BBF TOWN PLANNERS

STATEMENT OF ENVIRONMENTAL EFFECTS

Proposed Shop Top Housing Development

50 Lawrence Street

Freshwater

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Statement of Environmental Effects

Proposed Shop Top Housing Development

50 Lawrence Street, Freshwater

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ANNEXURE 1 ARCHITECT SEPP 65/ ADG/ DESIGN VERIFICATION STATEMENT

1 Introduction

This Statement has been prepared in support of a development application proposing the demolition of the existing site structures and the construction of a shop top housing development comprising 2 x ground level commercial (retail and business) tenancies with 11 residential apartments above comprising a mix of studio, 1, 2 and 3 bedroom apartments. Carparking for 19 vehicles is provided over 2 levels with access provided from both the Dowling and Oliver Street frontages.

The project architect has responded to the client brief to design a contextually responsive building of exceptional quality which appropriately addresses all 3 street frontages, takes advantage of the sites superior locational attributes whilst providing high levels of amenity for future occupants. In this regard the scheme has been developed through detailed site and contextual analysis to identify the constraints and opportunities associated with the development of this infill site having regard to the sites constrained size and geometry, irregular topography and prominent corner location.

Particular attention has been given the minutes arising from formal pre-DA discussions with Council and ensuring that the development responds to its immediate built form context and the form of development anticipated within the Freshwater Village precinct which is currently undergoing significant regeneration. This statement will demonstrate that the built form outcome proposed has been achieved whilst providing for a highly articulated, modulated and visually stimulating building form as viewed in the round and which will provide diversity in housing choice, whilst ensuring Lawrence Street remains activated through the retail and business tenancies provided at ground floor level.

In addition to this Statement of Environmental Effects, the application is also accompanied by Architectural plans, shadow diagrams, landscape plan, survey, arborist report, traffic impact assessment, stormwater management plan, access report, geotechnical report, acoustic report, traffic management plan, waste management plan, schedule of materials and finishes, montages, BASIX certificate, cost summary report and SEPP 65 Design Verification Statement prepared by the project Architect.

In preparation of this document, consideration has been given to the following:

- Environmental Planning and Assessment Act, 1979;
- Warringah Local Environmental Plan 2011;
- Warringah Development Control Plan 2011;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- State Environmental Planning Policy (Infrastructure) 2007;
- State Environmental Planning Policy No 55 – Contaminated Lands;
- State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development/ Apartment Design Guide; and
- The Apartment Design Guide.

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15(1) of the Environmental Planning and Assessment Act, 1979 as amended. It is considered that the application, the subject of this document, is appropriate on merit and is worthy of the granting of development consent for the following reasons:

- The height, form and massing of the development are contextually appropriate and satisfies the various relevant local and state planning controls applicable to the site.
- The proposed development is consistent with the desired future character of the Freshwater Village precinct.
- The proposed development will not give rise to unacceptable natural or built form impacts including impacts to any heritage items within vicinity of the site.
- The site is assessed as suitable for the proposal having regard to the relevant considerations pursuant to the SEPP 65 - Design Quality of Residential Apartment Development and the Apartment Design Guide.
- The proposal will increase the supply and diversity of housing choice on a site ideally suited to increased residential densities.

2 Site Analysis

2.1 Site Description and location

2.1.1 The Site

The subject property is located at the west end of the Freshwater Local Centre and is legally described as Lot 1 in DP 571975, No. 50 Lawrence Street, Freshwater. The site is irregular in shape having 3 frontages to Lawrence Street, Oliver Street and Dowling Street. The property has irregular frontage and address to Lawrence Street of 13.815 metres, secondary irregular/ curvilinear frontage to Oliver Street of 43.285 metres, tertiary frontage to Dowling Street of 45.72 metres and a site area of 590 square metres. The landform falls in multiple directions across its surface towards its north eastern corner by approximately 5 metres. The site does not contain any trees or significant landscape features as depicted in the site survey extract at Figure 1 below. A bus stop is located immediately adjacent to the site on Dowling Street.

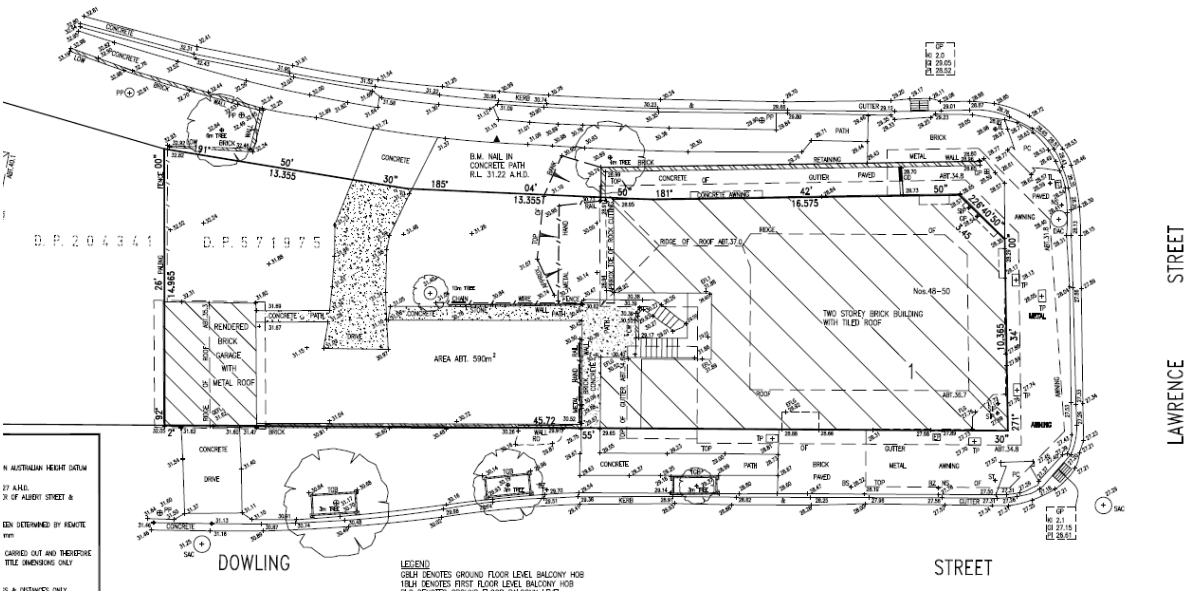

Figure 1: *Site survey extract*

The property is occupied by a 2 storey brick commercial building with pitched and tile roof located on the northern portion of the site and constructed to each street boundary alignment. At-grade parking is located on the southern portion of the site and accessed via a driveway form Oliver Street. A rendered brick garage is located in the south eastern corner of the property and accessed from Dowling Street.

Figure 2: *Subject property as viewed from Lawrence Street*

Figure 3: *Subject property as viewed from the Lawrence Street/ Oliver Street intersection*

Figure 4: *View of the site from Oliver Street showing at grade parking accessed from this street frontage*

Figure 5: *Aerial location/ context photograph*

2.1.2 The Locality

The property is located at the western edge of the Freshwater Village comprising a strip shopping centre with relatively narrow frontages and small-scale shops oriented to Lawrence Street.

The properties to the east are occupied by 1 and 2 storey retail/business premises orientated to the Lawrence Street frontage. An open at-grade parking area is located to the rear (south) of these properties and accessed via Dowling Street. The properties to the north, and located on the opposite side of Lawrence Street, are occupied by single storey civic buildings, with 1 and 2 storey detached dwellings located to the south and south east of the site. A 3 storey residential flat building is located on the corner of Lawrence and Oliver Streets to the west of the site. Surrounding development is depicted in the following Figures.

Figure 6: *Adjoining development to the north.*

Figure 7: *General streetscape view looking east down Lawrence Street past subject site*

Figure 8: *Adjoining dwelling house to the south as viewed from Dowling Street*

Figure 9: *View looking north down Dowling Street past subject site*

Figure 10: *Adjoining development to the east as viewed from Dowiing Street*

Figure 11: *View looking east down Lawrence Street past the residential flat building to the west towards the subject site*

2.1.3 Site Analysis

There site is not affected by any known hazards.

