

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1759
----------------------------	-------------

Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot 2 DP 233083, 51 Arthur Street FORESTVILLE NSW 2087
Proposed Development:	Demolition works and construction of a shop top housing development
Zoning:	Warringah LEP2011 - Land zoned B1 Neighbourhood Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Gabrielian Holdings Pty Ltd
Applicant:	Gabrielian Holdings Pty Ltd

Application Lodged:	23/02/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	08/03/2021 to 22/03/2021
Advertised:	08/03/2021
Submissions Received:	13
Clause 4.6 Variation:	4.3 Height of buildings: 22.4%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 3,550,429.00
---------------------------------	-----------------

EXECUTIVE SUMMARY

The proposal seeks consent for a three (3) storey shop top housing development with one (1) level of basement parking. The proposal seeks to maximise site coverage and includes four (4) split level two (2) bedroom apartments above four (4) ground level retail / commercial units. The proposal includes a 22.4% breach to the 8.5m maximum height control. The clause 4.6 statement submitted with the application does not adequately address the matters required by clause 4.6, nor does it adequately justify that compliance with the LEP development standard is unreasonable or unnecessary in the circumstances

The height breach, combined with the nil side set back of the development on all levels, will result in a a

building which fails to transition to the adjacent R2 zoned low density development. The excessive height, scale and massing of the development will result in unreasonable visual impacts to neighbouring properties and the streetscape as well as unreasonable impacts on the residential amenity. In addition, issues are raised regarding insufficient landscaping to meet the requirements of SEPP 65 and access and water management issues.

The application was referred to the Design and Sustainability Advisory Panel (DSAP) who recommended design changes to address issues in relation to the scale, built form and articulation, access, privacy, landscaping, transport and sustainability. While it is acknowledged that some attempt was made by the applicant to address the recommendations of the Panel with draft amended plans the issues raised by the Panel remain unresolved as the Panel recommendations were not fully considered. The draft plans were not formally submitted as amended plans, and this assessment is therefore based on the original scheme.

Thirteen (13) submissions have been received which raise issues regarding the excessive height, scale, bulk, the design being out of character with low density residential area, amenity impacts (privacy and overshadowing), transport, excavation and construction, water management and landscaping. The issues raised in the submissions have been addressed in the "Public Notification" section of this report.

Based on the detailed assessment contained in this report, it is recommended that the application be refused.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the demolition of the existing commercial development and construction of a three storey shop top housing with four (4) x residential split-level apartments above a retail ground level. The proposal includes excavation to a depth of 4m with a nil setback to the boundaries for a basement car park. In detail the development seeks consent for:

Basement Level RL 107,975

- Entrance ramp via Duke Street
- Five (5) retail parking spaces
- Five(5) residential parking spaces
- Six (6) bicycle parking spaces
- Storage and plant rooms
- Lift and stair access

Ground Level RL 111,740

- Four (4) shops which vary in size from 67sqm, 68sqm and 100sqm with frontage to Arthur Street. Shop 4 has a dry store and cool room to the rear;
- Residential entry via Duke Street with lobby, access corridor lift and stairs;
- Back of shop comprising common bin storage area, residential bin store, male and female toilets and accessible toilet;
- Vehicular ramp and pedestrian ramp to basement via Duke Street, and
- 14sqm deep soil area within the rear.

First Floor Level RL 115,940

- Lower level of four (4) residential units comprising open plan living kitchen and dining, bathroom

- and 13sqm balcony. Each unit is accessed via internal steps;
- Ramped corridor providing access to the units;
- Stair and lift, and
- Two areas of non-trafficable roof to the southern corner. Area 1 measures 63sqm and area two measures 41sqm.

Second Floor Level RL 118,240

- Upper level of four (4) residential units comprising two bedrooms (one with an ensuite and WIR), storage area and winter gardens, and
- AC units installed to the southern elevation with a screen to the south.

External

- Awning to the Arthur and Duke Street frontage;
- Materials: white brick work, dark grey and off-white aluminium screens and clear louvres, and
- Public domain: five (5) new tree pits / trees along the Duke Street and Arthur Street frontages, kerb side planter beds and new cross over on Duke Street.

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 Development Control Plan - B6 Merit Assessment of Side Boundary Setbacks
 Warringah Development Control Plan - B10 Merit assessment of rear boundary setbacks
 Warringah Development Control Plan - C4 Stormwater
 Warringah Development Control Plan - D6 Access to Sunlight
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D9 Building Bulk

Warringah Development Control Plan - D10 Building Colours and Materials
Warringah Development Control Plan - D18 Accessibility and Adaptability
Warringah Development Control Plan - F1 Local and Neighbourhood Centres

SITE DESCRIPTION

Property Description:	Lot 2 DP 233083 , 51 Arthur Street FORESTVILLE NSW 2087
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Arthur Street. The site is a corner site, and is irregular in shape with a frontage of 27.89m along the primary frontage of Arthur Street and 19.31m along the secondary frontage of Duke Street. The site has an area of 581.7m².</p> <p>The site is located on land zoned B1 Neighborhood Center zone and the site currently accommodates a single storey commercial building containing 6 tenancies which has almost 100% site coverage. Vehicular access to the site is from Duke Street via a concrete driveway which provides for parking and loading and unloading of goods. There are 8 Council car parks along the site frontage of Arthur Street.</p> <p>Surrounding development consists of low density residential development ranging from one - two storey dwellings located on land that is zoned R2 – Low Density Residential. The site has a fall towards the west with no topographical constraints and no onsite vegetation.</p>

Map:



SITE HISTORY

A search of Council's records has revealed the following:

Application **DA2013/1278** for Use of premises as a medical centre (physiotherapy clinic) and associated signage was approved on 18/12/2013.

Application **DA2015/0255** for Subdivision of an existing building (retail premises) was approved on 05/06/2015.

Application **DA2015/1116** for Fitout and use of premises as a take-away food and drink premises (shop 6) was approved on 08/02/2016.

Pre-lodgement Meeting PLM2019/0061 was held on 18/04/2019 for Construction of a Demolition and construction of a Shop Top Housing and medical centre development 2019 in relation to the development of the site and the adjoining site at 49 Arthur Street. The issues raised relate to height, parking arrangements, building bulk and inconsistency with the surrounding low density residential context of the site.

Design and Sustainability Advisory Panel DSAP

The application was presented to the DSAP on 29 April 2021 who concluded:

"Significant changes to building massing, roof form, access arrangements, setbacks on the upper level and improved relationship to the adjoining residence on no 49 Arthur Street are required."

Further discussion on the issues raised by the DSAP are contained throughout this report and the minutes of the DSAP meeting are contained in the attachment to this report.

On 1 June 2021, a letter was sent to the applicant raising issues with regards to the height, bulk, scale and massing, setbacks and overshadowing, common open space and landscaping, amenity and privacy, eastern facade articulation and detailing and access.

On 28 June 2021, the applicant submitted some draft amendments which included a significant change in the design resulting in an increase in the setback of the upper floor from the side boundaries and an increase in the height of the development. The amended design whilst attempting to resolve some concerns is considered unsuitable for the following reasons:

- Height breach of (up to) 3m significant and Cl 4.6 justification using public benefits provided by development is nil.
- The setback to top roof area should be 3m clear to roof eaves from east, west and north boundaries.
- Slope corridor to rear of shops so that disabled access to toilets is accessible.

*Note: The application was not formally amended and this report is based on an assessment of the original design.

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) –	See discussion on "Environmental Planning Instruments" in this

Section 4.15 Matters for Consideration'	Comments
Provisions of any environmental planning instrument	report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	<p>Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018.</p> <p>The subject site has been used for commercial purposes for an extended period of time. A contamination report has been submitted with the DA which identifies no historical or current land use that would alert to concerning contamination onsite. Subject to the recommendations of the report Council's Health Unit have no objections to the development.</p>
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to issues with the design, landscaping, access and transport.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. Should consent be granted this matter can be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia</p>

Section 4.15 Matters for Consideration'	Comments
	<p>(BCA). This matter can be addressed via a condition of consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
<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>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the area.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered to be generally suitable for a shop top housing development. However, as discussed throughout this report, the application is recommended for refusal based on various factors including non-compliance with building height development standard, insufficient side setbacks of the upper floor and the resultant excessive scale and bulk which is out of character with the adjoining low density residential area.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>This assessment has found the proposal to be contrary to the relevant requirement(s) of the WLEP and WDCP, including the height development standard and will result in a bulk and scale that is out of character with the existing and desired future character of the surrounding area. The proposal will result in a development which will create an undesirable precedent and be contrary to the expectations of the community.</p> <p>Due to the excessive height, bulk and scale and insufficient side setbacks, particularly to the eastern boundary, the development fails to transition to the surrounding low density residential area. The proposal will result in unreasonable amenity impacts to neighbouring residents in terms of overshadowing and loss of privacy. The proposal is also deficient in terms of the provision of areas for deep soil planting that would support planting to help soften the built form and provide screening to neighbours.</p> <p>In summary, the development, as proposed, is not considered to be in the public interest.</p>

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 08/03/2021 to 22/03/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 13 submission/s from:

Name:	Address:
Mrs Vicki Michelle Hewat	33 Duke Street FORESTVILLE NSW 2087
Mr William Siu Lum Wong	41 Duke Street FORESTVILLE NSW 2087
Mrs Leona Pauline Spencer	29 Willunga Crescent FORESTVILLE NSW 2087
Fy Kok	Address Unknown
Vicken Semerdjian	37 Duke Street FORESTVILLE NSW 2087
Brett Leo Ryan	37 Milham Crescent FORESTVILLE NSW 2087
Mrs Adele Katherine Spence	28 Duke Street FORESTVILLE NSW 2087
Claire Elizabeth Hovagimian	34 Duke Street FORESTVILLE NSW 2087
Mrs Viviana Lina Oliver	39 Duke Street FORESTVILLE NSW 2087
Mr John Mathew Farrant Mrs Jolene Michelle Farrant	47 Arthur Street FORESTVILLE NSW 2087
Mrs Margaret Kolotas	42 Duke Street FORESTVILLE NSW 2087
Harry Kolotas	44 Arthur Street FORESTVILLE NSW 2087
Gregor Riese	20 Duke Street FORESTVILLE NSW 2087

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

- **Excessive height, bulk and scale**
- **Zero setbacks**
- **Privacy**
- **Overshadowing**
- **Architecture is out of character**
- **Transport and parking**
- **Stormwater and flooding**
- **Devalue property**
- **Excavation and construction**
- **Landscaping and trees**
- **Un-authorised use of tenancy**

While the majority of submissions support some form of redevelopment on the site the matters raised within the submissions with the current design are addressed as follows:

- **The height and bulky appearance of the proposed development is concerning it is out of character with the surrounding low density area. There are height encroachments between 14.6% - 22.4% of a substantial nature and appearance. The proposal should be amended to reduce the density to bring this more into alignment with the streetscape and character of the local area. An option would be to reduce the height of the units to single storey nature rather than 4 units of a vertical, bulky nature.**

Comment:

It is agreed that the height, bulk and scale of the development is out of character with the surrounding low density area. The clause 4.6 variation for the breach of the building height is not supported. Refer to detailed discussion under Clause 4.6 of this report. The applicant has not amended the proposal to address the issues in respect of height, bulk and scale.

