such residential flat buildings are permissible on the site. Detailed discussion regarding density is found under the ADG section of this report.

- **Stormwater management**

The submissions raised concerns with the management of stormwater.

Comment:

The application was referred to Council's Development Engineers for comment in regard to stormwater management. Suitable conditions have been recommended to ensure adequate stormwater management for the residential flat building and adjoining properties if the application is to be approved.

- **Legal options**

A submission requests that Council provide access to potential legal officers or organisations if the application is approved to help contest the approval of the application.

Comment:

The application is referred to the NBLPP for determination. The provision of such service requested in the submission is both not within the wider public interest or with Council's civic obligations conferred by the *Local Government Act, 1993*

## REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	<p><b><i>Supported, without conditions</i></b></p> <p>Following the lodgment of the development application, the proposal was referred to DSAP, who provided the following comments:</p> <p><b><i>General</i></b></p> <p><i>The proposal has non compliances in building height, number of storeys, side boundary envelope, side setbacks, front setbacks, landscaped open space, deep soil, and ADG separation to the adjoining site.</i></p> <p><i>The Panel's position remains that any non-compliance with planning controls should only be considered where there is:</i></p> <ul style="list-style-type: none"> <li>• <i>a demonstrable improvement in amenity within the proposal, (overshadowing, privacy, access to rooftop open space etc);</i></li> </ul>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li><i>reduced impact on adjoining sites (either existing or in relation to future development potential);</i></li> <li><i>contributions to the public domain or other public benefits (affordability, environmental performance).</i></li> </ul> <p><i>The proposal does not justify the non-compliances in terms delivering improved outcomes in any of the three areas stated above.</i></p> <p><i>The Panel is of the view that as a consequence of the extent of non-compliances there is a cumulative impact resulting in overdevelopment. In particular, the significant landscape noncompliance resulting from the size of the building footprint is fundamental. The reduction of the building envelope and dwelling numbers would also enable the basement excavation to be reduced in key deep soil areas.</i></p> <p><b>Strategic context, urban context: surrounding area character</b>  <i>The urban context is adjacent to an R2 zone to the north and is in an R3 zone with generally 3 storey flat buildings, although the adjoining site has a 4-storey flat building of which the eaves heights are in approximate alignment with the proposed development.</i></p> <p><i>The Panel notes that as a curving ‘corner’ allotment on Waine Street which has a wide road reserve, a variation to the setback control along this boundary (or part thereof) can be justified in terms of the surrounding area character test.</i></p> <p><i>In terms of scale transition to the R2 zone, the northern built form which is 4 storeys high and non-compliant is sited so that it has an effective 3 storey scale when viewed from Waines Street.</i></p> <p><i>The southern frontage is more problematic as the building is effectively 5 storeys, even though the built form is steeped and has a lesser setback (4m) than the prevailing frontage adjacent (6.5m).</i></p> <p><u><b>Recommendations</b></u></p> <ol style="list-style-type: none"> <li><i>Notwithstanding the northern frontage has an effective 3 storey scale when viewed from Waines Street, the landscaping/tree canopy in the banked setback zone will need to be designed to protect and enhance the visual quality of the streetscape.</i></li> <li><i>The southern setback should be required to be compliant at 6.5m or the built form reduced by 1 storey to meet the surrounding area character test.</i></li> </ol> <p><b>Planner Comment:</b>  The height has been reduced from five storeys to four storeys on the southern side of the development. The setback to the level 1-3 is maintained at 4 metres. The applicant has complied with the Panel's recommendation in this regard.</p>

Internal Referral Body	Comments
	<p><b>Scale, built form and articulation</b></p> <p><i>The flat roof built form has the potential to dominate its surroundings where the existing built form is generally pitched roofs. This visual impact is alleviated by stepping the built form with the topography.</i></p> <p><i>The height non compliances result in minimal detrimental overshadowing impacts in comparison to the complying reference scheme and in themselves are not a major concern to the Panel in terms of amenity impacts.</i></p> <p><i>Key issues are</i></p> <ul style="list-style-type: none"> <li>· <i>The scale of the building footprint has resulted in a non-compliant landscaped open space and in particular the ability of the landscape to accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants both in terms of private open space and communal space.</i></li> <li>· <i>Concern about the visual impact of the built form in the south east corner of the site where the building reads as 5 storeys over the carpark entrance particularly when viewed obliquely with the 4 storeys of blank masonry wall on the east elevation. This portion of wall projects forward of the street frontage with a reduced (non-compliant 4m) setback. (The adjacent No.25, though 4 storeys is setback and compliant at 6.5m and does not have an excavated car park entry.)</i></li> </ul> <p><u><b>Recommendations</b></u></p> <p>3. <i>Reduce the height in storeys from five to four on the southern street frontage or reduce the building footprint by increasing the building setback to 6.5m. This will enable opportunities for a rooftop communal open space to compensate for the non-compliant landscaped open area.</i></p> <p><b>Planner Comment:</b></p> <p>The height has been reduced from five storeys to four storeys on the southern side of the development. This area has been replaced by <b>communal</b> open space (59m<sup>2</sup>). The applicant has complied with the recommendation of the Panel in this regard.</p> <p><b>Access, vehicular movement and car parking</b></p> <p><i>The Panel notes that stair access to carparking is not provided and in the event of lift failure the only access is via the Bin Room after exiting the property.</i></p> <p><u><b>Recommendations</b></u></p> <p>4. <i>Provide direct stair access to the car park.</i></p> <p><b>Planner Comment:</b></p> <p>Direct access to the building foyer is provided from the parking basement. The applicant has complied with the recommendation of</p>

Internal Referral Body	Comments
	<p>the Panel in this regard.</p> <p><b>Landscape</b>  <i>The Panel notes the landscaped area is significantly non compliant.</i></p> <p><i>All site trees are proposed to be removed significantly reducing the existing canopy cover.</i></p> <p><i>The Panel were very concerned that a endangered tree, The Port Jackson fig Ficus rubiginosa on the sites NW corner is scheduled to be removed due to proximity to the proposed basement. The Panel is yet to review Councils tree officers report, however this tree should be preserved and maintained in the current site. The reduction of one dwelling would reduce the requirement for basement volume in the north west corner.</i></p> <p><i>The private open space between Units G02 and G03 is not separated by a landscape planter buffer and relies on fencing for privacy separation.</i></p> <p><u><b>Recommendations</b></u>  5. <i>Reduce the basement footprint to enable retention of the existing Ficus rubiginosa</i>  6. <i>Increase the landscaped area by providing a significant planter (10m3 - Refer ADG Table 1.5.4) above the basement capable of supporting a small tree to provide increased canopy cover and a landscaped buffer between private open spaces of G02 and G03.</i></p> <p><b>Planner Comment:</b>  The issue of the potential retention of the Port Jackson Fig has been explored by Council's Landscape officer and applicant's Arborist consultant. Both the Landscape Officer and the Applicants arborist have determined that the fig cannot be retained long term due to its overall existing condition being in poor health. New plantings would be required in the event that the development is approved to offset the loss of this tree and to provide a landscape buffer north facing private open spaces.</p> <p><b>Amenity</b>  <i>The reduced landscape area does not provide adequate space for outdoor recreation, either private or communal.</i></p> <p><i>Stair access to the carpark is not provided so that in the event of lift failure access to the apartment lobby is obtained by exiting the property which results in safety issues at night and exposure to weather.</i></p> <p><i>The eastern façade has habitable windows less than 6m from the boundary that face habitable rooms in No.25 Waine Street with screening devices and so is non-compliant with the ADG.</i></p>