The relationship of the proposed development to the adjacent sites provides for appropriate and anticipated built form separation. The development has no unacceptable impact on the amenity of surrounding developments and is complimentary and compatible in a streetscape context.

3 Description of Proposed Development

3.1 Details of the proposed development

The application proposes the demolition of the existing site structures and the construction of a shop top housing development comprising 2 x ground level commercial (retail and business) tenancies with 11 residential apartments above comprising a mix of studio, 1, 2 and 3 bedroom apartments. Carparking for 19 vehicles is provided over 2 levels with access provided from both the Dowling and Oliver Street frontages. The development is depicted on plans DA-001(F), DA-002(F), DA003(D), DA-0101(F), DA-1001(F), DA-1002(F), DA-1101(F) to DA-1106(F), DA-2001(F), DA-2002(F), DA-3001(F), DA-3002(F), DA-4001(F), DA-4003(F), DA-7001(F), DA-7101(F), DA-7102(F), SK-0003(B) and SK-0004(A) prepared by CKDS Architects:

Specifically, the application provides for the following components:

- Demolition of the existing site structures;
- Construction of a shop top housing development that includes 11 apartments comprising the following mix:
  - 2 x Studio apartments
  - 1 x 3 bedroom apartment
  - 5 x 2 bedroom apartments
  - 3 x 1 bedroom apartments
  - 1 x business tenancy 34.48m^2 GFA
  - 1 x retail tenancy 38.8m^2 GFA
- Provision of 19 car spaces over 2 levels and a loading bay catering for a small rigid vehicle;

All apartments are provided with balconies accessed directly from the living areas of each apartment. Each apartment has access to car parking with separate secure storage areas also located in the carparking areas of the development. A schedule of external building materials and colours is included on the architectural drawings together with montage images of the development.

The application also proposes the implementation of an integrated site landscape regime as depicted on the plans prepared by Conzept Landscape Architecture with all stormwater disposed of through the required OSD tank as detailed on the plans prepared by KYSU Engineers. The acceptability of the proposed excavation is detailed in the accompanying geotechnical report prepared by Crozier Geotechnical Consultants with accessibility and acoustics also addressed in the accompanying reports prepared BCA Access Solutions and Koikas Acoustics Pty Limited.

4 Statutory Planning Framework

The following section of the report will assess the proposed development having regard to the statutory planning framework and matters for consideration pursuant to Section 4.1591) of the Environmental Planning & Assessment Act, 1979 as amended. Those matters which are required to be addressed are outlined, and any steps to mitigate against any potential adverse environmental impacts are discussed below.

4.1 Warringah Local Environmental Plan 2011

4.1.1 Zoning

The Warringah Local Environmental Plan (LEP) 2011 applies to the subject site and this development proposal. The subject site is located within the B2 Local Centre zone. Shop top housing is permissible in the zone with consent. The stated objectives of the B2 zone are as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area;*
- *To encourage employment opportunities in accessible locations;*
- *To provide an environment for pedestrians that is safe, comfortable and interesting;*
- *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment;*
- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*

Shop top housing is defined as one or more dwellings located above ground floor retail premises or business premises.

The development incorporates dwellings located above ground floor retail/ business premises and accordingly is appropriately defined as shop top housing and permissible with consent in the zone.

The proposed development meets the relevant zone objectives given the creation of a ground floor retail/ business uses and the appropriate concentration of residential densities within an established Local Centre zone. The height and scale of the development is responsive to context, compatible with that of adjoining development and will not result in unacceptable or jarring residential amenity, streetscape impacts.

Accordingly, there are no statutory zoning or zone objective impediment to the granting of approval to the proposed development.

4.1.2 Height of Buildings – Exceptions to Development Standards

Pursuant to the height of buildings map, the site has a maximum building height limit of 11 metres.

The objectives of this control are as follows:

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

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

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

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

Building height is defined as follows:

> *building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like*

The proposed development has a maximum building height of 11.9 metres measured to the northern edge of the roof form over apartment 11 as depicted in Figures 12, 13 and 14 over page. This represents a non-compliance of 900mm or 8.1%.

Clause 4.6 of WLEP 2011 provides a mechanism by which a development standard can be varied. The objectives of this clause are:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

A clause 4.6 variation request has bene prepared at Attachment 1 with such request addressing the applicable statutory requirements and confirm that strict compliance is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify the variation sought. Such request is well founded.

Figure 12: Plan extract showing extent of 11 metre building height breach on eastern elevation

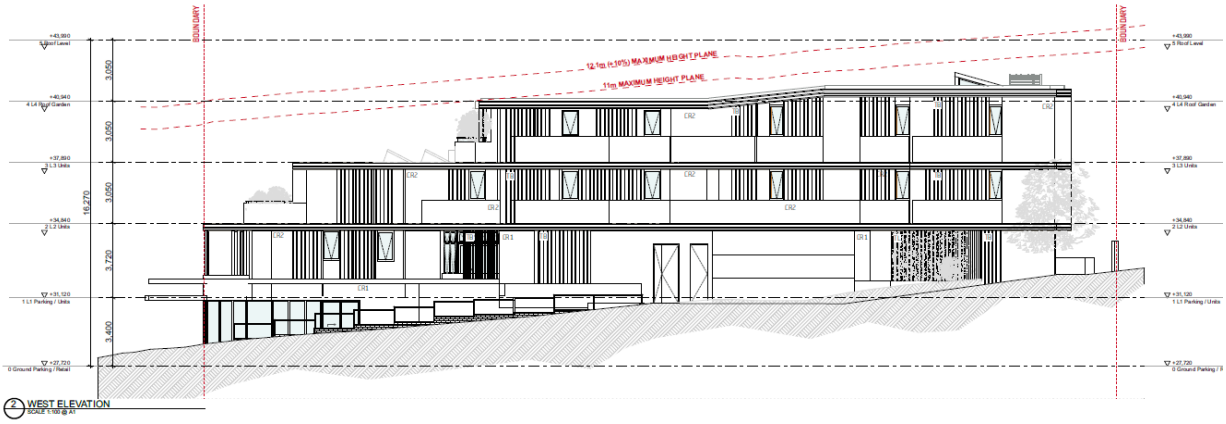

Figure 13: Plan extract showing compliant height along western façade

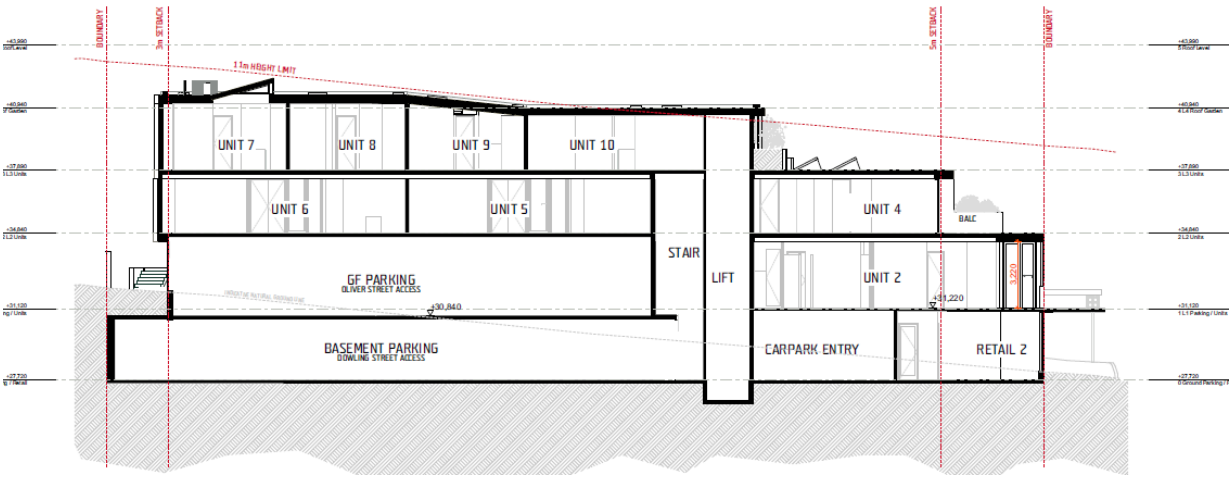

Figure 14: Plan extract building height breach at Section A

4.1.3 Heritage Conservation – Heritage Impact Statement

Pursuant to clause 5.10 WLEP 2011 development consent is required for any of the following:

> *(a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance):*
>
> *(i) a heritage item,*
>
> *(ii) an Aboriginal object,*
>
> *(iii) a building, work, relic or tree within a heritage conservation area,*

The stated objectives of this clause are as follows:

> *(a) to conserve the environmental heritage of Manly,*
>
> *(b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
>
> *(c) to conserve archaeological sites,*
>
> *(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.*

The subject property is not heritage listed or located within a heritage conservation area however is located within the vicinity of a number of heritage items as depicted on the WLEP 2011 Heritage Map extract at Figure 15 below.