- **The nil setback will result in a 3 storey wall reaching 10.4m in height which is out of character with the surrounding low density housing which comprises one and two storey houses. To exacerbate the lack of setback, the top 2 storeys of this proposed development are not stepped back from the street, there has been no attempt along Duke St to reduce the bulk of the building and ensure that development does not dominate existing buildings and public spaces. The 3D montage is a misrepresentation of the scale and bulk of the building in the surrounding area. The trees are overstated and some do not exist. The excessive bulk is further exacerbated by the location of the property on a visually prominent corner allotment of Arthur and Duke Street. The removal of the upper level will reduce the impacts.**

Comment:

It is agreed that the nil setbacks of the upper floor will result in an inappropriate relationship / transition to the single storey dwelling at No. 49 Arthur Street. Similarly, the building is not stepped back to Duke Street and as a result of the topography of the site the impacts of the excessive height are amplified on the prominent corner. The montage includes trees which are proposed in the public domain as part of the subject application and it is noted that these trees do not currently exist. The applicant has not amended the proposal to address the issues in relation to the transition of the development to the adjacent and neighbouring low density residential area.

- **Overlooking and loss of privacy to neighbouring properties including areas of private open space and windows. The proposed development will have sightlines directly into kitchen window, bedrooms and bathrooms.**

Comment:

Windows to habitable rooms are proposed in the eastern elevation with no setback. Privacy screens are proposed to the windows, however, the design of the screens are not suitable as they add to the excessive height of the development on the eastern elevation. In addition, there is no screening to the southern edge of the elevated breezeway and insufficient soil depth to the landscaped roof to allow for screen planting to protect the privacy of the southern neighbour.

- **The contemporary design of the proposed development is out of place with the Forestville area and the streetscape with the unsightly large square frames that overwhelm all surrounding dwellings. The design is not sympathetic to existing houses in the suburb.**

Comment:

Generally the proposed development represents a development of design merit, however, the merit of the design proposal does not outweigh the substantial breach of the height control.

- **The proposal will overshadow neighbouring residential properties, including areas of private open space and a pool.**

Comment:

The proposal will increase the amount of shadow cast to the southern and eastern neighbours. The additional shadow affects the area around the pool to No.34 Duke Street, refer to discussion under Clause D6 of the WDCP.

- **The proposal will negatively impact property values.**

Comment:

Impacts on property value is not a material planning consideration.

- **Traffic generated and impacts on the availability of on street parking and add to issues with traffic congestion at the traffic light intersection of Albert Ave and Warringah Road. We will also require the street parking out the front of our home to be restricted for residence only as we are concerned this area on our street front will become a permanent carpark.**

Comment:

Council's Transport Engineer has confirmed that the proposed parking provision is acceptable. Refer to further comments in this report.

- **Inadequate provision of the storm water run disposal to Duke Street which could lead to potential flooding and encroachment on surrounding properties. Flood management systems do not appear to be integrated in detail into this site design. Concern is raised about the potential flooding of the underground carpark and the adverse affects this will have given the size of the hole in the ground proposed which will be directly next to our property. Frequent and heavy rain seems to be a commonplace occurrence and we believe the underground carpark will be subject to flooding and overland flow during heavy rains. Having below street level potential flooding directly next to our land is greatly unsettling. We do not support the proposal to excavate for a carpark of any size.**

Comment:

Insufficient information has been submitted to address water management issues. Refer to the comments from Council's Development Engineer.

- **Underground basement parking is out of character with the low density area and requires significant excavation. There are concerns about the construction and demolition periods and impacts on neighbouring amenity in terms of noise, dust and air pollution in addition to concerns about the structural impacts of the excavation. The site is within an Area A Landslip category and the extent of excavation required may adversely affect surrounding properties. Dilapidation Report are required prior to commencement of the proposed work at the cost of the Developer. Removal of asbestos needs to be remediated and there is no provision for this plan or cost.**

Comment:

The principle of the excavation for the construction of the basement is acceptable; however, the

excavation extends to the eastern and southern boundary with no setback from boundaries and the concern from neighbours is therefore valid. Should consent be granted conditions will be required to manage construction, excavation and the removal of asbestos in accordance with the recommendations of the geotechnical report and the contamination report. Additional conditions can also be imposed relating to asbestos removal and the need for dilapidation reports.

- **There is also a history of other un-authorized work to the existing building including the lease of a tenancy as a recreational use which is prohibited in the zone.**

Comment:

A search of Council's record has confirmed that there has been a compliance matter regarding the unauthorised use of a commercial tenancy as an indoor recreation facility. There was no evidence of any unauthorised use of the tenancies at the time of the site inspection.

- **The proposal may impact on neighbouring trees. There is no landscaping to soften the visual impact of the development from the street.**

Comment:

Council's Landscape Officer has also raised a concern about the potential impacts on an existing neighbouring tree, refer to comments in this report. There are insufficient deep soil zones to meet the requirements of the SEPP which is required to allow for sufficient screen planting to soften the visual impacts of the development. The proposal does however include some street tree planting within the public domain which will help reduce the visual impacts to the street.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Not Supported</p> <p>This application is for the demolition of existing site structures, and the construction of a new shop top housing development accommodating basement car parking, four ground floor retail spaces, as well as four two-storey residential apartments above.</p> <p>Council's Landscape Referral section has considered the application against the following relevant controls and policies:</p> <ul style="list-style-type: none"> • State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development 2002, • NSW Department of Planning - Apartment Design Guide 2015, specifically <i>Parts 3C Public Domain Interface, 3E Deep Soil Zones, 4O Landscape Design, and 4P Planting on Structures</i>, • Warringah Local Environment Plan 2011, • Warringah Development Control Plan 2011 - <i>C7 Excavation and Filling, D1 Landscaped Open Space and Bushland Setting, D2 Private Open Space, and E1 Preservation of Trees or Bushland Vegetation.</i> •

Internal Referral Body	Comments
	<p>A Landscape Plan is provided with the application and proposed works include the in-ground planting of trees, grasses and groundcovers in the public domain, as well as in-ground planting of palms, grasses and groundcovers and on-slab planting of grasses and groundcovers within private areas of the proposed site.</p> <p>Concern is raised regarding the limited proposed deep soil areas within the site. The design criteria within <i>Part 3E Deep Soil Zones</i> of the Apartment Design Guidelines states that for developments less than 650m² in size, they shall be required to have deep soil zones totaling 7% of the site. In its current form, the proposed site would require a total of 41m² of deep soil areas, however only 14m² is provided, totaling 2% of the site. This is well below the 7% minimum requirement, and also provides insufficient area for suitable canopy tree planting to help mitigate the bulk and scale of the development. Currently, two palms (<i>Howea fosteriana</i>) are proposed within the area, and due to the growth habit of these palms, they are not likely to provide meaningful landscape amenity and canopy coverage, and will do little in regards to providing screening and built form mitigation. In addition to this, <i>Howea fosteriana</i> is an exempt species, and the planting of this would not be supported. It is noted that a landscaped roof has also been provided adjacent to this deep soil zone, however concern is raised regarding the provided soil depth and plant species used. Currently, the soil depth is proposed to be 300mm and is to be planted with a variety of low grasses and groundcovers. The intention of this landscaped roof as per the Statement of Environmental Effects is to provide a visual buffer between the proposal and neighbouring buildings. The use of low-lying grasses and groundcovers is not expected to provide an adequate visual buffer, particularly in relation to views from adjoining properties. It would be recommended that the soil depth on this landscaped roof be increased, at minimum, to 1000mm to support the planting of small/medium trees. This would satisfy the required soil depths as outlined in <i>Part 4P Planting on Structures</i> of the Apartment Design Guidelines. This increase in soil depth would go a long way in regards to providing valuable screening and built form mitigation, a key aspect of control D1, as well as offsetting the limited deep soil zone that is currently proposed.</p> <p>The State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development 2002, specifically <i>Clause 28 (2) (b)</i> requires the design quality of the development to be assessed in relation to the nine design quality principles. With regards to landscape, <i>Principle 5 - Landscape</i>, is the key principle to be assessed. A key outcome of good design within <i>Principle 5</i> is proposed developments to provide a positive image and contextual fit, which is achieved by contributing to the landscape character of the streetscape and neighbourhood. Although the proposed landscape works within the site boundaries do not contribute high levels of landscape amenity, the proposed landscape works within the public domain do provide benefits to the broader community. The public domain plan provides for the retention of existing parking facilities, but also the addition of new street trees and low-lying grasses and</p>