Internal Referral Body	Comments
	<p><i>The adaptable dwelling does not have a bedroom at the living room level.</i></p> <p><i>External bathrooms and laundries do not all have windows</i></p> <p><b><i>Recommendations</i></b></p> <p><i>7. Provide landscaped communal open space to rooftop on Level 3 to the southern frontage to compensate for reduced landscaped area in addition to increased landscaping required in Recommendations 5 &amp; 6). This will also reduce the scale of the built form to the southern frontage in addition to changes required in the Recommendation No. 3</i></p> <p><i>8. Provide onsite, secure, sheltered stair access to the carpark</i></p> <p><i>9. Provide natural light and ventilation to all bathrooms and kitchens adjacent to exterior</i></p> <p><i>10. Ensure all window openings are compliant with ADG separation or means to provide appropriate levels of privacy between adjoining dwellings.</i></p> <p><b>Planner Comment:</b></p> <ul style="list-style-type: none"> <li>• Communal open space has been provided to the rooftop of level 3.</li> <li>• As noted above, direct access to the building foyer is provided from the parking basement.</li> <li>• Natural light is maintained to all areas of each dwelling.</li> <li>• Windows along the eastern elevation which directly overlook living areas of the adjoining residential flat building have been amended to ensure acceptable privacy is maintained to the adjoining dwellings.</li> </ul> <p>The applicant has complied with the recommendation of the Panel in this regard.</p> <p><b><i>Façade treatment/Aesthetics</i></b></p> <p><i>The Panel notes that the scheme is in the early stages of development. Whilst the photographic examples of other projects allude to a certain character and palette, they are not definitive. The use of stone, solid timber and off-form concrete (that are shown in these images) is supported. Elevations need to be provided that provide confirmation.</i></p> <p><i>The blank wall on the southern end of the eastern elevation has been patterned with projecting block details. The Panel has concerns that this detailing is not enough to mitigate the scale of the 4-storey blank wall. The masonry detailing proposed would be more successful architecturally if the floor slab edges were not expressed. Further, it is likely that the detailing will result in the off-white blockwork staining due to its orientation (continuous exposure to the wet and shaded south east aspect).</i></p>



Internal Referral Body	Comments
	<p><i>Northern facades have no overhangs or eaves and large expanse of glazed wall</i></p> <p><u><b>Recommendations</b></u></p> <p>11. <i>Consider the use of less absorptive honed blockwork to minimise staining on severe exposure facades and remove the expressed slab edges, or</i></p> <p>12. <i>Consider avoiding large expanses of blank wall with window openings screened for privacy rather than relying on decorative masonry</i></p> <p>13. <i>Provide appropriate sun shading to exposed north glazed areas.</i></p> <p><b>Planner Comment:</b>  <i>Façade changes have been made as part of the amended proposal to reduce continuous wall planes.</i></p> <p><u><b>Sustainability</b></u>  <i>The Panel notes the development:</i></p> <ul style="list-style-type: none"> <li>• <i>Does not include ceiling fans in living rooms and bedrooms</i></li> <li>• <i>Proposes gas cooktops in all the kitchens</i></li> <li>• <i>Unit G01 has a poor NatHERS star rating of 4.7</i></li> </ul> <p><i>It is also noted that higher BASIX thermal performance standards will commence on 1 October 2023 will require an average 7 stars NatHERS, with no unit below 6 stars. This consistent with the National Construction Code for 2022.</i></p> <p><i>Given the levels of non-compliance the Panel would recommend that any approval be conditional on the following recommendations.</i></p> <p><u><b>Recommendations</b></u></p> <p>14. <i>Modify the design as necessary so that it achieves a minimum 6-star NatHERS for Unit G.07 while maintaining a minimum 7-star average for the development</i></p> <p>15. <i>Provide ceiling fans in bedrooms and living areas</i></p> <p>16. <i>Replace gas cooktops with electric induction cooktops</i></p> <p>17. <i>Provide PV Panels to serve common areas</i></p> <p>18. <i>Provide windows to all external bathrooms and utility rooms</i></p> <p>19. <i>Provide EV charging capability so that all spaces are 'EV ready'. e.g. the provision of a backbone cable tray and a dedicated 15A circuit within an EV Distribution Board enabling future installations of a smart EV charger and cabling to the EV Distribution Board.</i></p> <p><b>Planner Comment:</b> <i>The BASIX Certificate and conditions dictating colours and materials have been incorporated into the recommendations to ensure sustainability and a suitable colour scheme and finish for the development.</i></p> <p><b>PANEL CONCLUSION</b></p>

Internal Referral Body	Comments
	<p><i>The Panel does not support the proposal in its current form.</i></p> <p><b>PLANNER CONCLUSION:</b> In response to the comments made by DSAP, the development has been satisfactorily amended and refined to address the issues raised by DSAP and as such the proposal is acceptable in that regard.</p>
Building Assessment - Fire and Disability upgrades	<p><b><i>Supported, subject to conditions</i></b></p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p><i><u>Note:</u> The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</i></p>
Environmental Health (Industrial)	<p><b><i>Supported, subject to conditions</i></b></p> <p>Environmental Health will recommend compliance with the acoustic assessment</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to conditions</p>
Landscape Officer	<p><b><i>Supported, subject to conditions</i></b></p> <p>Council's Landscape Referral have assessed the application against the following relevant landscape controls and policies:</p> <ul style="list-style-type: none"> <li>• State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP65) under: clause 28(2) (a) (b) and (c), including Schedule 1, Principle 5: Landscape,</li> <li>• the associated Apartment Design Guide, including the objectives of control 3E Deep Soil Zones, 4O Landscape Design, 4P Planting on Structures, and</li> <li>• Warringah Local Environmental Plan (WLEP) 2011 and the following Warringah Development Control Plan (WDGP) 2011 controls (but not limited to): D1 Landscaped Open Space and Bushland Setting; E1 Preservation of Trees or Bushland Vegetation; and E2 Prescribed Vegetation</li> </ul> <p>The landscape proposal is required to satisfy Schedule 1 Design quality principles of SEPP65, including:</p> <ul style="list-style-type: none"> <li>• Principle 5: Landscape - positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood; enhances the</li> </ul>

Internal Referral Body	Comments
	<p>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; optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.</p> <p>Additionally, the objectives of the Apartment Design Guide shall be satisfied as follows: 2G Street Setback: to contribute to the landscape character; 2H Side and rear setbacks: to achieve setbacks that maximise deep soil areas and retain existing landscaping and support mature vegetation; 3C Public domain interface: as contributes to the quality and character of the streetscape; 3D Communal and public open space: to provide residential amenity; 3E Deep Soil Zone: to promote the retention and/or establishment of canopy trees to provide shade and amenity for residents, as well as achieve environmental benefits and stormwater management; 4O Landscape Design: to contribute to the setting of the property within the locality; and 4P Planting on Structures: to provide amenity, improve air quality and microclimate, and reduce direct energy use and stormwater runoff, and supplement deep soil planting.</p> <p>The following plans and reports, in accordance with Council's DA Lodgement requirements, are submitted for assessment by Landscape Referral: Updated Landscape Plans; an Arboricultural Impact Assessment; and an Addendum to the Arboricultural Impact Assessment.</p> <p>The Addendum to the Arboricultural Impact Assessment addresses the potential to retain T8 Rusty Fig, and the recommendation following further review is that this tree can't be retained and has arboricultural issues including several pockets of decay and a overall poor condition and low vitality. As recommended in the Arboricultural Impact Assessment all other existing trees within the property (T1, T2, T7 - Brushbox; T3 - Bottlebrush; and T4 Irish Strawberry) are proposed for removal based on impact of the proposed development basement layout. Two existing trees within the road reserve verge (T22 Lillypilly and T23 Paperbark) are impacted by the proposed driveway and require removal should the application be approved. Landscape referral raise no objections to removal of existing trees impacted by the proposed development, subject to tree canopy replacement within the property in deep soil areas with locally native trees, as indicated on the Landscape Plans.</p> <p>The updated Landscape Plans are a response to the site planning architectural layout including the availability of deep soil planting areas. In principle Landscape Referral raise no objections to the scheme as the Landscape Plans show buffer screening to boundaries adjoining neighbouring residential properties as well as amenity planting to soften the built form as viewed from the streetscape. The</p>