Figure 15: WLEP Heritage map extract

The identified heritage items within vicinity of the site are as follows:

I71	Building known as “Harbord Literary Institute”	Corner Lawrence Street and Oliver Street Lot 374, DP 752038
I72	Building known as “Early Childhood Health Centre”	29 Lawrence Street Lot 2, DP 864459

This Heritage Impact Statement has been prepared in accordance with the standard guidelines of the NSW Heritage Office.

Heritage Considerations

The following aspects of the proposal respect or enhance the heritage significance of the adjacent buildings for the following reasons:

- The proposed works will have no amenity impact on any adjoining heritage item in terms of privacy and overshadowing and will not impact on views to and from the items.
- The proposed building will contribute positively to the streetscape character and design quality of development located within the sites visual catchment.
- The proposed building appropriately addresses all streets with an active street frontage maintained.

The following aspects of the proposal could detrimentally impact on heritage significance.

- Nil

The following sympathetic solutions have been considered and discounted for the following reasons:

- Nil

Having given consideration to the impact of the proposed works on the significance of the adjacent heritage items I have formed the considered opinion that:

- The proposed works will have no amenity impact on any adjoining heritage items in terms of privacy and overshadowing and will not impact on views to and from the items.
- The proposed building will contribute positively to the streetscape character and design quality of development located within the sites visual catchment; and
- The proposed building appropriately addresses all streets with an active street frontage maintained.
- Accordingly, the proposed development will have a neutral impact on the significance of the heritage items and their setting.

Accordingly, there is no statutory impediment to the granting of consent to the proposed works in this instance.

4.1.4 Development on Sloping Land

Pursuant to clause 6.4 of WLEP 2011, the site is mapped as falling within a Land Slip Risk Area B. In this regard the application is accompanied by a geotechnical report prepared by Crozier Geotechnical Consultants which contains the following conclusions:

> *The site investigation indicated the presence of fill (≤0.50m) underlain by a sand layer (≤0.40m thick), overlying extremely sandstone bedrock, quickly grading to sandstone bedrock of at least low strength at depths between 0.35m (BH2) to 1.20m (BH3) below the existing ground surface. The bedrock is expected to grade to medium strength at shallow depth. However, this will require confirmation at the north end of the site, following demolition of the structure and existing ground floor slabs.*
>
> *The proposed works will require an excavation up to 5.0m depth within the southern portion of the site decreasing to 0.50m depth within the north-east corner of the site. The excavation is expected to mainly intersect sandstone bedrock. As such a crucial part of the works will be to ensure ground vibrations produced by the rock excavation equipment do not damage the neighbouring properties (including nearby services).*
>
> *The geotechnical engineer should approve the proposed excavation equipment and methodologies. Based on the extension of the excavation to the site's boundaries and the depth of soils identified within the southern portion, support prior to excavation may be required along the west boundary (particularly the southwest portion) of the site. However, it might not be required along the south, east and north boundaries of the site. This should be confirmed by geotechnical inspection following demolition and prior to bulk excavation.*
>
> *The risks associated with the proposed development can be maintained within 'Acceptable' levels with negligible impact to neighbouring properties or structures provided the recommendations of this report and any future geotechnical directive are implemented. As such the site is considered suitable for the proposed construction works provided that the recommendations outlined in this report are followed.*

Accordingly, Council can be satisfied that the clause 6.4 WLEP have been appropriately addressed.

4.2 Warringah Development Control Plan 2011

The following relevant DCP 2011 controls have been addressed with respect to consideration of the proposed Shop Top Housing Development.

4.2.1 DCP Compliance Table

A table demonstrating compliance with the relevant provisions of the G5 Freshwater Village controls contained within Warringah DCP 2011 is detailed as follows:

Control	Requirement	Proposed	Compliance
Built Form in Freshwater	R1. Development is to evoke the coastal setting of the area through architectural expression and public art, eg murals or other external treatment of buildings	The building displays an appropriate architectural expression for its coastal location as reflected in design, detailing and materials/ finishes.	Yes
	R2. Buildings, including balconies and carpark entry points, fronting any public place must not contain any utility service pipe or conduit that is visible from the public place. Utility services including service structures, plant and equipment are to be located below ground or be designed to be an integral part of the development and suitably screened from public places including streets.	Satisfied	Yes
	R3.Locate residential uses so that noise, odour and any other adverse impacts are minimised from loading bays, garbage disposal and other service areas	Satisfied	Yes

Control	Requirement	Proposed	Compliance
	R4. Retail entries are to be no more than 10m apart A minimum floor to ceiling height of 3.3m for ground floor uses	Retail entries satisfy control. A variation is sought to the retail client height to enable the overall height of the development to be lowered relative to 11 metre height control. A minor variation is sought in this regard noting that a 3050mm ceiling height will not compromise the utility of these relatively small retail spaces.	Yes/ No Acceptable on merit
	R5.A minimum floor to ceiling height of 2.7m for uses above the ground floor	Satisfied	Yes
	R6. For any development with 10 or more shops or 500m2 or more retail floor space, accessible and well signposted toilet facilities complying with AS 1428 shall be provided. These facilities shall have the same minimum opening and closing hours as the proposed development. Residential entries are to be separate and clearly distinguished from business entries.	N/A	N/A
Number of Storeys	Maximum 3 storeys	Maximum 3 storeys	Yes
Street Activation	R1. Ground floor uses are to provide active uses to streets, shareways, lanes, public areas and arcades	Satisfied with retail/ business frontage activation	Yes
	R2. Ground floor uses are to have direct and	Satisfied	Yes

Control	Requirement	Proposed	Compliance
	convenient entries from streets, shareways, lanes, arcades or public areas		
	R3. The glazed area of street frontage windows at ground floor level is to be maximised	Satisfied	Yes
	R4. Street frontage windows are to be wrapped around corners into side streets, shareways, lanes, and public areas to increase the area of active frontage	Satisfied	Yes
	R5. Shopfronts at any arcade entry are required to wrap around the corner into the arcade, maximising the glazed area of windows, to a minimum distance of 6 metres from the front building line	N/A	N/A
	R6. Buildings are designed to overlook the street	Casual surveillance opportunities to all street frontages	Yes
	R7. Minimise the extent and visual impact of vehicle entrances and other building entries not associated with active uses	Vehicle access split between Oliver and Dowling Streets with visual impact considered acceptable	Yes
Street facades and shopfront design	R1. The design and proportions of the façade elements are to continue and respect the narrow lot frontages	Satisfied	Yes