Internal Referral Body	Comments
	<p>groundcovers. Once established, this planting shall provide valuable shading for the future retail spaces, as well as a general increase in greening, as the existing site provides little to none landscape amenity at the moment. The proposed public domain works would therefore be supported.</p> <p>Further concern is raised regarding the impact of the proposed works on existing trees, specifically those located on the adjoining property to the south. In order to construct the basement car park and associated driveway, excavation works are likely to be within both the Tree Protection Zone and Structural Root Zone of existing trees located at the front of No. 34 Duke Street. It is noted that these trees are already located within raised planting areas, with walls located on both the north and west boundaries. Although these walls are expected to restrict the existing roots, the walls are approximately 500mm high, and roots are likely to be located below the existing driveway within the proposed site. It is recommended an Arboricultural Impact Assessment be provided with the application, alongside a tree root investigation, to further analyse and investigate the effects and impacts of the proposed works on long term tree health and retention values. Works that would see the decline of overall tree health would not be supported, as these trees are located within the neighbouring property and as a result shall be protected accordingly. The protection of these trees on the adjoining property are vital to satisfy control E1 of the Warringah Development Control Plan, as a key objectives of the control include "to protect and enhance the scenic value and character that trees and/or bushland vegetation provide", as well as "to effectively manage the risks that come with an established urban forest through professional management of trees".</p> <p>The landscape component of the proposal is therefore not supported in its current state, as a total deep soil area of 14m², or 2% of the site, has been provided which does not satisfy the Apartment Design Guidelines requirements. In addition, the impacts of the proposed development on existing trees is not fully known at this stage. It is therefore recommended that Arboricultural advice be sought regarding the impacts on the proposed works on existing trees in adjoining properties, as well as further design exploration be made in relation to increasing the total amount of deep soil areas. This increase in soil depth can provide a positive outcome for adjoining properties as it can support small/medium tree planting, with the intention of mitigating the bulk and scale of the proposed built form.</p> <p>Should additional information be provided, further assessment can be made.</p>
NECC (Development Engineering)	<p>Not Supported</p> <p>The proposal is not supported as the development requires the submission of a stormwater drainage plan detailing the provision of On site stormwater detention in accordance with Councils water management policy for development . A DRAINS hydraulic model is to</p>

Internal Referral Body	Comments
	be also prepared to support the sizing of a detention system.
Road Reserve	<p>Supported</p> <p>Limited impact on existing road assets. Development engineering to require Road Act consent for public domain improvements as per Council's public domain guidelines. Upgrades to streetscape should include physical barrier (eg bollards) to prevent vehicles in 90 deg parking entering the footway, given likelihood of area being used for outdoor dining.</p>
Strategic and Place Planning (Urban Design)	<p>Not Supported</p> <p><u>Summary</u></p> <p>The property is located in a B1 neighbourhood centre and sits within the context of 1 and two storey residential development. Proposed as shop top housing with 4 x residential split level apartments of two storeys above a retail ground level the development seeks to maximise the site coverage.</p> <p>The site is constrained by its topography and fall across the site from east to west and north to south. The impacts of the development at the western boundary are amplified due to this constraint. As such the proposed two level apartments with a reduced floor to floor height in addition to the proposed reduced floor to floor height for the ground level retail demonstrates the additional level being the upper level of the apartments is in clear breach of the height of buildings and would be exacerbated further if recommended floor to floor level under the ADG were adhered to.</p> <p>Notwithstanding this, the development has the potential to re-invigorate the local context and provide an updated commercial/retail offering to the local neighbourhood.</p> <p>Generally the proposed development represents a development of design merit. Unfortunately the merit of the design proposal does not outweigh the substantial breach of the height control and further design testing to reduce the height through either deletion of the upper level to that of a single storey and reduced yield of residential suites to break up the mass across the development is recommended.</p> <p>WLEP</p> <p>Cl. 4.3 Height of Buildings</p> <p>Floor to Floor (and Ceiling) Heights</p> <p>Current proposal of 2.9m floor to floor including minimum dimension of 200mm slab leaves insufficient room for ceiling lining and in ceiling servicing.</p> <p>The upper storey residential should have a minimum 3.1m standard floor to floor dimensions</p> <p>Current proposal of 3.4 metre floor to ceiling height for the ground floor commercial is insufficient and does not meet the recommendation of the ADG for ground floor commercial floor to ceiling heights. The implementation of the recommended 4.2m floor</p>

Internal Referral Body	Comments
	<p>to floor at ground level demonstrates an additional 800mm shortfall in dimension for ground floor retail.</p> <p>Similarly if an additional 200mm for each residential floor above ground level were implemented an increase in height of 1200mm on top of the current 1380 mm breach of height would bring the overall breach of height to a minimum 2.580 metres over the 8.5m height plane representing an overall height of 11.80m. (Refer DA402 for dimensioned levels)</p> <p>WDCP 2011</p> <p>B1 Wall Height</p> <p>There are insufficient dimensions on the drawings to demonstrate a clear indication of the wall heights relative to the 7.2m height control. A calculation of the spot levels provided on drawing DA401 Section A demonstrates a height of 10.02 at the point of cross section demonstrating the breach of the height control.</p> <p>B3 Side Boundary Envelope</p> <p>There is a minor encroachment of the side boundary envelope to the southern boundary, not representing a major breach of the control.</p> <p>B9 Rear Boundary Setback</p> <p>The nil setback proposed does not provide sufficient area to allow for a transition to the adjacent residential building to the south. A minimum 2m setback to allow for a significant mature tree planting buffer would assist to break down the bulk and scale of the building presentation to the street and adjoining property.</p> <p>D9 Building Bulk</p> <p>The mass and excessive bulk is exacerbated at the eastern boundary where nil setback is provided and the increase height with no stepping back of the built form of the upper adding to the perceived bulk and scale where development should seek to minimise the visual impact.</p> <p>F1 Local and Neighbourhood Centres</p> <p><i>(6) Buildings greater than 2 storeys are to be designed so that the massing is substantially reduced on the top floors and stepped back from the street front to reduce bulk and ensure that new development does not dominate existing buildings and public spaces.</i></p> <p>The eastern boundary elevation presents the most issues with regard to transitioning to the adjacent single storey residential development. Upper levels should be reduced to provide a softer transition to the eastern boundary by removal of the upper storey or the entire unit to the east so the building reads as a single storey transitioning to a perceived two storey development.</p> <p>Additionally;</p> <p>Solar Access</p> <p>The shadow diagrams indicate increased overshadowing to the property to the south during the winter months.</p> <p>Access Ramp to Apartments</p>

Internal Referral Body	Comments
	<p>The access ramp to the southern elevation is comprised six ramps with interstitial landings both at doorways and at the central point of the apartment walls. Is there an opportunity with the gradient of the fall across the site to rationalise the ramp to reduce number of ramps and provide more generous landings at the doorway, noting that the ramps are at the maximum fall of 1:10 and the maximum length of ramp is 9metres before the requirement of the landing.</p> <p>Streetscape and Urban Design The townhouse style and form of building goes some way to demonstrating a building that could be read as 2 storeys and not three. However the significant breach of the height control needs to be acknowledged. The general design and articulation can be supported in that it demonstrates a good design response to the neighbourhood typology with abstraction of pitched rooves articulation and material use adding to the upper level articulation.</p> <p>Rear Terrace Garden Concern is raised with the potential for overlooking the neighbouring property to the south. Noting the roof is annotated as non trafficable, meaning it cannot be occupied by residents as a communal open space, however regular maintenance will require the roof to be trafficable. Clarification of the use and intent of this space The green roof does represent merit in the development. Similarly there is a question as to the useability and the life span of the small garden to the south at ground level which serves no real function or provides any contribution to the streetscape, being it is located in the south eastern sector abutting a three storey wall and a dry store and cool room enclosing the space. There is no clear point of access to the space other than through an enfilade arrangement through the dry store or cool room.</p> <p>Streetfront Access to Tenancies The drawings demonstrate a 1m wide access point to the three tenancies on the Arthur Street elevation. Further details on the pavement profile that demonstrates access into and across the frontage will be compliant with AS1428.1 is required. Further details showing the pavement plan, falls across the retail frontage and adequate circulation and compliant access can be achieved is required.</p> <p>Materials The general material palette of face brick and screening elements generally can be supported. The material distribution of the face brick and the vertical 'non-combustible' screening detail to the eastern elevation has the effect of amplifying the verticality of the elevation, and whilst it provides a modernist articulation to the development it may be considered quite monolithic.</p> <p><u>Planner comments</u> For clarification the Clause B1 Wall Height and B3 Side Building</p>

Internal Referral Body	Comments
	Envelope of the WDCP do not apply to the development.
Traffic Engineer	<p>Supported subject to conditions</p> <p><u>Description of proposal:</u> This application seeks for the demolition of the existing site structures and the construction of a shop top housing development comprising the following: - 4 ground floor retail tenancies with a total GLFA of 321m2 - 4 x 2 bedroom residential units. Each unit are 2 storey - Single level basement parking for 11 spaces accessed from Duke Street. The spaces comprise 5 for residents, 1 visitor, and 5 commercial spaces for staff - 6 bicycle spaces in the basement carpark</p> <p><u>Parking:</u> Applying the parking rate required by Warringah DCP, the total parking spaces required for the proposed development is 26 spaces. This includes 6 parking spaces for the residential component and 20 spaces for the retail area. The proposal includes the parking provision of 6 spaces for the residential component which satisfies the residential parking requirements, and 5 staff parking spaces for the retail component. Taking into consideration the parking availabilities around the site including the 10 parking spaces immediately at the frontage of the proposed development, the reliance on the street parking for the customers can be acceptable. Deliveries to the development is proposed to be undertaken by a variety of light commercial vehicles up to and including the size of a B99 design vehicle. Given the size of retail area, the provision of a loading dock accommodating the minimum size of Small Rigid Trucks (SRVs) will be required. This can be provided as an indented bay at Duke Street frontage.</p> <p><u>Vehicular Access:</u> Vehicular access to the off-street car parking facilities is proposed to be provided via a single-lane, two-way vehicular entry/exit driveway located at the southern end of the Duke Street site frontage. This is considered satisfactory.</p> <p><u>Traffic Generation:</u> That projected nett change in traffic generation of the development is considered negligible, and will not have adverse traffic implication on the road network.</p> <p><u>Conclusion:</u> In view of the above, the proposal is supported subject to conditions.</p>
Waste Officer	<p>Supported subject to conditions</p> <p>Proposal is approved with conditions.</p>

External Referral Body	Comments

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for commercial purposes for a significant period of time with no prior land uses.