Internal Referral Body	Comments
	<p>landscape scheme provides replacement tall canopy trees within the northern boundary corners where natural deep soil is retained and otherwise small to medium sized tree planting elsewhere. It is noted that whilst numerically the requirement for deep soil under Apartment Design Guide, section 3E Deep soil zones, is satisfied, the WDCP requirement for landscape area is not satisfied and this impacts the landscape scheme to provision of small trees in the majority rather than canopy trees, and the matter of landscape area as a planning principle shall be determined by the Assessing Planning Officer.</p> <p>Should the application be approved, Landscape Referral provide conditions of consent.</p>
NECC (Development Engineering)	<p><b><i>Supported, subject to conditions</i></b></p> <p>The DRAINS model and revised stormwater/OSD plans have been reviewed and are satisfactory. No objections to the development subject to conditions.</p>
NECC (Flooding)	<p><b><i>Supported, without conditions</i></b></p> <p>The property is not identified as being flood affected.</p>
Traffic Engineer	<p><b><i>Supported, subject to conditions</i></b></p> <p>The Revised Traffic and Parking Assessment report (Revision: Final V2) prepared by CJP dated 24 June 2023 and the plans (Amended Master Set Following Council Comments) issue for DA, Revision P3, designed by FUSE Architects, dated 14/06/2023 have been reviewed by the Traffic team.</p> <p>The proposed revised development involves the demolition of the existing dwelling house on the site and the construction of a daresidential apartment building, comprising a total of 4 x three bedroom units.</p> <ul style="list-style-type: none"> <li>• Application of the Warringah DCP car parking rates (1.5 spaces per 3-bedroom dwelling, and 1 visitor space per 5 units or part of dwellings) to the amended proposal (4 three bedroom apartment) would result in a parking requirement of six (6) residential parking spaces and one (1) visitor parking space. In response, 8 residential spaces (including 1 disables/adaptable space) and 1 visitor space have been provided. Parking in excess of DCP requirement is proposed (9 spaces) to which there is no objection in this location.</li> <li>• Dimensioned plans are submitted for the parking area and confirm that all parking bays and aisles are appropriately sized.</li> <li>• The design of the accessible parking space should be in accordance with the Australian Standard AS2890.6:2009 Parking Facilities-Off Street Parking for People with Disability. Bollards shall be</li> </ul>

Internal Referral Body	Comments
	<p>provided for the disabled shared area as shown in Figure 2.2 of the Australian Standard AS2890.6:2009 Parking Facilities-Off Street Parking for People with Disability. Disabled parking space on the Architectural Plans, is provided with a clear width of 2.4m and located adjacent to a shared area of 2.4m. However, the accessible shared area is shared with the carpark circulation roadway. This should be confirmed with the accessibility consultant prior to the issue of any Occupation Certificate.</p> <ul style="list-style-type: none"> <li>• It is noted that the proposed plans detail the provision of five (5) bicycle parking spaces, satisfying Council's DCP requirements.</li> <li>• One (1) motorcycle parking space has been proposed and it is 1.2 metre by 2.5 metres; therefore, the dimensions are compliant with Australian Standard AS2890.1:2004 Off-Street Parking requirements.</li> </ul> <p>The application can therefore be supported from a traffic perspective.</p>
Waste Officer	<b><i>Supported, subject to conditions</i></b>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><b><i>Supported, subject to conditions</i></b></p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

## State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

### SEPP 65 - Design Quality of Residential Apartment Development

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment

Development (SEPP 65) stipulates that:

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

(a) the development consists of any of the following:

- (i) the erection of a new building,
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
- (iii) the conversion of an existing building, and

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and

(c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development is for the erection of a four storey residential flat 'housing' development plus basement car parking for the provisions of four self-contained dwellings.

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

As previously outlined within this report Clause 29 of the Environmental Planning and Assessment Regulation 2021 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

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

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

## **DESIGN REVIEW PANEL**

Northern Beaches Council does not have an appointed Design Review Panel. Rather, Northern Beaches Council has an appointed Design and Sustainability Advisory Panel (DSAP). Refer to the DSAP referral comments section within this report.

## **DESIGN QUALITY PRINCIPLES**

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

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

neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment:

The proposed building is not considered to fit with the landscape character of the area by virtue of the deficient landscape scheme that does not contribute to the character of the locality. The area's future desired character is set by the planning controls requiring 11 metres height and 3 storey buildings, with the proposed development being 4 stories and in excess of the planning controls. The proposal is not in character due to the excessive scale and deficient landscape scheme, along with building separation less than current ADG standards.

**Principle 2: Built Form and Scale**

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

Comment:

The proposed 4 four storey building is not consistent with the desired future character as set by the LEP and DCP planning controls. The arrangement of the building along Waine Street is not consistent with predominant building line of Waine Street as set by the existing developments.

**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 additional building height and deficient building separation results in 4 x 3 bedroom apartments within the development, that would likely not otherwise be achieved in a complying scheme. In this regard, due to the number of planning controls which are not complied with, the development is considered too dense for the site and a reduction of units will likely result should a compliant scheme be presented.

**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 design of the building allows for adequate natural cross ventilation and sunlight for the amenity and liveability of future residents and provides passive thermal design for ventilation, heating and cooling which will reduce the reliance on technology and operation costs. The application is supported by a Waste Management Plan which includes suitable details for the disposal and recycling of demolition and excavation materials should the application be approved. In addition, a BASIX certificate has been submitted with the application. The certificate confirms that the development is capable of achieving the water and energy targets and has obtained a pass for thermal comfort.

### **Principle 5: Landscape**

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

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

#### Comment:

The proposal also does not meet the future desired landscaped setting as set by the DCP which requires 50% landscape open space. Inadequate landscaped open space is proposed across the site.

### **Principle 6: Amenity**

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

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

#### Comment:

The proposal results in an acceptable outcome for solar access to the adjoining properties in accordance with the ADG. The balconies facing the northern boundary have been setback in accordance with the ADG requirements, with skewed windows and highlight windows used to minimise views between neighbours. The proposal provide a compliant amount of private open space through balconies.

### **Principle 7: Safety**

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

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



Comment:

The proposal provide a high level of passive surveillance of the street and well defines the street edge, with gates at the street frontage regulating access between the private/public domain.

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

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

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

Comment:

The provision of three bedroom apartments in this location is considered reasonable due to the site's close proximity to public transport and commercial facilities.

**Principle 9: Aesthetics**

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

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

Comment:

The proposed development with regards to bulk, scale and height is not considered to fit within the desired future context for the R3 zone, as discussed in detail elsewhere within this report.