Control	Requirement	Proposed	Compliance
	R2. The maximum length of a shopfront is to be between 5 – 10m. Frontages greater than 10m must be broken into smaller vertical sections	Satisfied	Yes
	R3. Facades are to have a predominantly vertical emphasis	Satisfied	Yes
	R4. No blank walls are to be presented to any public domain area	Satisfied	Yes
	R5. Building fronts and entries are to be clearly visible from the street	Satisfied	Yes
	R6. Air conditioning units, exhaust vents, aerials, clothes lines, water heaters etc are not to be visible from streets or public areas	Satisfied. Integrated into screened roof form.	Yes
	R7. Glazed shopfronts that allow visual connection between the activities inside the development and the public domain are to be provided	Satisfied	Yes
Access and Loading	R1. Service and loading areas should improve the amenity of the streetscape and reduce any potential for vehicle / pedestrian conflict	Servicing and loading will occur in the designated service vehicle bay.	Yes
	R2. Locate all underground car park entries, service and loading as well as garbage collection	Satisfied	Yes

Control	Requirement	Proposed	Compliance
	areas away from the primary street frontage		
	R3. No additional vehicle or loading access is to be provided from Lawrence or Albert Streets	Satisfied.	Yes
	R4. Rear or underground loading, garbage collection and access for vehicles is to be provided as part of any new development for lots fronting Lawrence and Albert Streets wherever possible via new connected laneways or through negotiation with Council for access via existing surface carparking areas	N/A	N/A
Lighting	R1. Lighting is to be designed to not cause glare or unacceptable light spill to adjacent residential uses	Satisfied	Yes
	R2. Lighting is to be located on the underside of awnings or below awnings as wall lights to light the footpath	Noted	Condition
	R3. The use of exposed fluorescent batten lighting is not permitted.	Noted	Condition
	R4. Special effects lighting may be used to highlight key landscape design elements, major trees and significant buildings subject to compliance with other requirements of this control	N/A	N/A

Control	Requirement	Proposed	Compliance
Safety and Security	R1. Proposed development must incorporate the principles of Crime Prevention Through Environmental Design (CPTED), R2. Development is to maximise casual observation of open space areas, access ways, car parks, entries, driveways and the like	Satisfied. No concealment locations in basement or publicly accessible areas. All parking and circulation levels will be appropriately lit at night. Separate residential/ retail entries provided. Satisfied	Yes Yes
Signage	R1. Signage is to be appropriately located with no obscuring of architectural features R2. Signage is to relate to the business being carried out in the building; third party signage is not permitted R3. No signage is to be located above awning level	All noted. Subject to separate approval	N/A
Awnings	R1. Provide continuous awnings along: • Lawrence Street • Albert Street • Moore Road • Any new or upgraded pedestrian access within Freshwater	Wrap around awning provided. Satisfied	Yes

Control	Requirement	Proposed	Compliance
Front Setback	Ground level and second storey R1. New buildings may be built to the boundary or may be set back a maximum of 3m, for outdoor seating, display of goods, etc Third storey R2. The third storey is to be set back a minimum of 5m from the property boundary R3. Landscaping or gardens within the 5m setback area of buildings are encouraged	The lower 2 storeys are compliant with the control and are aligned with the front boundary on all street frontages. The upper 3rd floor level has been setback 4.975 metres from the Lawrence Street frontage representing a minor 25mm variation to the setback control. The 4th level, as the building steps up the site to the south, is setback over 14 metres from the Lawrence Street frontage. Increased setbacks to Dowling Street have also been provided at the upper levels noting that a variation is sought to the 3rd storey setback controls to both Dowling and Oliver Streets given the narrow and constrained nature of the site. The setbacks proposed are contextually appropriate and will not give rise to any adverse or jarring streetscape impacts. The building is appropriately articulated and modulated stepping down the site in response to topography. Strict compliance with the upper level setback control to both Oliver and Dowling Streets is unreasonable and unnecessary under the circumstances.	Yes No Acceptable on merit
Side and Rear Setbacks	R1. Where a side or rear boundary of the proposed development site adjoins land zoned for residential purposes, excluding roads, a minimum setback of 2m is required	The proposal provides an above ground setback of 3.217 metres to the southern building faced with minor window blade privacy screens projecting to within 2.2 metres of this boundary.	No Acceptable on merit

Control	Requirement	Proposed	Compliance
	R2. This setback area is to be landscaped and densely planted	The projections at ground level including the required egress stairs and bicycle parking will either be screened by boundary fence treatments or able to be screened through the use of integrated fixed privacy screening if considered necessary. The setbacks provide for an appropriate boundary interface with the overall height of the building remaining some 1 metre below the maximum prescribed building height in this location. Strict compliance is unreasonable and unnecessary under the circumstances.	
Other side and rear setbacks	R1. Where a side or rear boundary of the proposed development site does not adjoin residential zoned land other than roads, the side and rear boundary setbacks will be determined on a merit basis and will have regard to: • streetscape • amenity of surrounding properties • setbacks of neighbouring development R2. The setback area is to be landscaped, densely planted and free of any above or below ground structures, car parking or	N/A	N/A

Control	Requirement	Proposed	Compliance
	site facilities other than driveways and fences		
Roofs and building form	R1. Roof forms are to be an integral response to the building design R2. Step building and roof forms with the topography R3. Services, plant rooms and lift overruns are to be integrated into the design of the roof form and screened from the public domain R4. Lighter roof colours are preferred	All provisions satisfied	Yes
Building massing	R1. Ensure that the scale, massing and proportions respond to the narrow lot pattern of Freshwater R2. Buildings are not to exceed a maximum building length of 20m without the provision of separate cores and entry points	Both provisions satisfied	Yes
Building sustainability	R1. For development greater than 2,000 square metres the proposed development is to achieve a minimum 4 star rating under the Green Star rating system under the Green Building Council of Australia or equivalent R2. The principles and	N/A Refer to BASIX	N/A Yes

Control	Requirement	Proposed	Compliance
	properties of thermal mass, glazing, insulation and solar energy are to be incorporated into the design of the development R3. Reduce reliance on artificial lighting, heating and cooling and minimise the areas of the building where such lighting, heating/cooling is required through the application of energy efficient passive design principles	Satisfied.	Yes
Materials and Colours	R1. Use textures, tones and different natural materials R2. Materials and colours should relate to the context of the proposed development. R3. Heavier materials such as stone should be mainly located at the base of buildings R4. Painted surfaces must be mid-tone or darker	Materials and finishes comply with provisions	Yes
Active Travel Links	R1. Where appropriate, sites adjoining lanes or parking areas are to maintain existing or incorporate new through-site links for residents, customers, workers and visitors travelling on foot or by bicycle R2. Provide legible	These requirements were not identified as required by Council at formal pre-DA meeting	N/A

Control	Requirement	Proposed	Compliance
	laneways, arcades and pedestrian / cyclist ways where appropriate		
Traffic, Access and Safety **DCP Controls C2**	To minimise: a) traffic hazards; b) vehicles queuing on public roads c) the number of vehicle crossings in a street; d) traffic, pedestrian and cyclist conflict; e) interference with public transport facilities; and f) the loss of “on street” kerbside parking.	BRS have prepared a Traffic Impact Assessment Report. This report demonstrates that the proposed development satisfies the on-site car parking and bicycle parking requirements. The site is also well serviced by public transport with bus stops within a 200m radius.	Yes
Parking Facilities **DCP Control** **C3**	Application of the DCP Parking Rates yields the following requirements: Residential 14.4 spaces Residential visitor 2.4 Total say 17 Retail 4 spaces Grand total 21 spaces.	BRS have prepared a Traffic Impact Assessment Report. Compliant car parking is provided	Yes Yes
Stormwater **DCP Control C4**	To ensure the appropriate management of stormwater. To minimise the quantity of stormwater run-off. To incorporate Water Sensitive Urban Design techniques and On-Site Stormwater Detention	All stormwater disposed of through the required OSD tank as detailed on the plans prepared by KYSU Engineers. addressing these provisions	Yes