The subject site has been used for commercial purposes for an extended period of time. A contamination report has been submitted with the application which identifies no historical or current land use that would alert to concerning contamination onsite. The report did identify possible asbestos, lead paint and PCB and concludes there is a Low Risk of Contamination that may affect the proposed development and that the site can be made suitable for the proposed development, subject to implementation of:

1. Completion of a targeted soil assessment which may result in an Environmental Management Plan and
2. Completion of a hazardous materials assessment to assess the presence of hazardous material

Council Health Officer has reviewed the report and agrees with the findings of this report. Should the Panel decide to approve the DA a condition can be include requiring compliance with the recommendations of the contamination report.

Council's Health Officer have also conducted a search of Council records which did not indicate this site may have potential contamination.

In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential and commercial land use.

SEPP 65 - Design Quality of Residential Apartment Development

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

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

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

As previously outlined the proposed development is for the erection of a three (3) storey 'shop top' housing development plus basement car parking for the provisions of four (4) self-contained dwellings.

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

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

Clause 28 of SEPP 65 requires:

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

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

DESIGN REVIEW PANEL

The application was referred to the Design Advisory and Sustainability Panel (DSAP) on 29 April 2021 and the Panel concluded that *the application cannot be supported in its current form and significant changes are required to the massing, roof form, access arrangements, setbacks on the upper level and improved relationship to the adjoining residence on no 49 Arthur Street*. The DSAP report is provided as an attachment to this report and a summary of the Panel recommendations is provided below:

Scale built form and articulation

1. Reduce the overall bulk of the building. Any breaches of the height controls should be in the centre of

the building while keeping the extremities as low as possible.

2. Reduce the height of the building at the eastern end by introducing a set back above the ground level.
3. Floor to ceiling heights should comply with the ADG and floor to floor should be sufficient to achieve this with adequate tolerance for construction; 3.1m floor to floor is general practice.
4. Reconsider the need for a second bathroom and the need for 'wintergardens' in the apartments.
5. More clearly define a 2-storey form with the third level set back. The panel notes that the PLM scheme had this form but also presented a monolithic appearance. It is not at all clear how the curved forms in the PLM scheme, or the double storey form of the apartments relate to the local area.
6. The Panel does not support the roof forms and recommends that alternative approaches be explored to reduce the apparent height, in passing noting the re-orientation of the roofs would also provide a better solar orientation and avoid box gutters.

Access

7. Replan the access to all for direct level access to shops and apartments wherever possible.
8. Rearrange the internal circulation in apartments

Landscape

9. Provide further detail on the landscaping of the 'green roof'.
10. Consider enhancing the public domain design and landscape character to further complement the landscape context.

Vehicular movement and car parking

11. Consider a reduction in the amount of car parking on site.

Sustainability

12. Consider utilising electric heat pump hot water and induction cooktops to replace the use of gas.
13. The Panel recommends increasing the capacity of PV.
14. Add external windows to bathrooms and utility rooms wherever possible including ground level retail toilets.

While it is acknowledged that some attempt was made by the applicant to address the recommendations of the Panel with draft amended plans the majority of the issues raised by the Panel remain unresolved. The draft plans were not formally submitted, and this assessment is therefore based on the original scheme. All issues raised by the Panel therefore remain valid and unresolved in the subject design.

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 corner site is located on land zoned B1 Neighbourhood Centre and is surrounded by Low Density Residential development on land zoned R2 Low Density Residential consisting primarily of one and

two storey detached dwellings set back from the street in landscape settings. A single storey brick residence is located to the immediate east at No 49 Arthur Street and a two storey detached dwelling with a garage and pool is located to the immediate south at No 34 Duke Street.

The Design Panel, Council and Public are very supportive of the principle of a shop-top housing development which is seen to provide an upgrade of essential retail service in the area while increasing and diversify housing supply. However, the development needs to fit in and complement the surrounding area and adjoining properties as required by SEPP 65 and the WLEP and WDCP controls.

The proposed shop top housing development that proposed 4 residential split level apartments two storeys in height located above ground level retail seeks to maximise the site coverage. The proposal breaches the 8.5m height development standard and proposes no step back of the upper floor to the east or west boundaries. The eastern boundary elevation presents the most issues regarding transitioning to the adjacent single storey residential development at No. 49 Arthur Street. Upper levels should be reduced to provide a softer transition to the eastern boundary. In addition, the proposal has a repetitious form and the row of apartments with strong vertical expression serves to emphasis the height of the building rather than moderate it. The removal of the upper storey or the entire unit to the east has been suggested as a design solution to allow the building to read as a single storey transitioning to a perceived two storey development.

In summary, the proposal does not appropriately respond to, or fit comfortably within, the context, due to its height, scale bulk and mass and is therefore inconsistent with Principle 1.

Principle 2: Built Form and Scale

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

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignment, 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 height, bulk and scale of the development is excessive, as expressed by the breach of the built form controls including the maximum height limit. The scale, bulk and height fail to relate to the existing and desired low density character of the surrounding area. The mass and excessive bulk is exacerbated at the eastern boundary where nil setback is provided and the increase height with no stepping back of the built form of the upper adding to the perceived bulk and scale where development should seek to minimise the visual impact. The topography and fall across the site from east to west and north to south amplifies the impacts of the development at the western boundary.

In summary, the built form does not respond to its context and is therefore inconsistent with Principle 2.

Principle 3: Density

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

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

Comment:

The internal amenity of the residential units is generally compliant with the Apartment Design Guide (ADG), refer to discussion below.

The subject site is located within a Neighbourhood Centre which is well serviced by infrastructure and public transport. This area also enjoys the use of nearby public spaces. There is no density prescribed by the WLEP or WDCP for this area. However, it can reasonably be expected that the principle of a development of this type can be supported within the local centre. Furthermore, the Northern Beaches Section 7.12 Contributions Plan 2019 provides a mechanism for Council to provide required infrastructure

The proposal generally satisfies Principle 3.

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:

As noted above, the internal amenity of the residential units is generally acceptable in terms of cross ventilation and access to sunlight. The proposal is also supported by a BASIX Certificate that confirms that the development can achieve the water, energy and thermal comfort requirements. It is however noted that the sustainability recommendations of the Design Panel remain outstanding, refer above.

Should the Panel decide to approve the application conditions can be imposed to address the recommendations and satisfy Principle 4.

Principle 5: Landscape

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

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

Comment:

While it is acknowledged that the existing site has almost 100% site coverage and the 14sqm of deep soil zone in the south-east corner is a slight improvement to the current arrangement. Nonetheless, the deep soil zones will provide limited opportunities to support any significant planting, refer to comments from Council's Landscape Officer.

In addition, the landscaped roof does not provide sufficient soil depth to allow planting to provide a landscape buffer as is intended. Council's Landscape Officer has also raised concern regarding the impact of the proposed works on existing trees, specifically those located on the adjoining property to

the south. In order to construct the basement car park and associated driveway, excavation works are likely to be within both the Tree Protection Zone and Structural Root Zone of existing trees located at the front of No. 34 Duke Street.

The proposed landscape works within the public domain do provide benefits to the broader community. The public domain plan provides for the retention of existing parking facilities and the addition of new street trees and low-lying grasses and groundcovers. The public domain works has the potential to provide shading for the future retail spaces, as well as a general increase in greening, as the existing site currently provides little to no landscape amenity.

In summary, the proposal fails to fully comply with Principle 5.

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 proposed four residential units will achieve good amenity in terms of room dimensions, access to sunlight and natural ventilation, outlook and visual and acoustic privacy and private open space generally in accordance with the objectives of the ADG as discussed below.

The proposal however results in unreasonable impacts on the amenity of neighbouring residential properties as a result of excessive height and insufficient setbacks.

In summary, the proposal fails to fully comply with Principle 6.

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 allows for casual surveillance from the balconies of the upper floor units to the street and the entry to the residential units and shops is well defined. The Design Panel however note that there are issues of shared use of the lift between customers and residents which remains unresolved.

In summary, the proposal fails to fully comply with Principle 7.

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:

There is no mix of apartments, all four units are two bedroom units which the applicant justifies on the basis of the small scale of the development and the demographic and market in the area.

The applicant also notes that units 1 and 4 have been designed to meet Silver Level of the Liveable Housing Guidelines requirements with little modification. Access to the units is via an accessible ramp along the southern boundary and then up the internal stairs which in practice will make the units inaccessible. In addition, access to the 'accessible' toilet is unclear as is the access between the lift and lobby and retail.

In summary, the proposal fails to fully comply with Principle 8.

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 range of facade compositions, materials and colours are generally supported. However, the material distribution of the face brick and the vertical 'non-combustible' screening detail to the eastern elevation has the effect of amplifying the verticality of the elevation, and whilst it provides a modernist articulation to the development it may be considered quite monolithic.