**APARTMENT DESIGN GUIDE**

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

Development Control	Criteria / Guideline	Comments
<b>Part 3 Siting the Development</b>		
<b>Site Analysis</b>	Does the development relate well to its context and is it sited appropriately?	<b>Consistent</b> The proposal is orientated, sited and setback appropriately in accordance with the controls and site constraints.
<b>Orientation</b>	Does the development respond to the streetscape and site and optimise solar access within the	<b>Consistent</b>

	development and to neighbouring properties?													
<b>Public Domain Interface</b>	<p>Does the development transition well between the private and public domain without compromising safety and security?</p> <p>Is the amenity of the public domain retained and enhanced?</p>	<p><b>No</b></p> <p>The development provides an inappropriate transition between the public and private domain.</p>												
<b>Communal and Public Open Space</b>	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> <li>1. Communal open space has a minimum area equal to 25% of the site</li> <li>2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)</li> </ol>	<p><b>No</b></p> <p>59m<sup>2</sup> or 10.44% of the site is communal open space. Given the size of the site and proximity of the proposed development to Nolan Reserve and Queenscliff, there is no substantial demand for additional communal open space for occupants of the development.</p>												
<b>Deep Soil Zones</b>	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m<sup>2</sup></td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m<sup>2</sup> – 1,500m<sup>2</sup></td><td>3m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup></td><td>6m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup> with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m <sup>2</sup>	-	7%	650m <sup>2</sup> – 1,500m <sup>2</sup>	3m	Greater than 1,500m <sup>2</sup>	6m	Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m	<p><b>Consistent</b></p> <p>101m<sup>2</sup> (18.2%)</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m <sup>2</sup>	-	7%												
650m <sup>2</sup> – 1,500m <sup>2</sup>	3m													
Greater than 1,500m <sup>2</sup>	6m													
Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m													
<b>Visual Privacy</b>	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> </tbody> </table>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	<p><b>No</b></p> <p>See comments and discussions below</p>						
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												

	<table border="1"> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </table> <p><b>Note:</b> Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	
Up to 25m (5-8 storeys)	9m	4.5m						
Over 25m (9+ storeys)	12m	6m						
<b>Pedestrian Access and entries</b>	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p><b>Consistent</b></p> <p>The pedestrian entryway is located to the western side of the site, the entrance is easily identifiable and addresses the public domain.</p>						
<b>Vehicle Access</b>	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p><b>Consistent</b></p> <p>Council's Traffic Engineer has reviewed the proposed traffic and vehicle access and raises no objections to the proposal, subject to recommended conditions.</p> <p>The vehicle access point is considered to be the most suitable upon the site to minimise conflicts between pedestrians and vehicles.</p>						
<b>Bicycle and Car Parking</b>	<p>For development in the following locations:</p> <ul style="list-style-type: none"> <li>On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</li> </ul> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p>	<p><b>Consistent</b></p> <p>The proposal provides adequate provisions for bicycles and car parking in accordance with the requirements of the WDCP 2011.</p>						

	<p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>							
Part 4 Designing the Building								
Amenity								
Solar and Daylight Access	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"><li>Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.</li></ul>	<p><b>Consistent</b></p> <p>100% (4 out of 4) of the proposed apartments living rooms and private open spaces receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid winter.</p>						
	<ul style="list-style-type: none"><li>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.</li></ul>							
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"><li>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.</li></ul>	<p><b>Consistent</b></p> <p>100% (4 out of 4) of the proposed apartments</p>						
	<ul style="list-style-type: none"><li>Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</li></ul>							
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	<p><b>Consistent</b></p> <p>Habitable - 2.7 metres</p> <p>Non-habitable - 2.4 metres</p>
Minimum ceiling height								
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Non-habitable	2.4m							

	<table><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>	For 2 storey apartments	2.7m for main living area floor  2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use					
For 2 storey apartments	2.7m for main living area floor  2.4m for second floor, where its area does not exceed 50% of the apartment area											
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope											
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use											
Apartment Size and Layout	Apartments are required to have the following minimum internal areas: <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m<sup>2</sup></td></tr><tr><td>1 bedroom</td><td>50m<sup>2</sup></td></tr><tr><td>2 bedroom</td><td>70m<sup>2</sup></td></tr><tr><td>3 bedroom</td><td>90m<sup>2</sup></td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p>	Apartment type	Minimum internal area	Studio	35m <sup>2</sup>	1 bedroom	50m <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>	<b>Consistent</b>  Ground - 161m <sup>2</sup> Level 1 - 177m <sup>2</sup> Level 2 - 177m <sup>2</sup> Level 3 - 111m <sup>2</sup>
	Apartment type	Minimum internal area										
	Studio	35m <sup>2</sup>										
	1 bedroom	50m <sup>2</sup>										
	2 bedroom	70m <sup>2</sup>										
	3 bedroom	90m <sup>2</sup>										
	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.	<b>Consistent</b> All habitable rooms have suitably sized windows										
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	<b>Consistent</b> Habitable room depths are of appropriate size.										
In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	<b>Consistent</b> Open plan depth not exceed 8m from a window.											
Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space).	<b>Consistent</b> Bedroom sizes meet minimum requirements											
Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have	<b>Consistent</b> Bedroom sizes meet minimum requirements											

	space for freestanding wardrobes, in addition to the 3.0m minimum dimension.																
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"><li>3.6m for studio and 1 bedroom apartments</li><li>4m for 2 and 3 bedroom apartments</li></ul>	Consistent															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Consistent															
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m<sup>2</sup></td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m<sup>2</sup></td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m<sup>2</sup></td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m<sup>2</sup></td><td>2.4m</td></tr></table>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m <sup>2</sup>	-	1 bedroom apartments	8m <sup>2</sup>	2m	2 bedroom apartments	10m <sup>2</sup>	2m	3+ bedroom apartments	12m <sup>2</sup>	2.4m	Consistent
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2 bedroom apartments	10m <sup>2</sup>	2m															
3+ bedroom apartments	12m <sup>2</sup>	2.4m															
	The minimum balcony depth to be counted as contributing to the balcony area is 1m	Apartment Ground- 74m <sup>2</sup> , 4.3 metres Apartment 101 - 23m <sup>2</sup> , 2.4 metres Apartment 201 - 23m <sup>2</sup> , 2.4 metres Apartment 301 - 23m <sup>2</sup> , 2.4 metres															
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m <sup>2</sup> and a minimum depth of 3m.	Meets objective Ground floor unit has at least 15 m <sup>2</sup>															
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Consistent															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Not applicable															
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m<sup>3</sup></td></tr><tr><td>1 bedroom apartments</td><td>6m<sup>3</sup></td></tr><tr><td>2 bedroom apartments</td><td>8m<sup>3</sup></td></tr><tr><td>3+ bedroom apartments</td><td>10m<sup>3</sup></td></tr></table>	Dwelling Type	Storage size volume	Studio apartments	4m <sup>3</sup>	1 bedroom apartments	6m <sup>3</sup>	2 bedroom apartments	8m <sup>3</sup>	3+ bedroom apartments	10m <sup>3</sup>	Consistent					
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3+ bedroom apartments	10m <sup>3</sup>																
	At least 50% of the required storage is to be located within the apartment.	Each apartment has at least 10m <sup>2</sup> of storage, split between the individual apartments and basement.  A condition of consent will be recommended to ensure basement storage is allocated as per the ADG.															

<b>Acoustic Privacy</b>	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	<b>Consistent</b>
<b>Noise and Pollution</b>	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	<b>Consistent</b>
<b>Configuration</b>		
<b>Apartment Mix</b>	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	<b>No</b> All four dwellings propose 3 bedrooms. While there is no mix of bedrooms, the proposal offers a higher a greater number of bedrooms when compared to that of other residential flat buildings within Waine Street, which are dominated by single and two bedroom apartments.
<b>Ground Floor Apartments</b>	Do the ground floor apartments deliver amenity and safety for their residents?	<b>Consistent</b> Ground floor apartment opens to the street.
<b>Facades</b>	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	<b>Consistent</b> The use of a a mix of contemporary materials and finishes and effective building articulation will ensure appropriate visual interest is provided along Waine Street whilst respecting the character of the local area.
<b>Roof Design</b>	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	<b>Consistent</b> The proposed roof design is consistent with recent and modern buildings located within the street and locality. The roof elements are constructed of lightweight materials to ensure the development does not become visually dominant by way of its bulk or scale.
<b>Landscape Design</b>	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	<b>Inconsistent</b> insufficient landscaped

		open space is proposed throughout the site.																																			
<b>Planting on Structures</b>	When planting on structures the following are recommended as minimum standards for a range of plant sizes:	<b>Consistent</b> Areas of planting that are located on structures provides adequate size planting, soil depth and area to support the growth of planting																																			
	<table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m<sup>3</sup></td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m<sup>3</sup></td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m<sup>3</sup></td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table>		Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m <sup>3</sup>	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m <sup>3</sup>	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m <sup>3</sup>	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm	
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Turf			200mm																																		
<b>Universal Design</b>	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features	<b>Consistent</b> At least 20% of the apartments contained within the development are capable of providing adaptable living arrangements.																																			
<b>Adaptable Reuse</b>	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	<b>Not applicable</b>																																			
<b>Mixed Use</b>	Can the development be accessed through public transport and does it positively contribute to the public domain?  Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	<b>Not Applicable</b>																																			