Control	Requirement	Proposed	Compliance
	(OSD) Technical Specification into all new developments. To ensure the peak discharge rate of stormwater flow from new development is no greater than the Permitted Site Discharge (PSD).		
Erosion and Sedimentation **DCP Control C5**	•To reduce the potential for soil erosion and adverse sedimentation impacts upon the environment. •To prevent the migration of sediment off the site onto any waterway, drainage systems, public reserves, road reserve, bushland or adjoining private lands. •To prevent any reduction in water quality downstream of the development site.	Please refer to the erosion and sediment control plan prepared by KYSU Engineers.	Yes
Excavation and Landfill **DCP Control C7**	Excavation and landfill works must not result in any adverse impact on adjoining land.	The application is accompanied by a geotechnical report prepared by Crozier Geotechnical Consultants. No objection in raised to a condition requiring compliance with any recommendations contained therein.	Yes

Control	Requirement	Proposed	Compliance
Demolition & Construction **DCP Control** **C8**	A demolition and waste management plan must be satisfactorily completed and submitted.	A demolition and waste management plan accompanies the application.	Yes
Waste Management **DCP Control C9**	Each development must include, or have access to Waste/Recycling Storage Rooms and Areas. a) where the number of dwellings/units is 29 or less, the Waste/Recycling Storage Rooms or Areas must be located at the front of the development within 6.5 metres walking distance to the front boundary adjacent to the roadway. If a Waste/Recycling Storage Room or Area is to be provided at another suitable location within the building, a complementary Waste/Recycling Storage Room or Area must be provided within 6.5 metres walking distance to the front boundary adjacent to the roadway; or b) where the number of dwellings/units is 30 or more, the waste/Recycling Storage Rooms or Areas must be located within 6.5 metres walking distance of the service area.	A waste management plan accompanies the application. The development provides appropriately for commercial and residential waste storage and collection.	Yes

Control	Requirement	Proposed	Compliance
Private Open Space **DCP Control** **D2**	Multi dwelling housing (not located at ground level) residential flat buildings and shop top housing, to provide 10sqm of private open space with a minimum dimension of 2.5 metres. Private open space is to be directly accessible from a living area of a dwelling and be capable of serving as an extension of the dwelling for relaxation, dining, entertainment, recreation and children's play. Private open space is to be located and designed to ensure privacy of the occupants of adjacent buildings and occupants of the proposed development. Private open space shall not be located in the primary front building setback. Private open space is to be located to maximise solar access.	As demonstrated on the proposed floor plans each residential unit is afforded with a terrace comprising a minimum of 10 sqm, accessed directly from the living room areas to each individual units. Each of the terraces have been positioned to maximise solar access and privacy between apartments. All private open space areas are accessed directly from the living rooms and are appropriately sized and dimensioned.	Yes
Access to Sunlight **DCP Control D6**	Pursuant to these provisions development is not to unreasonably reduce sunlight to surrounding properties. In the case of housing:	Refer to the accompanying shadow diagrams which demonstrate that 3 hours of solar access will be maintained to the east and west facing living room windows of the southern adjoining dwelling between 9 am	Yes

Control	Requirement	Proposed	Compliance
	• Development should avoid unreasonable overshadowing any public open space. • 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.	and 3pm on 21st June. Complaint levels of solar access will be maintained to all surrounding residential properties/ land uses.	
Views **DCP Control** **D7**	Development is to allow for the reasonable sharing of views, encourage innovative design solutions and ensure existing canopy trees have priority over views.	Having inspected the site and its surrounds and identified available view corridors we have formed the considered opinion that existing views from neighbouring properties will be retained. Accordingly, we have formed the considered opinion that a view sharing scenario is maintained in accordance with the principles established by the Land and Environment Court in the matter of Tenacity Consulting v Warringah [2004] NSWLEC 140.	Yes

Control	Requirement	Proposed	Compliance
Privacy **DCP Control D8**	Ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.	The development has been designed through detailed site analysis to ensure that appropriate privacy is maintained between adjoining development through building design and orientation, the appropriate use and placement of fenestration and the inclusion of fixed privacy screen treatments where necessary including the use of privacy blades to south facing fenestration. In this regard, appropriate privacy and security will be maintained between adjoining development.	Yes
Building Bulk **DCP Control D9**	Encourage good design and innovative architecture to improve the urban environment. Minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.	The development has been designed through detailed site context analysis to provide through a contextually responsive building form maintaining appropriate amenity to adjoining properties and a high level of amenity to future occupants. The development has regard to the scale, proportion and line of visible facades with the highly articulated and modulated building form providing appropriate facade treatment and visual interest to the streetscape. The scale and footprint of the development are entirely in keeping with the emerging built form character of Lawrence Street.	Yes

Control	Requirement	Proposed	Compliance
Accessibility **DCP Policy D18**	To ensure convenient, comfortable and safe access for all people including older people, people with prams and strollers and people with a disability.	The proposed development has been designed to ensure a convenient, comfortable and safe access for all people including wheelchair and pram accessibility as detailed in the accompanying BCA/ Access report prepared by BCA Access Solutions.	Yes

4.3 State Environmental Planning Policy No.55 – Remediation of Land

Council shall not consent to the carrying out of any development on land unless it has considered the provisions of SEPP No. 55 – Remediation of Land ("SEPP 55"). In this regard, the likelihood of encountering contaminated soils on the subject site is extremely low given the following:

- Council's records indicate that site has only been used for commercial/ retail uses.
- The subject site and surrounding land are not currently zoned to allow for any uses or activities listed in Table 1 of the contaminated land planning guidelines of SEPP 55.
- The subject site does not constitute land declared to be an investigation area by a declaration of force under Division 2 of Part 3 of the Contaminated Land Management Act 1997.

Given the above factors no further investigation of land contamination is warranted. The site is suitable in its present state for the proposed development. Therefore, pursuant to the provisions of SEPP 55, Council can consent to the carrying out of development on the land.

4.4 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies to the residential component of the development and aims to encourage sustainable residential development.

A BASIX Assessment accompanies the development application and demonstrates that the proposal achieves compliance with the BASIX water, energy and thermal efficiency targets.

4.5 State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Development

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) aims to improve the design quality of residential flat developments to provide sustainable housing in social and environmental terms that is a long-term asset to the community and presents a better built form within the streetscape.

It also aims to better provide for a range of residents, provide safety, amenity and satisfy ecologically sustainable development principles. In order to satisfy these aims the plan sets design principles in relation to context, scale, built form, density, resources, energy and water efficiency, landscaping, amenity, safety and security, social dimensions and aesthetics to improve the design quality of residential flat building in the State.

SEPP 65 applies to new residential flat buildings, the substantial redevelopment/refurbishment of existing residential flat buildings and conversion of an existing building to a residential flat building.

Clause 3 of SEPP 65 defines a residential flat building as follows:

> *"Residential flat building means a building that comprises or includes:*
>
> *a) 3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and*
>
> *b) 4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops), but does not include a Class 1a building or a Class 1b building under the Building Code of Australia."*

The proposed development is for the erection of a 3-storey building, as defined, containing 11 dwellings and 2 retail/ business premises. As per the definition of a 'Residential Flat Building' and the provisions of Clause 4 outlining the application of the Policy, the provisions of SEPP 65 are applicable to the proposed development.

Clause 28(2)(b) SEPP 65 requires any development application for residential flat development to be assessed against the 9 design quality principles contained in Schedule 1. The proposal's compliance with the design quality principles is detailed in the Design Verification Statement at ANNEXURE 2.

Pursuant to clause 28(2)(c) of SEPP 65 in determining a development application for consent to carry out residential flat development the consent authority is required to take into consideration the Apartment Design Guide. In this regard an Apartment Design Guide compliance table is attached at ANNEXURE 2.

4.6 State Environmental Planning Policy (Infrastructure) 2007

Clause 102 of the policy applies to development for any of the following purposes that is on land in or adjacent to the road corridor for a freeway, a tollway or a transitway or any other road with an annual average daily traffic volume of more than 40,000 vehicles (based on the traffic volume data published on the website of the RTA) and that the consent authority considers it likely to be adversely affected by road noise or vibration:

(a) a building for residential use,

(b) place of public worship,

(c) a hospital,

(d) an educational establishment or child care centre.