The proposal fails to fully comply with Principle 9.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Inconsistent The surrounding area consists of low density one and two storey dwellings set back from the street in landscaped gardens. The

		<p>proposed three storey development maximises the site coverage and has no set back of the upper floors to the east or west boundaries. The excessive height, bulk and scale expressed as non-compliance with the built form controls, including the height development standard, is out of character with the surrounding area. The proposal, in particular the eastern elevation, fails to transition or relate well to its context, including the single storey dwelling at No. 49 Arthur Street to its immediate east.</p>
Orientation	<p>Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?</p>	<p>Consistent in part The general design, articulation and materiality of the street frontages can be supported.</p> <p>The orientation of the lot ensure that the units receive good solar access from the north. The proposal however increases the shadow impact to the dwelling to the south No. 34 Duke Street.</p>
Public Domain Interface	<p>Does the development transition well between the private and public domain without compromising safety and security?</p> <p>Is the amenity of the public domain retained and enhanced?</p>	<p>Generally Consistent The development provides active street frontages and has the potential to enhance the amenity of the public domain. It is however noted that the Design Panel had some concern about the shared use of lifts between the retail and residents.</p>
Communal and Public Open Space	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> Communal open space has a minimum area equal to 25% of the site 	<p>Inconsistent The proposal includes a 104sqm (17.8% of the site) landscaped roof which is not accessible. There is no</p>

	<p>2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)</p>	<p>communal open space and the applicant relies on the development being located in close proximity to Angophora Reserve 75m to the west and the fact that all units have areas of private open space in excess of the minimum standards.</p> <p>The applicants justification has some merit, especially given the small 583.2sqm size of the allotment and the B1 Neighbourhood zone. However, the design requires further amendment including the provision of sufficient soil depth to the landscaped roof to allow screen planting. The proposal in its current form has not addressed this issue or satisfied the clause.</p>												
<p>Deep Soil Zones</p>	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> <tr> <td>Greater than 1,500m² 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 ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	<p>Inconsistent</p> <p>An area of 14sqm deep soil zone (2%) is proposed within the south-east rear corner which breaches the control by 27sqm (5%). While it is acknowledged that there is no landscaping currently on the site the deep soil zone area is well below the 7% minimum requirement. The area will not support suitable canopy tree planting to help mitigate the bulk and scale of the development from the southern neighbour.</p> <p>In addition, the proposed 300mm depth on the landscaped roof will not allow sufficient screen planting to provide a landscape buffer to the rear.</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													

		<p>A redesign of the landscape roof may help support some merit exception to the requirements for deep soil planting. However, the proposal in its current form has not addressed this issue or satisfied the clause.</p>												
Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <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> </tbody> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>Inconsistent</p> <p>Living room and bedroom windows to unit 4 are positioned at level 1 and 2 in the eastern elevation with no setback to the common boundary. In addition the level 1 common circulation corridor / breezeway has a zero setback from the eastern boundary. The breezeway has a compliant 7.4m - 10m setback to the southern boundary. However, as it is elevated it would benefit with a privacy screen along the southern edge.</p> <p>The separation distance of habitable windows and the corridor to the east is inconsistent with the control. In order to address this issue vertical screens are proposed along the openings and the eastern edge of the common circulation space as a privacy treatment. The design of the vertical screen is not acceptable and will amplify the height breach.</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												
Pedestrian Access and entries	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p>Consistent in part</p> <p>The pedestrian access to the shops and residential entry is clearly defined. However, the Design Panel has raised concerns with regards to accessible</p>												

		access to the units and the accessible toilet, refer above.
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	Generally Consistent Vehicular access to the off-street car parking facilities is proposed to be provided via a single-lane, two-way vehicular entry/exit driveway located at the southern end of the Duke Street site frontage. This is considered satisfactory.
Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p>Inconsistent (assessed as acceptable on merit)</p> <p>The proposed parking is inconsistent with the parking rate required by WDCP, i.e. 26 (6 spaces for the residential component and 20 spaces for the retail area). The proposal includes the parking provision of 6 spaces for the residential component which satisfies the residential parking requirements, and 5 staff parking spaces for the retail component. Taking into consideration the parking availabilities around the site including the 10 parking spaces immediately at the frontage of the proposed development, the reliance on the street parking for the customers can be acceptable. The proposal provides bicycle parking spaces as per the WDCP.</p> <p>The vehicular access to the site is integrated into the design of the development and will not result in any unreasonable visual or environmental impacts within the locality.</p> <p>Given the size of retail</p>

		area, the provision of a loading dock accommodating the minimum size of Small Rigid Trucks (SRVs) will be required. This can be provided as an indented bay at Duke Street frontage.								
Part 4 Designing the Building										
Amenity										
Solar and Daylight Access	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: <ul style="list-style-type: none">Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.	Consistent The living areas and private open space (POS) receive compliant solar access.								
	<ul style="list-style-type: none">A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	Consistent								
Natural Ventilation	The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by: <ul style="list-style-type: none">At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	Consistent All units are naturally cross ventilated.								
	<ul style="list-style-type: none">Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	Consistent The depth of the units are 8.7m.								
Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are:	Residential unit consistent The floor to ceiling height of the upper floor varied with a minimum height of 2.4m to 3.3m. The floor to ceiling heights in the lower level is a compliant 2.7m. On merit the floor to ceiling heights of the units are assessed as acceptable. Retail units inconsistent Both the Design Panel and								
	<table><tr><td colspan="2">Minimum ceiling height</td></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr></table>		Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area
	Minimum ceiling height									
	Habitable rooms		2.7m							
Non-habitable	2.4m									
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area									

	<table><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>	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	Council's Urban Designer express a concerned that the 2.9m floor to floor dimension for the retail units will prove inadequate floor to floor height.						
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>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m ² each.	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	Consistent The 106.07sqm size of the two bedroom units exceeds the minimum area. The excessive size, including winter gardens and second bathroom, add to the bulk of the development.
	Apartment type	Minimum internal area										
	Studio	35m ²										
	1 bedroom	50m ²										
	2 bedroom	70m ²										
	3 bedroom	90m ²										
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	Complies All units receive adequate daylight.										
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Complies The control requires the depth of the room to not to exceed 6.75m. The proposal generally complies with this requirement.										
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Complies The proposal generally complies with this requirement.										
Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	Complies The size of the bedrooms is compliant.											
Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	Complies The size of the bedrooms is compliant.											
Living rooms or combined living/dining rooms have a minimum width of:	Complies All units are 5.7m in width.											

	<ul style="list-style-type: none">• 3.6m for studio and 1 bedroom apartments• 4m for 2 and 3 bedroom apartments																
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Complies All units are 5.7m in width.															
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	Consistent All units have balconies which exceed the minimum 10sqm being 13sqm. In addition, winter gardens are proposed on the top floor.
	Dwelling Type	Minimum Area	Minimum Depth														
	Studio apartments	4m ²	-														
	1 bedroom apartments	8m ²	2m														
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
	The minimum balcony depth to be counted as contributing to the balcony area is 1m																
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.																
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Consistent The proposal is for four (4) residential units.															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A															
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²	Consistent All units have compliant storage areas.					
	Dwelling Type	Storage size volume															
Studio apartments	4m ²																
1 bedroom apartments	6m ²																
2 bedroom apartments	8m ²																
3+ bedroom apartments	10m ²																
	At least 50% of the required storage is to be located within the apartment.																
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Consistent An acoustic report has been submitted with the application which confirms that subject to conditions there will be no acoustic issues.															

Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Consistent Subject to conditions external noise and pollution impacts can be mitigated.
Configuration		
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Inconsistent There is no unit mix, all apartments are 2 bedroom.
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	N/A
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Consistent to streetscape The facades to the public streets are generally acceptable and provide visual interest. Inconsistent to eastern facade The eastern facade is visually dominate given that it lacks any transition to the adjoining single storey dwelling in terms of its excessive height and nil setback of the upper floors.
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	Inconsistent The Design Panel raised issues with the roof design and pitch which they note <i>"serves to emphasis height, requires valley gutters and unnecessarily exceeds the height limit at the street and rear alignment"</i> .
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Inconsistent For the reasons discussed throughout this report the landscape design is not acceptable, refer to detailed comments on the referral section of this report.
Planting on	When planting on structures the following are	Inconsistent

Structures	<p>recommended as minimum standards for a range of plant sizes:</p> <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m³</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m³</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m³</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		<p>Soil depth is insufficient to support planting on structures, refer to detailed comments on the referral section of this report.</p>
Plant type	Definition	Soil Volume	Soil Depth	Soil Area																																	
Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent																																	
Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent																																	
Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent																																	
Shrubs			500-600mm																																		
Ground Cover			300-450mm																																		
Turf			200mm																																		
Universal Design	<p>Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features</p>	<p>Inconsistent The applicant suggests that unit 1 and 4 meet the Livable Housing silver level requirements. However, all units have internal stairs which suggests that they cannot be adaptable.</p>																																			
Adaptable Reuse	<p>New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.</p>	<p>N/A</p>																																			
Mixed Use	<p>Can the development be accessed through public transport and does it positively contribute to the public domain?</p> <p>Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.</p>	<p>Consistent The mixed use development generally contributes positively to the public domain with the commercial use on the ground level. The proposal also includes an upgrade of the public domain with new street trees and kerb</p>																																			

		side garden beds. The site has connections to public transport.
Awnings and Signage	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.	Consistent An awning is proposed along the Arthur and Duke Street frontage in compliant with the clause which will enhance the streetscape and public amenity in terms of providing weather protection.
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Consistent A BASIX certificate was submitted with the application
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Inconsistent The applicant has not submitted a storm-water drainage plan detailing the provision of on site stormwater detention in accordance with Councils water management policy for development or a DRAINS hydraulic model to support the sizing of a detention system. Council's Engineer does not support the proposal.
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	Consistent Council's Waste Management Officer has no objections to the proposal subject to conditions of consent if the development is approved.
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Consistent The building is of a suitable design to minimise building maintenance.