<b>Awnings and Signage</b>	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.  Signage must respond to the existing streetscape character and context.	<b>Not Applicable</b>
<b>Performance</b>		
<b>Energy Efficiency</b>	Have the requirements in the BASIX certificate been shown in the submitted plans?	<b>Consistent</b>
<b>Water Management and Conservation</b>	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	<b>Consistent</b>
<b>Waste Management</b>	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	<b>Consistent</b> The proposal include a waste management plan, approved by Council's waste officer, subject to conditions of consent.
<b>Building Maintenance</b>	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	<b>Consistent</b> The construction and facade materials selected for the development are of an adequate durability to ensure the longevity of the building provided reasonable building maintenance occurs for the duration of the buildings life.

### 3B Overshadowing of adjoining properties

The controls within the ADG state the following for adjoining properties:

- *Living areas, private open space and communal open space should receive solar access in accordance with sections 3D Communal and public open space and 4A Solar and daylight access.*
- *Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%*

Part 4A (Solar access and daylight access) requires 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. To maximise the benefit to residents of direct sunlight within living rooms and private open spaces, a minimum of 1m<sup>2</sup> of direct sunlight, measured at 1m above floor level, is achieved for at least 15 minutes

The application is accompanied by sun view diagrams at hourly increments (15 minute increments between 1pm and 3pm) for the adjoining residential flat building to the east (25 Waine Street). The sun view diagrams demonstrate that adjoining units to the east will continue to receive a minimum of 2 hours solar access in accordance with the ADG, with the impact of the proposal minimal on this building. Therefore, the application demonstrates that the solar access outcomes of the ADG have

been met and reasonable amounts of solar access will be maintained for the adjoining properties in accordance with the ADG controls

### **3F Visual Privacy Assessment**

The design criteria requires that separation for habitable room windows and balconies to an adjoining properties boundary is 6 metres.

The design guidance states that:

*"New development should be located and oriented to maximise visual privacy between buildings on site and for neighbouring buildings. Design solutions include:*

- *site layout and building orientation to minimise privacy impacts (see also section 3B Orientation)"*

Windows along the eastern elevation are setback 4 metres from the eastern property boundaries and as such do not meet the minimum setback requirement of 6 metres. The windows at levels ground 1 and 2 are located off bathrooms, laundries and living rooms (family room). To mitigate potential overlooking between the living rooms windows at level 1 and 2 and the living areas of the adjoining eastern dwellings where the development was approved a condition would be suitable to increase the sill height of the proposed windows so as to reduce potential direct overlooking between the properties without unreasonably compromising the internal amenity of the apartments. A further condition could also increase the height of the window sill to 1.6 metres above finished floor level.

Eastern windows to the level 3 apartment have a minimum sill height of 1.6 metres above finished floor level, the height of the windows will ensure adequate privacy between buildings. No further mitigation is required for the proposed windows.

The communal open space at level 3, will most likely have some sight lines from the adjoining dwellings to the east (No.25 Waine Street). However, the sightlines are not the dominant views from this terrace nor are they anticipated given the residential use of the site and neighbouring properties. The expectation of complete privacy is not reasonable in this circumstance. If the application is to be approved conditions could be imposed to reduce the size of the deck (1.5 metres non trafficable area to the east) to ensure sightlines are limited. The reduced size of the deck would, as intended, decrease the potential useability of the deck, while still allowing for a suitable communal open space. Subject to this recommended condition, reasonable visual privacy is maintained between the subject site and neighbouring properties.

### **STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT**

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

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

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

(c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

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

Comment:

The application is not recommended for refusal for the reasons of carparking (a), internal area (b) or the ceiling heights (c).

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

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

(3) To remove doubt:

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

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

Comment:

Insufficient regard has been given to the matters raised under subclause (2) and the application is recommended for refusal.

## **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. 1337902M\_02 dated 29 June 2023).

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

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

Should the development be approved, a condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

## **SEPP (Transport and Infrastructure) 2021**

### Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

### Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions being included on the development consent, should the development be approved.

## **SEPP (Resilience and Hazards) 2021**

### Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

#### **Division 3 Coastal environment area**

##### **2.10 Development on land within the coastal environment area**

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

Comment:

The proposal is consistent with considerations to maintain appropriate protection of the foreshore area, landscaping, water quality and natural features of the site. No known aboriginal relics are recorded on the site.

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

Comment:

The proposal will not create unreasonable impacts on the coastal environment in terms of runoff, coastal processes, ecology, landform, or scenic amenity. In the event that the development is approved, suitable conditions would be necessary to address the coastal location and environmental considerations.

**Division 5 General**

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

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

Comment:

The proposal will not create unreasonable impacts on the coastal environment in terms of runoff, coastal processes, hazards and geotechnical safety for excavation and building works. Suitable conditions would be necessary address the coastal location and environmental considerations in the event that the development is approved.

**2.13 Development in coastal zone generally—coastal management programs to be considered**

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

The proposal will not create unreasonable impacts on the coastal environment in terms of runoff, coastal processes, ecology, landform, or scenic amenity. Suitable conditions are recommended to address the coastal location and environmental considerations.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

#### **Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

#### **Warringah Local Environmental Plan 2011**

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

#### **Principal Development Standards**

<b>Standard</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation</b>	<b>Complies</b>
Height of Buildings:	11m	11.05m - 12.67m	up to 15.1%	No

#### **Compliance Assessment**

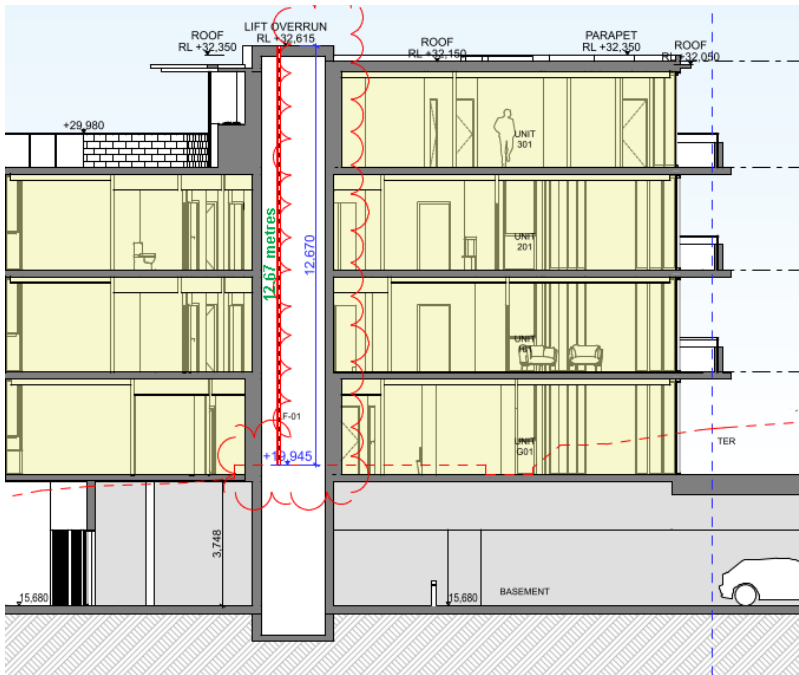
<b>Clause</b>	<b>Compliance with Requirements</b>
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	No
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