If the development is for the purposes of a building for residential use, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

(a) in any bedroom in the building — 35 dBA at any time between 10 pm and 7 am,

(b) anywhere else in the building (other than a garage, kitchen, bathroom or hallway) — 40 dBA at any time.

Compliance with these requirements is detailed acoustic report prepared by Koikas Acoustics Pty Limited with no objection raised to a condition requiring compliance with the recommendations contained therein.

4.7 Matters for Consideration pursuant to section 4.15(1) of the Environmental Planning and Assessment Act 1979 as amended

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15(1) of the Environmental Planning and Assessment Act 1979 (as amended). Guidelines (in *italic*) to help identify the issues to be considered have been prepared by the Department of Planning and Environment. The relevant issues are:

4.7.1 The provision of any planning instrument, draft environmental planning instrument, development control plan or regulations

This report clearly and comprehensively addresses the statutory regime applicable to the application pursuant to the Warringah LEP and DCP. The development has also been found to be consistent with the design quality principles of SEPP 65 and the Apartment Design Guide.

The accompanying acoustic report confirms compliance with the provisions of SEPP (Infrastructure) 2007.

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

Context and Setting

i. What is the relationship to the region and local context in terms of:

- *The scenic qualities and features of the landscape*
- *The character and amenity of the locality and streetscape*
- *The scale, bulk, height, mass, form, character, density and design of development in the locality*
- *The previous and existing land uses and activities in the locality*

These matters have been discussed in the body of this report.

ii. What are the potential impacts on adjacent properties in terms of:

- *Relationship and compatibility of adjacent land uses?*
- *sunlight access (overshadowing)*
- *visual and acoustic privacy*
- *views and vistas*
- *edge conditions such as boundary treatments and fencing*

These matters have been discussed in detail earlier in this report. The potential impacts are considered to be acceptable with regard to SEPP 65 and the ADG.

Access, transport and traffic:

Would the development provide accessibility and transport management measures for vehicles, pedestrians, bicycles and the disabled within the development and locality, and what impacts would occur on:

- *Travel Demand*
- *dependency on motor vehicles*
- *traffic generation and the capacity of the local and arterial road network*
- *public transport availability and use (including freight rail where relevant)*
- *conflicts within and between transport modes*
- *Traffic management schemes*
- *Vehicular parking spaces*

These issues have been discussed in detail in the report. The development provides adequate carparking facilities in conformity with the policy controls.

Public Domain

The proposed development will have no adverse impact on the public domain.

Utilities

This matter has been discussed in detail in the body of this report.

Flora and Fauna

The site will introduce areas of landscaping. The planting and landscaping treatments will enhance the landscape quality of the street frontages.

Waste Collection

Retail and domestic waste collection applies to this development.

Natural hazards

The site is not identified as affected by any known hazards.

Economic Impact in the locality

The proposed development will generate temporary employment during construction. On-going employment will be provided by the business that occupies the non-residential tenancy and through the employment of building and strata managers for the building.

Site Design and Internal Design

i) Is the development design sensitive to environmental considerations and site attributes including:

- *size, shape and design of allotments*
- *The proportion of site covered by buildings*
- *the position of buildings*
- *the size (bulk, height, mass), form, appearance and design of buildings*
- *the amount, location, design, use and management of private and communal open space*
- *Landscaping*

These matters have been discussed in detail earlier in this report. The potential impacts are considered to be minimal and within the scope of the desired future character and built form controls of Warringah LEP and DCP.

ii) How would the development affect the health and safety of the occupants in terms of:

- *lighting, ventilation and insulation*
- *building fire risk – prevention and suppression*
- *building materials and finishes*
- *a common wall structure and design*
- *access and facilities for the disabled*
- *likely compliance with the Building Code of Australia*

The proposed development will comply with the provisions of the Building Code of Australia. The proposal complies with the relevant standards pertaining to health and safety and will not have any detrimental effect on the occupants.

Construction

i) What would be the impacts of construction activities in terms of:

- *The environmental planning issues listed above*
- *Site safety*

Normal site safety measures and procedures will ensure that no safety or environmental impacts will arise during construction.

4.7.3 The suitability of the site for the development

- *Does the proposal fit in the locality*
- *Are the constraints posed by adjacent development prohibitive*
- *Would development lead to unmanageable transport demands and are there adequate transport facilities in the area*
- *Are utilities and services available to the site adequate for the development*
- *Are the site attributes conducive to development*

The adjacent development does not impose any unusual or impossible development constraints. The site is well located with regards to public transport and utility services. The development will not cause excessive or unmanageable levels of transport demand.

The development responds to the topography of the site, is of adequate area, and has no special physical or engineering constraints is suitable for the proposed development

4.7.4 Any submissions received in accordance with this act or regulations

It is envisaged that Council will appropriately consider any submissions received during the notification period.

4.7.5 The public interest

It is considered that the development is sensitive both to the natural and built environments and is consistent with the provisions of the Warringah LEP and DCP.

5 Conclusion

The proposal is permissible and in conformity with the intent of the development standards contained within Warringah Local Environmental Plan 2011 as they reasonably relate to this form of development on this particular site and the built form guidelines contained within Warringah Development Control Plan 2011 as they relate to the proposed shop top housing development within the B2 Local Centre zone. The proposal satisfies the design quality principles contained within SEPP 65 and the design guidance within the Apartment Design Guide.

The project architect has responded to the client brief to design a contextually responsive building of exceptional quality which appropriately addresses all 3 street frontages, takes advantage of the sites superior locational attributes whilst providing high levels of amenity for future occupants. In this regard the scheme has been developed through detailed site and contextual analysis to identify the constraints and opportunities associated with the development of this infill site having regard to the sites constrained size and geometry, irregular topography and prominent corner location.

Particular attention has been given the minutes arising from formal pre-DA discussions with Council and ensuring that the development responds to its immediate built form context and the form of development anticipated within the Freshwater Village precinct which is currently undergoing significant regeneration. This statement will demonstrate that the built form outcome proposed has been achieved whilst providing for a highly articulated, modulated and visually stimulating building form as viewed in the round and which will provide diversity in housing choice, whilst ensuring Lawrence Street remains activated through the retail and business tenancies provided at ground floor level.

Whilst the proposal requires the consent authority to give favourable consideration to a variation to the building height standard strict compliance has been found to be unreasonable and unnecessary having regard to the particular circumstances of the case including the irregular site topography, the attainment of an appropriate contextual fit and general paucity of streetscape impacts. Sufficient environmental planning grounds existing to support the variation proposed with the accompanying clause 4.6 variation request well founded.

The identified non-compliances with the 3rd storey and side boundary setback WDCP controls have been acknowledged and appropriately justified having regard to the associated objectives. Such variations succeed pursuant to section 4.15(3A)(b) of the Act which requires Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the objects of DCP standards for dealing with that aspect of the development.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.

Having given due consideration to the matters pursuant to Section 4.15 of the Environmental Planning and assessment Act, 1979 as amended, it is considered that there are no matters which would prevent Council from granting consent to this proposal in this instance.

Boston Blyth Fleming Pty Limited

Greg Boston

Director

ANNEXURE 1

CLAUSE 4.6 VARIATION REQUEST – HEIGHT OF BUILDINGS

Clause 4.6 variation request - Height of buildings (clause 4.3 WLEP 2012)

1.0 Introduction

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe)* at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *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.

2.0 Manly Local Environmental Plan 2013 ("MLEP")

2.1 Clause 4.3 - Height of buildings

Pursuant to Clause 4.3 of Warringah Local Environmental Plan 2011 (WLEP) the height of a building on the subject land is not to exceed 11 metres in height. The objectives of this control are as follows:

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

(b) to control the bulk and scale of buildings,

(c) to minimise disruption to the following:

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

(iii) views between public spaces (including the harbour and foreshores),

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Building height is defined as follows:

building height *(or* ***height of building****) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

Ground level existing is defined as follows:

> ***ground level (existing)*** means the existing level of a site at any point.

The proposed development has a maximum building height of 11.9 metres measured to the northern edge of the roof form over Apartment 11 as depicted in Figures 1, 2 and 3 below and over page. This represents a non-compliance of 900mm or 8.1%.