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who advised that a response was not required.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	No
6.2 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:	8.5m
Proposed:	9.7m - 10.4m

Percentage variation to requirement:	14.69%- 22.4%
--------------------------------------	---------------

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

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

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

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has not demonstrated that the objectives of the development standard are achieved.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

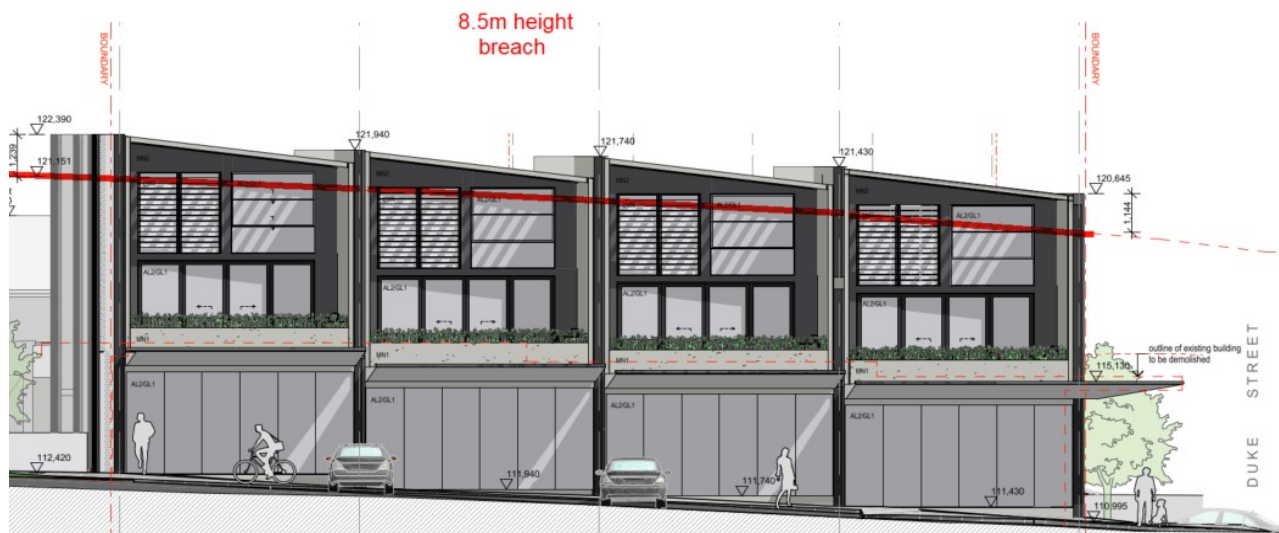
- *The development has been cleverly designed to step down the site in response to topography*

the topographical characteristics to make strict compliance difficult to achieve whilst providing a building of high design quality, amenity and streetscape appearance.

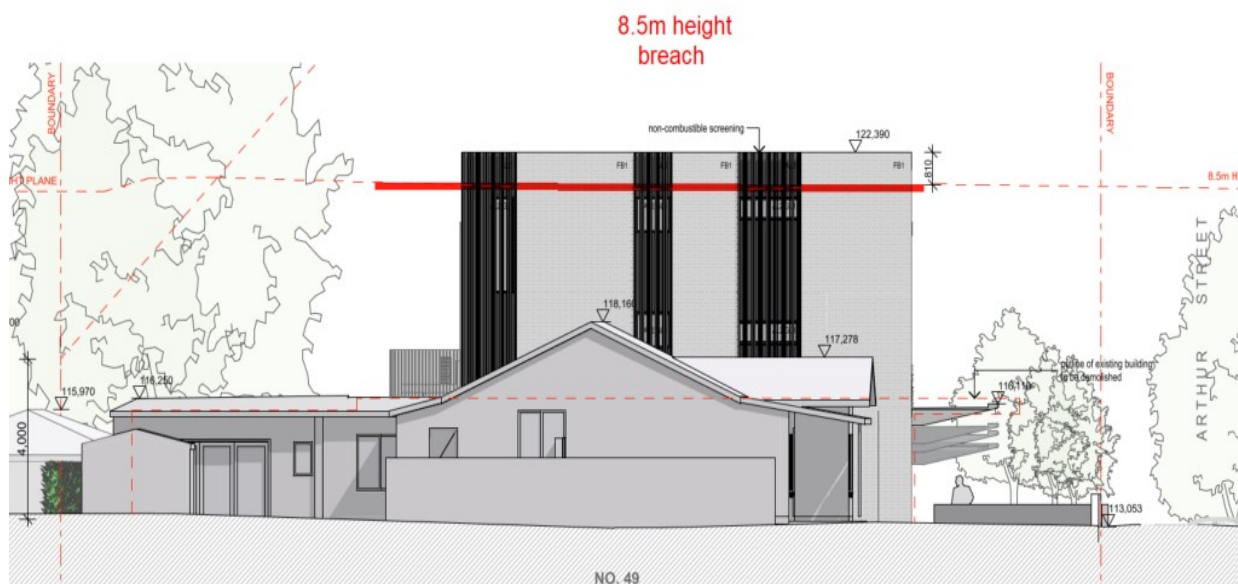
- *The development has been designed to provide through a contextually responsive building form maintaining appropriate amenity to adjoining properties and a high level of amenity to future occupants.*
- *The 2 storey mezzanine style apartments above ground level retail spaces have been designed to present as 2 storey elements to both street frontages with the split level floor plates enabling the development to step down the Arthur Street frontage in response to topography. This design approach also keeps the building low in the streetscape and minimises the building height breach. The facades are otherwise appropriately articulated in both the horizontal and vertical planes.*
- *Particular attention has been given to achieving a contextually appropriate human scale consistent with that established by 2 storey dwelling houses in the locality with the skillion roof forms adopted also reflecting a complimentary and compatible residential form and scale.*
- *The proposal will not give rise to adverse residential amenity or land use conflicts with the future development of the subject site for either commercial or shop top housing land uses anticipated, through the provision of a highly articulated and modulated façade presentation to this property which responds to the residential character of the area in a contemporary fashion. The proposal has taken into consideration the adjoining residential zone and does not create any conflict between land uses on adjoining properties or the amenity of residential uses within adjoining zones.*
- *The proposal achieves the objectives of the zone and the height control.*

Comment

The proposal will result in a height of between 9.7m and 10.4m which equates to a breach of the height control of 14.6% - 22.4% as illustrated in the diagrams below:



Northern elevation (source Ramsay Architects)



Eastern elevation (source Ramsay Architects)

The applicant's argument that the proposed design provides an appropriate contextual response to the surrounding area is not supported. The excessive height, bulk and scale and insufficient set backs of the upper floor to the eastern boundary results in a development that lacks any transition to the low density scale of the adjoining single storey dwelling at No. 49 Arthur Street. The excessive height is emphasised with the vertical louvres along the eastern elevation. In addition the site is constrained by its topography and fall across the site from east to west and north to south. The impacts of the development at the western boundary are amplified due to this constraint.

The applicant's argument that the proposal will not give rise to any unreasonable amenity impacts to neighbouring properties is not concurred with. Due to insufficient setback of the upper floors of unit 4 to the eastern boundary the proposal will have the potential to cause unreasonable amenity impacts on the adjoining residential dwelling in terms of loss of privacy. Windows to habitable rooms are proposed in the eastern elevation with no setback to the boundary. In addition, the eastern edge of the shared elevated breezeway directly adjoins the eastern boundary with no setback. As noted above, the vertical louvred screens are not considered to be an appropriate method of privacy treatment to the windows and the breezeway. No screen is provided along the southern edge of the elevated breezeway and the proposal may also impact on the privacy of the neighbour to the rear.

The proposal also increased the amount of shadow cast on the adjoining southern and eastern neighbour. This issue is discussed under Clause D6 of the WDCP.

The applicant's argument that the proposal meets the objectives of the height control and zone is not concurred with as discussed below.

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.

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

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

(ii) the proposed development will be in the public interest because it is consistent with the objectives of

the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment:

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

Objectives of development standard

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

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

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

Comment:

The corner site is zoned B1 Neighbourhood Centre and is surrounded by a Low Density R2 Residential zone comprising one and two storey detached dwellings setback from the street in landscape settings. The adjoining site to the immediate east at No. 49 Arthur Street is a single storey detached dwelling.

The applicants Clause 4.6 variation suggests that the development meets the compatibility Principle established in the matter of *Project Venture Developments v Pittwater Council (2005) NSW LEC 191*. In this matter the Senior Commissioner formed the following opinion:

There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve

The applicant argues that the height and form is consistent with the 2 storey development in the surrounding area and the height breach will not give rise to any unreasonable physical impacts in terms of view loss, privacy or overshadowing. Further the applicant argues that the resultant building form will contribute positively to the streetscape quality of the area given the design initiatives adopted including its highly articulated and modulated building facades and introduction of balcony edge landscape treatments. The 2 storey mezzanine style apartments above ground level retail spaces have been designed to present as 2 storey elements to both street frontages with the split level floor plates enabling the development to step down the Arthur Street frontage in response to topography. This design approach also keeps the building low in the streetscape and minimises the building height breach. The facades are otherwise appropriately articulated in both the horizontal and vertical planes

The applicants argument regarding compatibility is not fully supported. While it is agreed that the townhouse style and form of building goes some way to demonstrating a building that could be read as 2 storeys and not three, the significant breach of the height control needs to be acknowledged. The general design and articulation can be supported in that it demonstrates a

good design response to the neighbourhood typology with abstraction of pitched rooves articulation and material use adding to the upper level articulation. However, the proposal occupies the entire site with no setback of the upper floors to the eastern boundary. The height and scale of the development, particularly to the eastern boundary, fails to transition, relate or be compatible with the height and scale of the adjoining development. In addition, the vertical screens proposed on the eastern elevation amplify the verticality of the elevation and its inappropriate relationship to the existing low density neighbouring character. The site is also constrained by its topography and fall across the site from east to west and north to south. The impacts of the development at the western boundary are amplified due to this constraint.

As such, the proposal is not consistent with Objective 1.

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

Comment:

As a result of the excessive height, bulk and scale of the building and the lack of transition to the low density dwellings there will be unreasonable visual impact from the neighbouring property at No. 49 Arthur Street. The height, bulk and scale of the proposal will also have unreasonable visual impacts on the streetscape.

Windows to habitable rooms and the edge of the common breezeway are sited within the eastern boundary with no setback. It is noted that vertical screens are proposed to the windows and edge of the breezeway, however, the design of the screen is not supported, refer above. The proposal will increase shadow impacts to the southern neighbour, refer to further discussion under Clause D6 of the WDCP.

It is agreed that the proposal will not give rise to view loss.

In summary, the proposal is inconsistent with Objective b (with the exception of impacts on view loss).