#### **Detailed Assessment**

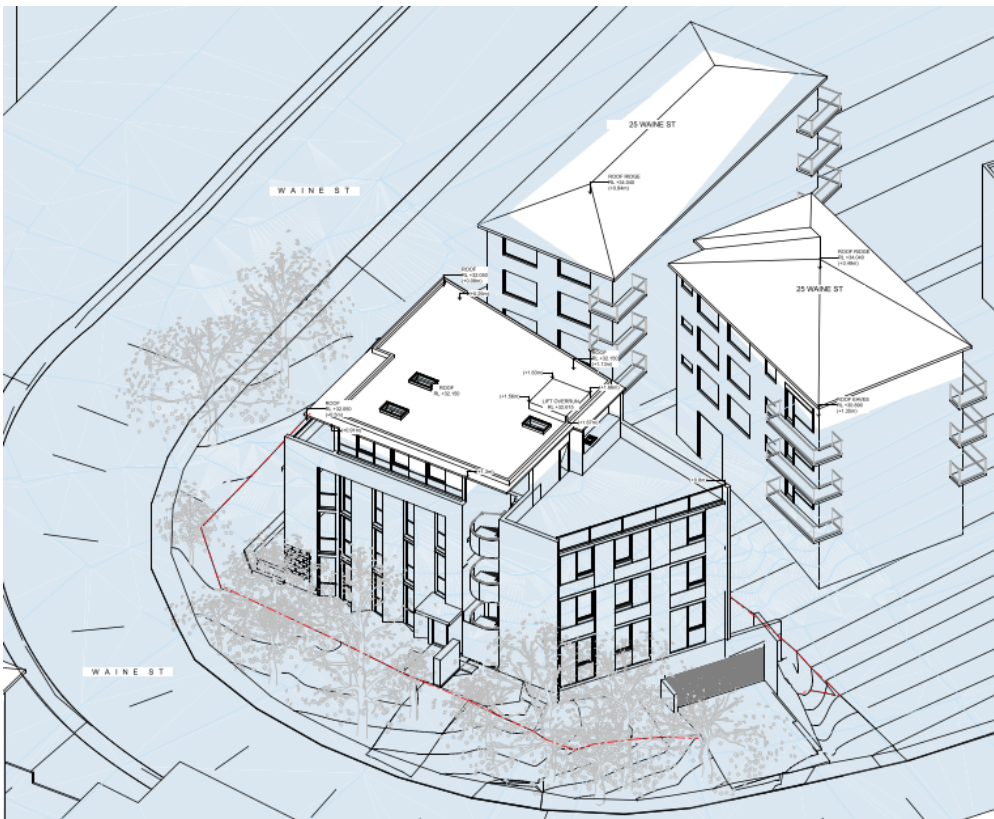
#### **4.6 Exceptions to development standards**

##### **Description of non-compliance:**

Development standard:	Height of buildings
Requirement:	11m
Proposed:	11.05m - 12.67m
Percentage variation to requirement:	up to 15.1%



**Figure 1 - Building Height calculation - Section A**



**Figure 2 - Height Diagram with RL's**

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra*

*Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.*

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

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

*(a) the consent authority is satisfied that:*

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

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

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

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

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are



achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

**1.3 Objects of Act (cf previous s 5)**

*The objects of this Act are as follows:*

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

The applicants written request argues, in part:

**"Sufficient environmental planning grounds**

*In my opinion, there are sufficient environmental planning grounds to justify the building height variation as outlined below.*

**Ground 1 – Topography**

*The site experiences a fall of approximately 5.13m, from the upper northern boundary down towards the southern boundary, with a slope of approximately 15%. Whilst the topography of the land does not*

*itself prevent strict compliance being achieved with the standard, it does prove challenging when trying to achieve workable floor plates throughout the building. The fall across the length of the site is considered to appropriately justify the non-compliance associated with the Level 4 element of the development including access to the roof top communal open space.*

*Allowing for the height breach in response to the topography of the site is considered to ensure the orderly and economic development of the site, consistent with Objective 1.3(c) of the EP&A Act.*

### **Ground 2 - Contextually responsive building design**

*Despite non-compliance with the 11m building height development standard, the proposed development is consistent with and compatible with 4 storey development within the immediate catchment of the site, including:*

- *3-4 storey residential flat building at 29-33 Waine Street*
- *3-4 storey residential flat building at 28 Waine Street*
- *4-5 storey residential flat building at 19-23 Waine Street*
- *4 storey residential flat building at 32 Waine Street*
- *4 storey residential flat building at 26-30 Waine Street*
- *4 storey residential flat building at 15 Waine Street*
- *4 storey residential flat building at 13 Waine Street*
- *3-4 storey industrial complex at 20 Waine Street*

*Each of the examples listed above have a 3-4 storey height with a pitched roof. The scale of the proposed development is entirely consistent with that of the buildings listed, with the proposed lift overrun otherwise contained within the volume of a pitched roof.*

*Council's acceptance of the proposed height variation will ensure the orderly and economic development of the site, in so far as it will ensure conformity with the scale and character established by other existing development within the visual catchment of the site, consistent with Objective 1.3(c) of the EP&A Act. The building is of exceptional design quality with the variation facilitating a height that provides for contextual built form compatibility, consistent with Objective 1.3(g) of the EP&A Act.*

### **Ground 3 – Height variation facilitates the provision of communal open space**

*The size, geometry and orientation of the land makes the provision of ground level communal open space with appropriate amenity difficult to achieve whilst realising the orderly and economic use and development of the land.*

*The provision of rooftop communal open space is consistent with objective 3D-1 of the Apartment Design Guide where the design guidance indicates that where development is unable to achieve the design criteria, such as on small lots or in dense urban areas should provide communal open space elsewhere such as a landscaped roof top terrace.*

*Approval of a building height variation facilitates the provision of well-designed roof top communal open space which receives good levels of solar access between 9am and 3pm on 21st June."*

### **Council's Assessment of the Clause 4.6 Request**

The applicant has not satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, in seeking to demonstrate that sufficient environmental planning grounds exist.

The first ground does not set out where and why topography unreasonably constrains compliance with the height standard and as such the arguments that it makes are not sufficient. In the case of ground 2, these buildings by in large pre-date the WLEP and as such it is considered that these buildings do not represent the desired future character. Furthermore, the site is adjacent to low density R2 zoned land, the intent of which is to provide for low scale and density residential development. In this regard, contextually the arguments are not considered to be sufficient environmental planning grounds. The 3

ground advanced is considered insufficient as there is no requirement for communal open space and that communal open space at the roof top could be accommodated with a compliant development.

The proposed development is not considered compatible with regards to bulk and scale with the surrounding properties. The currently planning controls which require an 11m height limit under the LEP and three (3) stories under the WDCP are considered to guide the future character of development in the R3 Zone and the proposed development is therefore contrary to the intentions of the planning controls reading as a four storey building. In addition, the proposed development does not provide sufficient building separation in accordance with the Apartment Design Guidelines or comprise of a landscaping scheme that will provide appropriate canopy tree planting around the building to mitigate bulk and scale.

In this regard, the applicant's written request has not demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has failed to sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R3 Medium Density Residential zone. An assessment against these objectives is provided below.

**Objectives of development standard**

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

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

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

Comment:

The design of the building is not considered to be compatible with the surrounding building heights in the visual catchment of the site.

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

Comment:

The application has demonstrated the reasonable solar access outcomes will be maintained to the adjoining properties in accordance with the ADG and the minor encroachment to the building height is not in a location that has a direct influence on solar access outcomes for the units at 25 Waine Street (with the height breach being located on the eastern and northern edge of the roof). The breach of height does contribute to a loss of privacy.