Figure 1: Plan extract showing extent of 11 metre building height breach on eastern elevation

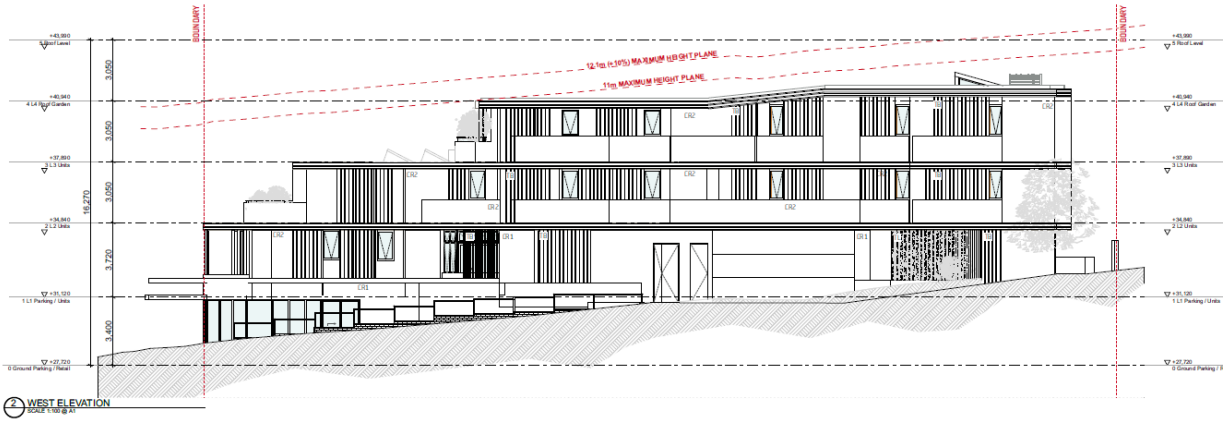

Figure 2: Plan extract showing compliant height along western façade

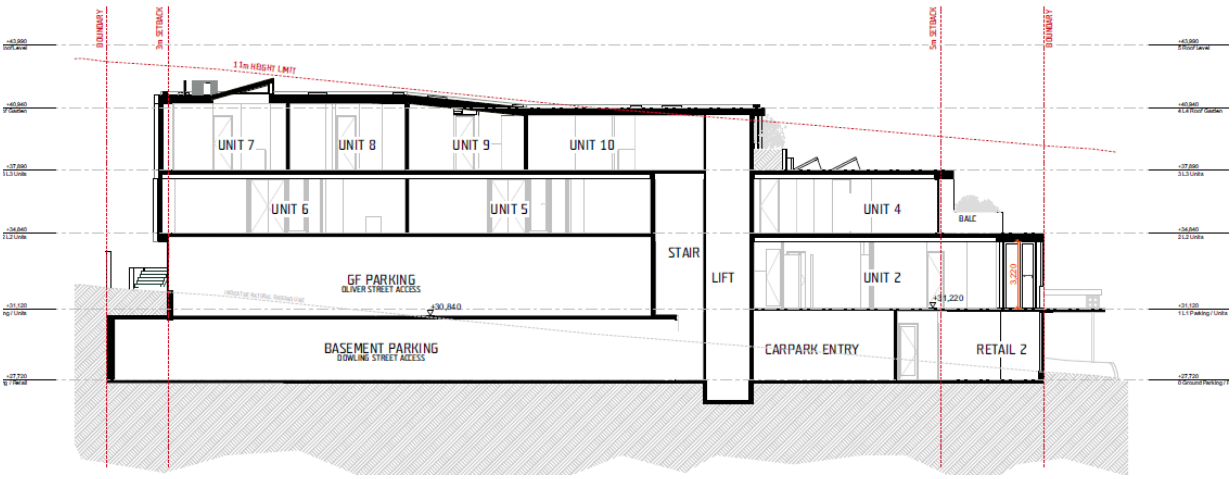

Figure 3: Plan extract building height breach at Section A

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of WLEP provides:

(1) The objectives of this clause are:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The decision of Chief Justice Preston in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 ("Initial Action") provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal *in RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner. At [90] of *Initial Action* the Court held that:

> *"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."*

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of WLEP provides:

(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.

This clause applies to the clause 4.3 Height of Buildings Development Standard.

Clause 4.6(3) of WLEP provides:

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

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

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

The proposed development does not comply with the height of buildings provision at 4.3 of WLEP which specifies a maximum building height however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of WLEP provides:

(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 Director-General has been obtained.

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation* 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of WLEP provides:

(5) In deciding whether to grant concurrence, the Director-General must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

As these proceedings are the subject of an appeal to the Land & Environment Court, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of WLEP from the operation of clause 4.6.

3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

17. The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].

18. A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].

19. A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].

20. A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].

21. A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

22. These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.3 of WLEP a development standard?

2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:

   (a) compliance is unreasonable or unnecessary; and

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

3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the zone?

4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of WLEP?

4.0 Request for variation

4.1 Is clause 4.3 of MLEP a development standard?

The definition of "development standard" at clause 1.4 of the EP&A Act includes:

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,

Clause 4.3 WLEP prescribes a height provision that relates to certain development. Accordingly, clause 4.3 WLEP is a development standard.

4.2A Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in Wehbe v Pittwater Council [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the height of buildings standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

The development responds to the building height objectives as follows:

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

Comment: The proposed development provides for a compliant 3 storey building height presentation to each street frontage with the building stepping down the site in response to topography. The areas of non-compliance are appropriately described as minor and generally located in the north eastern corner of the building. The surrounding area is in transition with older 1 and 2 storey commercial buildings being replaced with more contemporary 3 storey shop top housing building forms consistent with the adopted medium density planning regime applicable to the Freshwater Village precinct.

In this regard, we have formed the considered opinion that the height, bulk and scale of the development including its 3 storey stepped form are entirely consistent with the height and scale of development anticipated site and within the precinct generally. Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development by virtue of its height offensive, jarring or unsympathetic in a streetscape and urban context. In this regard, it can be reasonably concluded that the development is compatible with surrounding and nearby development and accordingly this objective is achieved.

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

Comment: Having undertaken a detailed site and context analysis and identified available view lines over the site we have formed the considered opinion that the height of the development, and in particular the non-compliant height components, will not give rise to any visual, view, privacy or solar access impacts with appropriate spatial separation maintained to the existing residential development further to the north. The proposal achieves this objective.

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

Comment: The non-compliant building height elements will not be readily discernible as viewed from the coastal foreshore area or from any bushland 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: The non-compliant building height elements will not compromise the amenity of any public places due to inappropriate or jarring visual impacts.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development, in particular the non-compliant portions of the building, offensive, jarring or unsympathetic in a streetscape context.

We have formed the considered opinion that the non-compliant building height elements will not compromise amenity in terms of solar access and privacy and will not give rise to any adverse public or private view affectation. Further, the areas of non-compliance will not adversely impacted development potential of the adjoining properties. In this regard, the development satisfies the objectives of the height of buildings standard and accordingly strict compliance is unreasonable and unnecessary under the circumstances.

Having regard to the above, the non-compliant component of the building will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the building height standard. Given the developments consistency with the objectives of the height of buildings standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

Consistency with zone objectives

The subject site is located within the B2 Local Centre zone. Shop top housing is permissible in the zone with consent. The stated objectives of the B2 zone are as follows:

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

Response: The proposed shop top housing provides both retail and business tenancies that are capable of accommodating uses that serve the needs of people who live in, work in and visit the local area. This objective is achieved;

- *To encourage employment opportunities in accessible locations;*

Response: The proposed shop top housing provides both retail and business tenancies that are capable of accommodating uses that serve the needs of people who live in, work in and visit the local area. This objective is achieved.

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

Response: The development activates all 3 site frontages, incorporates a wraparound awning and affords a safe, comfortable and interesting environment for pedestrians. This objective is achieved.