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

Comment:

It is agreed that the non-compliant building height elements will not have any discernible impact on the bush environment in the local area. The proposal achieves 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:

As noted above, the proposal fails to transition appropriately to the low density scale of the eastern neighbour. The non-compliant height combined with insufficient setback of the upper floor from the eastern boundary will result in unreasonable visual impacts as view from the adjoining property and the streetscape. The proposal is therefore inconsistent with this objective.

Zone objectives

The underlying objectives of the B1 Neighbourhood Centre zone are:

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

Comment:

It is agreed that the proposed mixed use development provides small scale ground floor retail/business tenancies that are able to accommodate a range of uses that serve the needs of people who live or work in the surrounding neighbourhood. The proposal achieves this objective.

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

Comment:

The proposal generally meets this objective as it includes an awning along the two street frontages that will add to the comfort of pedestrians offering weather protection. The proposal also has the potential to enhance the public domain and allows for passive surveillance to help ensure the safety of pedestrians. Insufficient details have however been submitted in terms of pavement profile, fall across the retail frontage and adequate circulation and compliant access to demonstrate compliance.

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

Comment:

Due to the excessive height bulk and scale of the development to the eastern boundary and insufficient setbacks of the upper floor the proposal fails to provide a suitable transition between the low density residential land use on the adjoining zone with unreasonable visual impacts and amenity impact in terms of overlooking. As such, the proposal does not satisfy the objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be inconsistent with the objective 3 of the B1 Neighbourhood Centre zone.

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning & 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.

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B6 Merit Assessment of Side Boundary Setbacks	merit assessment	Nil to east and west boundaries on all levels	N/A	No
B7 Front Boundary Setbacks	Nil	Nil	N/A	Yes
B9 Rear Boundary Setbacks (merit assessment)	merit assessment	<p>Basement - Nil</p> <p>Ground - Nil to boundary wall / ramp to basement, 2m to wall of store and approximately 5.1m to edge of fire stair and lift</p> <p>First - Nil to boundary wall and landscaped roof, 2m, approximately 5.1m to edge of fire stairs and lift, 7.4m to breezeway 10m to southern wall of development</p> <p>Second - Between 6.4m band 9.2m to the southern wall of the development.</p>	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B6 Merit Assessment of Side Boundary Setbacks	No	No
B7 Front Boundary Setbacks	Yes	Yes
B10 Merit assessment of rear boundary setbacks	No	No
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	Yes	Yes
C4 Stormwater	No	No
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	No
D7 Views	Yes	Yes
D8 Privacy	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
D9 Building Bulk	No	No
D10 Building Colours and Materials	No	No
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	No	No
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E10 Landslip Risk	Yes	Yes
F1 Local and Neighbourhood Centres	No	No

Detailed Assessment

B6 Merit Assessment of Side Boundary Setbacks

Clause B6 requires:

- Side boundary setbacks will be determined on a merit basis and will have regard to:*
 - streetscape;*
 - amenity of surrounding properties; and*
 - setbacks of neighbouring development*
- Generally, side boundary setback areas are to be landscaped and free of any above or below ground structures, car parking or site facilities other than driveways and fences.*

Comment

With the exception of a small setback to the south-east corner for a 14sqm area of deep soil the proposal has a nil setback to the side boundaries on all levels.

The application is assessed against the objectives of the control as discussed below:

- To provide ample opportunities for deep soil landscape areas.*

Comment:

A 14sqm area of deep soil is provided with the setback to the south-east corner which is the only area proposed for deep soil landscaping. The size of the area is assessed as too small to support sufficient landscaping to help soften the visual bulk of the development and maintain residential amenity to neighbouring properties. Refer to comments within this report from Council's Landscape Officer and discussion under SEPP 65. In summary, the proposal is inconsistent with objective 1.

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

Comment:

The nil setback on all levels to the eastern boundary will result in a development which is visually

dominate as viewed from neighbouring properties and the streetscape. As a result of the topography the development at the western corner is also visually dominate. In summary, the proposal is inconsistent with objective 2.

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

Comment:

As result of the nil setback on all levels to the boundaries the scale, bulk and height of the building is assessed as excessive particularly given the low density one and two storey scale of the surrounding area. In summary, the proposal is inconsistent with objective 3.

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

Comment:

As a result of the nil setback on all level of the building to the east the proposal results in insufficient building separation. Windows are proposed in the eastern elevation with no setback to the boundary. The design of the vertical screens to the windows will add expression to the excessive height of the building and for this reason the screens are not supported. As such, the proposed location of the window and the elevated breezeway will result in unreasonable impacts on neighbouring amenity in terms of loss of privacy.

In addition the proposal cast additional shadow impacts over the neighbouring properties to the south and east. In summary, the proposal is inconsistent with objective 4.

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

Comment:

There are no views that will be affected by the proposal. In summary, the proposal is consistent with objective 5.

B10 Merit assessment of rear boundary setbacks

Clause B10 requires

1. Rear boundary setbacks will be determined on a merit basis and will have regard to:

- *streetscape;*
- *amenity of surrounding properties; and*
- *setbacks of neighbouring development.*

Comment:

The setback of the rear boundary varies on all levels as detailed below:

- Basement: nil
- Ground - Nil to boundary wall / ramp to basement, 2m to wall of store and approximately 5.1m to edge of fire stair and lift
- First - Nil to boundary wall and landscaped roof, 2m, approximately 5.1m to edge of fire stairs and lift, 7.4m to breezeway 10m to southern wall of development
- Second - Between 6.4m and 9.2m to the southern wall of the development.

The proposal has been assessed, on merit, against the objectives of the control as follows:

- *To ensure opportunities for deep soil landscape areas are maintained.*

Comment:

As discussed above the 14sqm area of deep soil provided with the setback to the south-east corner is assessed as insufficient to support sufficient landscaping to help soften the visual bulk of the development and help maintain residential amenity to neighbouring properties. Refer to comments within this report from Council's Landscape Officer and discussion under SEPP 65. In summary, the proposal is inconsistent with objective 1.

- *To create a sense of openness in rear yards.*

Comment:

The 2m setback provides a limited sense of openness to the development. The landscaped roof is acceptable in principle which could help meet this objective, however, there is insufficient deep soil proposed to support any planting which may help provide for the amenity of the development and protection to neighbours. In summary, the proposal is inconsistent with objective 2.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Comment:

The shared elevated breezeway is setback between 6.3m and 1m from the southern (rear) boundary with no privacy protection / screening. The elevated breezeway will have unreasonable impacts on neighbouring privacy. As discussed above, there is also insufficient deep soil to support planting of the landscaped roof which will help protect the privacy of the neighbouring properties.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment:

The site is zoned B1 Neighbourhood Centre zone and the existing building is generally built to the boundaries. The site is surrounded on all sides by the R2 Low Density Residential zone which has a distinct pattern of buildings. Given the zoning of the subject site this objective is not applicable to the application.

- *To provide opportunities to maintain privacy between dwellings.*

Comment:

As discussed above, the proposal does not provide for sufficient opportunities to maintain privacy between the subject site and neighbouring dwellings. The proposal is inconsistent with this objective.

C4 Stormwater

Clause C4 requires:

Stormwater runoff must not cause downstream flooding and must have minimal environmental impact on any receiving stormwater infrastructure, watercourse, stream, lagoon, lake and waterway or the like.

The stormwater drainage systems for all developments are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

Comment:

Council's Development Engineer has confirmed that insufficient information has been submitted to meet the Council's Water Management Policy as such the proposal is inconsistent with the objectives and requirements of Clause C4 (Stormwater).

D6 Access to Sunlight

Clause D6 requires:

- 1. Development should avoid unreasonable overshadowing any public open space.*
- 2. At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.*

Comment:

The proposal is assessed against the objectives of the control as detailed below:

- To ensure that reasonable access to sunlight is maintained.*

Comment:

Shadow diagrams have been submitted which confirm that the proposal will cast additional shadow to the southern and eastern neighbour. The diagrams do not show the entire site to the southern neighbour to make a detailed assessment. Despite this the breach in the height and the insufficient side setbacks contribute unreasonably to impacts on solar access and a more innovative design solution will reduce solar access impacts. The proposal is therefore inconsistent with objective 1.

- To encourage innovative design solutions to improve the urban environment and public open space.*

Comment:

The proposal will not result in unreasonable impacts on the solar access to public open space as the additional shadow is primarily cast on the neighbouring residential properties to the south and east.

- To promote passive solar design and the use of solar energy.*

Comment:

The proposal fails to include any options for solar energy. The proposal is therefore inconsistent with objective 3.

D8 Privacy

Clause D8 requires:

- 1. Building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties.*
- 2. Orientate living areas, habitable rooms and windows to private open space areas or to the street to*

limit overlooking.

3. The effective location of doors, windows and balconies to avoid overlooking is preferred to the use of screening devices, high sills or obscured glass.

4. The windows of one dwelling are to be located so they do not provide direct or close views (ie from less than 9 metres away) into the windows of other dwellings.

5. Planter boxes, louvre screens, pergolas, balcony design and the like are to be used to screen a minimum of 50% of the principal private open space of a lower apartment from overlooking from an upper apartment.

Comment:

The proposal is assessed against the objectives of the control as detailed below:

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

Comment:

The development has a nil setback to the east on all levels with windows to habitable rooms located in the eastern elevation. In addition, the eastern edge of the elevated breezeway has a nil setback to the east. The design of the privacy screens to the windows add to the appearance of the excessive height and are not supported and the proposal has the potential to result in unreasonable amenity impacts on No. 49 Arthur Street to the immediate east.

In addition, the landscape roof fails to provide sufficient soil depth to support screen planting to the rear to ensure privacy is protected to the southern neighbour.

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

Comment:

A more innovated design that responds better to the context would improve the urban environment.

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

Comment:

The proposal provides for the personal and property security for future occupants and visitors.

D9 Building Bulk

Clause D9 requires

1. Side and rear setbacks are to be progressively increased as wall height increases.

2. Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.

3. On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular:

The amount of fill is not to exceed one metre in depth.