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

Comment:

The building will be highly visible from the north, west and southern side of Waine Street. The building will dominate the landscape and is unlikely to blend into the treed streetscape as a result of the building height and insufficient landscape open space for meaningful canopy tree planting. The proposal is inconsistent with this objective.

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

Comment:

The building will be highly visible from the Street. The building will dominate the landscape and is unlikely to blend into the treed streetscape as a result of the building height and insufficient landscape open space for meaningful canopy tree planting. The proposal is inconsistent with this objective.

## **Zone objectives**

The underlying objectives of the R3 Medium Density Residential zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*

Comment:

The proposal provides a medium density development on the site to meet the housing need of the community. The density of the development is compatible with the R3 Zone.

- *To provide a variety of housing types within a medium density residential environment.*

Comment:

The proposal provides apartments which add to housing diversity within the R3 Zone and for the wider Northern Beaches locality where housing need and affordability is an issue.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

N/A

- *To ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The proposal does not have sufficient landscape open space to allow meaningful landscape planting to create a landscape setting around the building to mitigate the visual impact of the development.

- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

Comment:

The proposed development is considered to be an overdevelopment of the site with regards to visual bulk and scale, along with insufficient landscaping to mitigate such bulk and scale. The proposal does not respect the street setback alignment of Waine Street and this results in an unsatisfactory presentation to the public domain. Not consistent with the objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of the R3 Medium Density Residential zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of buildings Development Standard can not be assumed.

**6.2 Earthworks**

The objectives of Clause 6.2 - 'Earthworks' require development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*
- (b) to allow earthworks of a minor nature without requiring separate development consent.*

In this regard, before granting development consent for earthworks, Council must consider the following matters:

*(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality*

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

*(b) the effect of the proposed development on the likely future use or redevelopment of the land*

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

*(c) the quality of the fill or the soil to be excavated, or both*

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

*(d) the effect of the proposed development on the existing and likely amenity of adjoining properties*

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

*(e) the source of any fill material and the destination of any excavated material*

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

*(f) the likelihood of disturbing relics*

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

*(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area*

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **6.4 Development on sloping land**

Under this clause, 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*

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from

a geotechnical perspective and therefore, Council is satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

*(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and*

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to recommended conditions being applied in the event that the development is approved. It is considered that the development will not cause significant detrimental impacts because of stormwater discharge from the development site.

*(c) the development will not impact on or affect the existing subsurface flow conditions.*

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions being imposed upon any approval issued by Council for the proposed development. It is considered that the development will not result in adverse impacts or effects on the existing subsurface flow conditions.

## Warringah Development Control Plan

### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B2 Number of storeys	3	4	25%	No
B3 Side Boundary Envelope	East - 5m	<b>Outside envelope</b> Length - 23.5m Height - 1m - 4.3m	20% - 86%	No
B5 Side Boundary Setbacks	East - 4.5m	<b>Basement</b> 0m - 3.4m <b>Ground</b> Building - 3m Retaining wall - 0.2m <b>First - third</b> 3m	24.5%  33% 95%  33%	No
B7 Front Boundary Setbacks	6.5m	<b>North</b> Basement - 0m Ground (terrace) - 2.5m Ground building - 7.2m - 8.9m First - Third - 6m	100% 62% - 8%	No No Yes No
		<b>West</b> Basement - 2m Ground - 3m First to third - 3m	53.8% - 69.7% 53.15% 53.15%	No

		<b>South Basement - Third - 4m</b>	38.5%	<b>No</b>
B9 Rear Boundary Setbacks	6m	Not applicable	N/A	<b>N/A</b>
D1 Landscaped Open Space (LOS) and Bushland Setting	50% (278.2sqm)	32% (178.8sqm)	36%	<b>No</b>

#### Compliance Assessment

<b>Clause</b>	<b>Compliance with Requirements</b>	<b>Consistency Aims/Objectives</b>
A.5 Objectives	Yes	Yes
B2 Number of Storeys	No	No
B3 Side Boundary Envelope	No	No
B7 Front Boundary Setbacks	No	No
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	Yes
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D19 Site Consolidation in the R3 and IN1 Zone	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment



## **B2 Number of Storeys**

### Description of non-compliance

The proposed development seeks consent for a four (4) storey residential flat building in a location where three (3) storeys is the height control. With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

### Merit consideration:

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

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

### Comment:

As discussed throughout this report, the proposed development is inconsistent with the existing and intended scale and bulk of buildings envisaged for the area. The proposed scale of the development is such that it creates additional and unreasonable impacts upon neighbouring properties. The third storey creates an unreasonable and undesirable sense of enclosure to the neighbouring property to the north and south due to its visual dominance by virtue of its bulk and scale.

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

### Comment:

The additional storey of development and lack of articulation and setbacks at the top two levels of the building will create an adverse visual impact on the adjoining properties who will be directly overlooked. The proposed design is not considered to minimise these impacts.

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

### Comment:

The proposal will not result in unreasonable disruption to views to, from or between residential development and public spaces.

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

### Comment:

Reasonable level of amenity will be retained to adjoining properties.

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

Comment:

A suitable roof form is proposed for the site.

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

Comment:

Whilst largely compliant with the 11 metres height limit, the proposed built form is non-compliant with a number of fundamental built form controls.

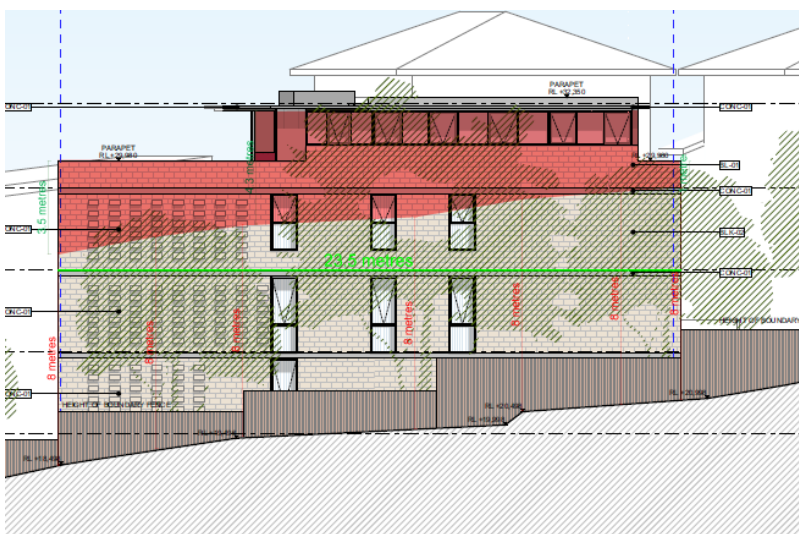
Having regard to the above assessment, it is concluded that the proposed development is not consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not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

### **B3 Side Boundary Envelope**

Description of non-compliance

Under Clause B3 of Warringah Development Control Plan 2011, buildings must be sited within a building envelope determined by projecting planes at 45 degrees from a height of 5 metres above ground level (existing) at the side boundaries.

The proposal sits outside of the building envelope on the eastern facade as depicted in figure 3 below. The eastern facade obtains an encroachment ranging from 1 metre to 4.3 metres in vertical height for a horizontal length of 23.5 metres, resulting in a variation between 20-86%.



**Figure 3 - Envelope non-compliance eastern facade**

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying

Objectives of the Control as follows:

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

Comment:

The application has a number of non-compliance's with the prescribed controls including building height under the WLEP 2011, number of stories, non-compliance with landscape open space. These non-compliances, coupled with the non-compliance with the building envelope point towards a development that has an excessive building height and scale, as well as visual bulk exceeds than anticipated by the planning controls.

- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

Comment:

Adequate physical separation is achieved between buildings which ensures no unreasonable loss of privacy or unreasonable solar amenity impacts on the adjoining land. Submitted shadow diagrams demonstrate compliant solar sunlight is provided to adjoining properties pursuant to SEPP 65. The proposed development allows for a reasonable level of amenity, solar access and privacy to be obtained from adjoining or nearby dwellings, subject to conditions being included as part of any approval granted to the proposed development. The proposal is consistent with this objective.

- *To ensure that development responds to the topography of the site.*

Comment:

The site has a cross-fall, however the gradient is not considered a factor in the proposals ability not to comply with the building envelope control.

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

## **B7 Front Boundary Setbacks**

### Description of non-compliance



northern and southern front setbacks considered to be secondary.

The application proposes the following front setbacks:

**West (Primary)**

Basement - 2 metres (69.7% variation to the numeric control)

Ground third - 3 metres (53.15% variation to the numeric control)

**North (Secondary) -**

Basement - 0 metres (100% Variation to the numeric control)

Ground (terrace) - 2.5 metres (28.5% variation to the numeric control)

Ground building - 7.2 metres - 8.9 metres (Compliant)

First - Third - 6 metres (Compliant)

**South (Secondary) -**

Basement - Third - 4 metres (Compliant)

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows, however it is relevant to note that the site is irregular in shape and the compliant setbacks unreasonably constrain the available building footprint area:

- *To create a sense of openness.*

Comment:

The sense of openness is reduced as a result of the proposed change from dwelling house to residential flat building, the bulk of the development reduced the sense of openness across the site.

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

Comment:

Visual continuity of the prevailing building pattern is not considered to be achieved. Insufficient landscaping is proposed to offset the impact and dominance of the built form.

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

Comment:

The proposal will not protect and enhance the visual quality of streetscapes, and public spaces through the visual enhancement of the existing development.

- *To achieve reasonable view sharing.*

Comment:

The front setback non-compliance to each frontage will not unreasonably impact upon views from neighbouring properties or public domain.

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

### C3 Parking Facilities

The application is considered against the recommended minimum amount of car parking specified in Schedule 1 of the Warringah DCP 2011.

The proposal consists of:

- 4 x 3 bedroom

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
RFB - 3 bedroom dwelling	1.5 spaces	6	8 (1 disabled/adaptable)	+2
Visitor	1 visitor per 5 units	1	1	N/A
<b>Total</b>		<b>7</b>	<b>9</b>	<b>2</b>

The proposed development is compliant with the minimum requirement.

### D1 Landscaped Open Space and Bushland Setting

#### Description of non-compliance

Part D1 of the WDCP 2011 requires at least 50% of the subject site to be landscaped open space (LOS). The proposed development will provide a landscaped open space of 32% (178.8m<sup>2</sup>). This represents a 36% variation to the numeric control. It is noted that the established pattern and form of adjoining development is such that many adjoining development do not meet the 50% landscaped area control.

#### Merit consideration

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

- *To enable planting to maintain and enhance the streetscape.*

#### Comment:

The proposed works do not impact upon the potential for future planting on site. The proposed open space as presented to the street is not unreasonable in terms of visual impact or

inconsistent with that of neighbouring properties.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment:

The site is not known to have any Indigenous vegetation or significant topographical features

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment:

The proposed development maintains suitable landscaped open space to all three frontages of the site to allow for the future establishment of low lying shrubs and trees.

- *To enhance privacy between buildings.*

Comment:

The landscape open space variation will not give rise to privacy impacts between buildings. The proposal includes adequate landscaping along the side boundaries to enhance privacy between properties.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment:

Sufficient dimensions of LOS are provided to adequately accommodate for the outdoor recreational needs of the occupants.

- *To provide space for service functions, including clothes drying.*

Comment:

The site will retain satisfactory space for service functions, including clothes drying.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment:

Conditions of consent would be necessary in the event that the development is approved which ensures stormwater from the new development is disposed of to an approved system in accordance with Northern Beaches Council's Water Management Policy and comply with the relevant Australian Standards and Codes. It is not considered the non-compliance will result in

adverse stormwater runoff.

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

#### **D6 Access to Sunlight**

See comments under the SEPP 65 assessment, as these prevail over the DCP.

#### **D8 Privacy**

See comments under SEPP 65 assessment, as these requirements prevail over the DCP.

#### **D9 Building Bulk**

##### Merit consideration

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

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

##### Comment:

The excessive wall length is not considered to be of good design, with little articulation and the additional building bulk causing a direct visual impact.

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

##### Comment:

The visual impact of the development has not been minimised which is reflected in the substantial built form non-compliances documented in this assessment.

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

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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



## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2022**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$39,850 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,985,000.

## **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

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

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

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

Council is not satisfied that:

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

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

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

## PLANNING CONCLUSION

This proposal, for demolition works and construction of a four storey residential flat building has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to proposed development being subject to SEPP 65 and the application receiving more than 10 submissions.

Council's assessment of the Clause 4.6 Variation Request has found that there are insufficient environmental planning ground to warrant such a departure from the height of building development standard. In this regard, as Council is not satisfied of the Clause 4.6 request Council is unable to recommend support for the application. Furthermore, the application is considered to be an overdevelopment of the site by virtue of the number of non-compliances with the built form controls with regards to building height, number of stories, setbacks and landscape open space.

Concerns raised by objecting neighbouring properties including solar access, privacy, loss of outlook and traffic are not seen as unreasonable and are not included as reasons for refusal.

The application is therefore recommended for **refusal** to the Local Planning Panel for the reasons outlined at the end of this assessment report.

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

## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2022/1985 for the Demolition works and construction of a residential flat building. on land at Lot A DP 412396,27 Waine Street, FRESHWATER, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011.

### Particulars:

Council is not satisfied that:

- a) the applicant's written requests under clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of the clause 4.3(Height of Buildings) WLEP 2011 development standard has adequately addressed and demonstrated that:
  - i. compliance with the standards is unreasonable or unnecessary in the circumstances of the case; and
  - ii. there are sufficient environmental planning grounds to justify the contraventions.
- b) the proposed development will be in the public interest because it is consistent with the objectives of the standards and the objectives for development within the zone in which the development is proposed to be carried out.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is contrary to the provisions of Clause 4.3 Height of Buildings of the Warringah Local Environmental Plan 2011.

### Particulars:

Clause 4.3 specifies that the height of building is not to exceed 11 metres. The proposed development has maximum height of 12.67 metres. Consequently:

- a) the proposed development, by virtue of its bulk and height, will not be consistent with the desired character of the locality.
  - b) the proposed development will not be compatible with the height and scale of surrounding and nearby development and results in a jarring transition to the adjacent low density R2 zoned properties.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposal is not considered to satisfactorily meet the relevant Design Quality Principles of SEPP 65 as required by Clause 28(2)(c) of the SEPP, in particular Principle 1: Context and Neighbourhood Character, Principle 2: Built Form and Scale, Principle 3: Density, Principle 5: Landscape and Principle 9: Aesthetics.

4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B2 Number of Storeys of the Warringah Development Control Plan.

Particulars:

- i. The proposed development exceeds the maximum number of storeys permitted on the site and the non-compliant storey will not be compatible with the height and scale of surrounding and nearby development.

5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B3 Side Boundary Envelope, B7 Front Boundary Setback and D9 Building Bulk of the Warringah Development Control Plan.

Particulars:

- i. The proposed is inconsistent with the numerical controls and objectives of the control B3 Side Boundary Envelope, B7 Front Boundary Setback and D9 Building Bulk and presents an unacceptable level of visual bulk and scale as a result of the fourth storey.

6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D1 Landscaped Open Space and Bushland Setting of the Warringah Development Control Plan.

Particulars

- i. The proposal does not allow for sufficient landscaped open space to offset the height, bulk and scale of the building and fails to achieve numerical compliance with the Control.