Fill is not to spread beyond the footprint of the building.

Excavation of the landform is to be minimised.

4. Building height and scale needs to relate to topography and site conditions.

5. *Orientate development to address the street.*
6. *Use colour, materials and surface treatment to reduce building bulk.*
7. *Landscape plantings are to be provided to reduce the visual bulk of new building and works.*
8. *Articulate walls to reduce building mass.*

Comment:

The proposal is assessed against the objectives of the control as detailed below.

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

Comment:

The design is generally regarded as a good design, however, the height, scale and bulk is contextually inappropriate in context to the surrounding low density residential area.

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

Comment:

The side setbacks are not progressively increased as wall height increases, the proposal is therefore inconsistent with sub-clause 1 of the control. The proposal as viewed from the east will result in unreasonable visual impact to No. 49 Arthur Street and the streetscape in general. For the reasons discussed throughout the report the proposal is inconsistent with the requirements and objectives of Clause D9 (Building Bulk).

D10 Building Colours and Materials

With the exception of the vertical screens attached to the eastern elevation the materials and colours are assessed as acceptable. Refer to comments from Council's Urban Designer within this report.

D18 Accessibility and Adaptability

Clause D18 requires:

1. *The design is to achieve a barrier free environment with consideration given to the design of door handles and switches, entrances and corridors. Steep, rough and slippery surfaces, steps and stairs and narrow paths should be avoided.*
2. *There are to be continuous, independent and barrier-free access ways incorporated into the design of buildings.*
3. *Pathways are to be reasonably level with minimal cross fall and sufficient width, comfortable seating and slip-resistant floor surfaces.*
4. *Where there is a change of level from the footpath to commercial or industrial floor levels, ramps rather than steps should be incorporated.*
5. *There is to be effective signage and sufficient illumination for people with a disability.*
6. *Tactile ground surface indicators for the orientation of people with visual impairments are to be provided in accordance with the relevant Australian Standard.*

Comment:

The proposal has been assessed against the objectives of the control as detailed below:

- *To ensure vehicular access points for parking, servicing or deliveries, and pedestrian access are designed to provide vehicular and pedestrian safety.*

Comment:

Insufficient information has been submitted to confirm that the proposal provides accessible pedestrian access to the shops and the accessible toilet. In addition, all split level units have internal stair access and the proposal does not provide for the needs for 20% of the units being adaptable. The proposal is therefore inconsistent with this objective.

- *To ensure convenient, comfortable and safe access for all people including older people, people with prams and strollers and people with a disability.*

Comment:

As discussed above, insufficient information has been submitted to confirm that the proposal provides a convenient, comfortable and safe access for all people including older people, people with prams and strollers and people with a disability, refer to Council's Urban Design comments within this report. Due to the insufficient information regarding access it is not possible to confirm compliance with this objective.

- *To provide a reasonable proportion of residential units that should be designed to be adaptable and easily modified to promote 'ageing in place' and for people with disabilities.*

Comment:

As discussed above, the proposal fails to provide any adaptable units given that all units have an internal stair at the entrance. The proposal is inconsistent with this objective.

F1 Local and Neighbourhood Centres

Clause F1 requires:

1. *Buildings are to define the streets and public spaces and create environments that are appropriate to the human scale as well as being interesting, safe and comfortable.*
2. *The minimum floor to ceiling height for buildings is to be 3.0 metres for ground floor levels and 2.7 metres for upper storeys.*
3. *The design and arrangement of buildings are to recognise and preserve existing significant public views.*
4. *Development that adjoins residential land is not to reduce amenity enjoyed by adjoining residents.*
5. ***The built form of development in the local or neighbourhood retail centre is to provide a transition to adjacent residential development, including reasonable setbacks from side and rear boundaries, particularly above ground floor level.***
6. ***Buildings greater than 2 storeys are to be designed so that the massing is substantially reduced on the top floors and stepped back from the street front to reduce bulk and ensure that new development does not dominate existing buildings and public spaces. (emphasis added).***
7. *Applicants are to demonstrate how the following significant considerations meet the objectives of this control:*
 - *Scale and proportion of the façade;*
 - *Pattern of openings;*
 - *Ratio of solid walls to voids and windows;*
 - *Parapet and/or building heights and alignments;*
 - *Height of individual floors in relation to adjoining buildings;*

- *Materials, textures and colours; and*
 - *Architectural style and façade detailing including window and balcony details*
8. *Footpath awnings should be designed to allow for street tree planting.*
9. *Awnings should be consistent in design, materials, scale and overhang with adjacent retail developments.*
10. *Awnings should have an adequate clearance from the kerb.*
- 15 (a) *At Forestway Shops, expansion or alteration to the existing approved buildings is to address the relationship of the development with the adjoining residential area and pedestrian and vehicular access and circulation.*
- (b) *Parking and access arrangements are to minimize conflicts between pedestrians and vehicles. Additional vehicular access from streets other than Forest Way is preferred.*

Comment:

The proposal does not achieve the required floor to ceiling height for the ground floor commercial units and is therefore contrary to part 3. The proposal has unreasonable impacts on neighbouring amenity in terms of loss of privacy and additional over-shadowing and is therefore contrary to part 4. The eastern elevation has a zero setback on all levels and the excessive height, bulk and scale of the building fails to transition to the adjacent single storey residential development contrary to part 5, 6 and 15a of the control. The architectural treatment of the eastern elevation with the vertical screens adds to the visual bulk of the development.

The proposal is assessed against the objective of the control as detailed below:

- *To encourage good design and innovative architecture.*

Comment:

While the architectural design articulation and details are general acceptable, with the exception of the eastern elevation, the critical issues is the failure of the development to transition to the adjoining low density dwellings. The height, bulk and scale of the development is excessive and an alternative innovative design that responds appropriately to the context is required.

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

Comment:

Insufficient information has been submitted to confirm that the comfortable access to all areas of the development can be achieved for pedestrians.

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

Comment:

The proposal provides opportunities for small scale shops and business that would add to the amenity of the Neighbourhood Centre. However, further consideration needs to be given to addressing the density of the residential component of the development to ensure that the scale, height and bulk of the development is contextually appropriate.

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

Comment:

The site is located within the B1 Neighbourhood Centre Zone, there is no established pattern of development in the zone. The existing building has 100% site coverage.

- *To enhance the public domain.*

Comment:

The proposal has the potential to enhance the public domain.

- *To increase adaptability, environmental performance and amenity of buildings.*

Comment:

The proposal is supported with a BASIX certificate, however, the Design Panel have suggested additional sustainability measures, refer to discussion under SEPP 65.

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 2021

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of \$35,504 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,550,429.

CONCLUSION

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

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

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

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

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

Council is not satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has not 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 not 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.

Conclusion

Height, bulk and scale

The proposal results in a significant breach of the maximum 8.5m height development standard by 22.4%. The clause 4.6 statement submitted with the application is not considered to adequately address the matters required, nor does it adequately justify that compliance is unreasonable or unnecessary in the circumstances.

The excessive height, combined with the nil set back of the upper floors from the side boundaries, will result in a development that is out of context with the surrounding low density residential area. The excessive height, scale and bulk fails to transition to the adjoining low density residential area and will result in unreasonable visual impacts when viewed from the property to the east and the streetscape.

Residential amenity (privacy and overshadowing)

As a result of the excessive height, bulk, scale and massing and insufficient side setbacks the proposal will result in unreasonable impacts on neighbouring residential amenity in terms of over-shadowing. Windows to habitable rooms and the edge of the elevated breezeway have a zero setback from the eastern boundary. The design of the privacy screens to the windows and breezeway is not supported and the proposal will result in visual privacy issues to neighbouring properties. In addition, insufficient soil depth is proposed on the landscaped roof to support screen planting which is required to help protect the privacy of the southern neighbour.

Landscaping (deep soil and common open space)

The proposal includes a 14sqm (2% of the site area) deep soil zone in the south-east rear corner which breaches the ADG requirement by 5%. The area will not support sufficient landscaping to help reduce the visual impact of the development to the rear. The proposal does not provide any common open

space which is also inconsistent with the SEPP 65 and the ADG.

Access

The proposal does not provide for the accessible requirements of SEPP 65 or the WDCP. 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 DA2020/1759 for the Demolition works and construction of a shop top housing development on land at Lot 2 DP 233083,51 Arthur Street, FORESTVILLE, for the reasons outlined as follows:

1. The proposal is inconsistent with Section 4.15 (b) and (c) of the Environmental Planning and Assessment Act 1979 as the height, scale and bulk of the fails to transition to the adjoining low density residential area. As a result, the proposal will result in unreasonable visual impacts to surrounding properties and the streetscape and unreasonable impacts on residential amenity. All of these issues result in a proposed development that is an overdevelopment of the site.
2. The proposal is inconsistent with the Design Quality Principles of the State Environmental Planning Policy 65 - Design Quality of Residential Flat Development. The proposal is also inconsistent with the requirements of the Apartment Design Guide in terms of landscape design (communal open space and deep soil zones), visual privacy, accessibility and minimum ceiling heights to the retail units.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
4. Pursuant to Section 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.
5. The proposal is inconsistent with the requirements and objectives of the following Warringah DCP controls:
 - (a) Clause B6 - Merit Assessment of Side Boundary Setbacks;
 - (b) Clause B10 Merit assessment of Rear Boundary Setbacks;
 - (c) Clause C4 Stormwater;
 - (d) Clause D6 Access to Sunlight;
 - (e) Clause D8 Privacy;
 - (f) Clause D10 Building Colours and Materials;
 - (g) Clause D18 Accessibility and Adaptability, and
 - (h) Clause F1 Local and Neighbourhood Centres.
6. The proposal is contrary to the relevant requirement(s) of SEPP 65, the WLEP and WDCP, including the height development standard. The proposal will result in a bulk and scale that fails to transition to the surrounding low density residential area and will result in unreasonable impacts on neighbouring amenity. The proposal will create an undesirable precedent and be contrary to the expectations of the community. As such, the proposal is not in the public interest.