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

Response: the from, scale and massing of the development are complimentary and compatible with the existing and desired future character of the B2 Local Centre zone and the Freshwater Village generally and appropriately addresses the zone boundary interface to the south. The proposal reflects an urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment. This objective is achieved.

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

Response: the proposal, through its design and setback to the southern zone boundary interface, minimises conflict between land uses in the zone and adjoining zones and ensures the maintenance of appropriate amenity of adjoining and residential land uses in terms of privacy, solar access and views. This objective is achieved.

The proposed works are permissible and achieve the stated objectives of the zone.

The non-compliant component of the development, as it relates to building height, demonstrates consistency with objectives of the B2 Local Centre zone and the height of building standard objectives. Adopting the first option in *Wehbe* strict compliance with the height of buildings standard has been demonstrated to be is unreasonable and unnecessary.

4.2B Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. 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.

24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

Sufficient environmental planning grounds exist to justify the height of buildings variation namely the design constraints imposed due to the sites area, irregular geometry and irregular topography.

In this regard, I consider the proposal to be of a skilful design which responds appropriately and effectively to the above constraints by appropriately distributing floor space, building mass and building height across the site in a manner which provides for appropriate streetscape and residential amenity outcomes.

Such outcome is achieved whilst realising the reasonable development potential of the land.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The development represents good design (1.3(g)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

It is noted that in *Initial Action,* the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

There are sufficient environmental planning grounds to justify contravening the development standard.

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the B2 Local Centre zone

The consent authority needs to be satisfied that the propose development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

> *"The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.*
>
> *If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii)."*

As demonstrated in this request, the proposed development it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

4.4 Secretary's concurrence

By Planning Circular dated 21st February 2018, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

(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.*

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

Boston Blyth Fleming Pty Limited

Greg Boston

B Urb & Reg Plan (UNE) MPIA

Director

ANNEXURE 2

ARCHITECT SEPP 65/ ADG/ DESIGN VERIFICATION STATEMENT

CKDS

Freshwater – Mixed Use Development

50 LAWRENCE STREET, FRESHWATER, NSW 2250

SEPP 65 Design Verification Statement

CKDS – Revision A
Nominated Architects: Caine King #7974 / Stuart Campbell #7545

CKDS

Prepared to accompany the Development Application
submitted for:

Shop-top Housing Development at 50 Lawrence Street, Freshwater

Verification of Qualifications:

Caine King and Stuart Campbell are registered as Architects in New South Wales and are enrolled in the Division of Chartered Architects in the register of Architects pursuant to the Architect Act 1921. Their registration numbers are 7974 and 7574 respectfully.

Statement of Design:

CKDS Architecture has been working in conjunction with related professionals and experts in respect of the design. The project has been designed to provide a development that is respectful of local planning and design controls and that responds to the best practice design principles of SEPP No. 65.

CKDS Architecture verify that the design quality principles set out in Part 2 of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development are achieved for the proposed residential development as stated below.

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Proposed Development

The proposed residential flat building consists of 11 units, ranging from studios to three-bedroom apartments, plus basement parking and retail/business spaces.

Whilst developing the design, due consideration has been given to the impact on immediate and surrounding neighbours, amenity, the architectural aesthetic and the present and future contexts. The following aims have been the key drivers of the design response:

Architectural Environment

The proposed building is located in the Freshwater village, a coastal area with a large proportion of residential dwellings. Recent development along Albet and Lawrence streets has seen the introduction of shop-top housing with almost all of the street fronts retail. The streetscapes (on 3 sides), immediate neighbours, and occupants have all been considered to ensure a high quality outcome. As demonstrated in the photomontage and elevations, the external aesthetics has been designed with timeless neutral tones for the finishes, and simplification of architectural features, which will be complimented by Freshwater's pre-existing character.

Context

The development is located on a sloping site, surrounded by 3 street frontages. The site is elongated with only one immediate neighbour – therefore the development has been designed to maximise privacy for all the residential apartments. The development has also considered two access points from the respective streets to maximise usable floor space. Overall the character of the development is a slender building that terraces to follow the sloping streetscape.

Scale

Ample consideration was taken to minimise the scale to comply with the objectives of planning controls and reduce impact, whilst leaving room for suffiicent floor space in each of the apartments. The setbacks are all compliant (both merit based and not), and although the height, in parts, is above the maximum height specified in the LEP, it is still commensurate with the objectives of the DCP and Sepp65 with regard to bulk and scale and negligible impact on its surroundings. The height is considered appropriate and provides additional amenity by providing usable floor space to the respective apartment.

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SEPP Design Verification Statement

The assessment of the proposal is made in accordance with respect to the Design Quality principles as set out in SEPP 65, part 2. As noted in the introduction:

Good design is a creative process which, when applied to towns and cities, results in the development of great urban places: buildings, streets, squares and parks.

Good design is inextricably linked to its site and locality, responding to the landscape, existing built form, culture and attitudes. It provides sustainable living environments, both in private and public areas.

Good Design serves the public interest and includes appropriate innovation to respond to technical, social, aesthetic, economic and environmental challenges.

The design quality principles do not generate design solutions but provide a guide to achieving good design and the means of evaluating the merit of proposed solutions.

CKDS Architecture has prepared and reviewed the architectural drawings and are satisfied that the design meets the intent of the design quality principles as set out in part 2 of State Environmental Planning Policy No.65 Design Quality of Residential Flat Development.

CKDS Architecture has extensive experience in the design of residential housing and developments in various forms ranging from individual residential houses to high-density apartment development.

Reference has also been made to the Residential Flat Design Code in preparing this report. These sections are used in order to cite objectives for each of the section headings.

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Part 1 - Design Quality Principles

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Sepp 65 schedule 1 - Design Quality Principles

Design Quality Principle 1: Context & Neighbourhood Character		
Objectives	Proposed Development	Compliance
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.*	The proposed (residential flat) building design is consistent with the evolving locality, which is seeing the gradual introduction of shop-top housing in conjunction with density increase, and positively addresses the vision for the Freshwater village, providing housing choice as well as retail/business spaces on one of the main streetscapes. This proposal has appropriately considered the streetscape and potential impacts of the built form. It is a positive and considerate design with no appreciable impact upon the surrounding properties and or the character of the neighbourhood locality.	Yes

Design Quality Principle 2: Built Form and Scale		
Objectives	Proposed Development	Compliance
Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings. *Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.* *Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.*	The site is located on Lawrence street, at the beginning Freshwater village. Lawrence Street is identified as the main retail village for the Freshwater area. Only one boundary adjoins another residential lot; the other 3 boundaries are alongside roads. The building is designed with both standard and merit based setbacks. The proposal is set back 3m from the adjoining residential lot. The LEP specifies a maximum building height of 11m. The immediate locality is an evolving area of shop-top housing developments whilst the remaining areas of Freshwater are primarily residential. The scale, bulk and height of the development represents good design which is compatible with development in the surrounding	Yes

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area and in keeping with the desired future character of the area. The built form elements have been designed sensitively to have negligible impacts upon the surrounding development and maintain a minimal impact outcome upon the streetscape.

The proposed development has been designed to complement and contribute to the area whilst potential impacts upon neighbouring properties have been minimised. Public vs private spaces are clearly delineated around the site, through the use of built form. Internal amenity and outlook are maximised with generous balconies designed with consideration for views and vistas as well as privacy between units.

Design Quality Principle 3: Density		
Objectives	Proposed Development	Compliance
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.*	The proposed development achieves a density which is congruent with the future vision for the area – providing an array of apartment choice, whilst still maintaining an appropriate scale. Although the development is designed with a merit-based FSR numerical control, it is considerate of the objectives for density which is appropriate for the context of the area. The services and facilities in the area will allow for access to public transport and community facilities.	Yes

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Design Quality Principle 4: Sustainability		
Objectives	Proposed Development	Compliance
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.	The proposed development has been designed to achieve sustainable outcomes with use of natural cross ventilation and sunlight for the amenity and passive thermal design for ventilation, heating and cooling. Waste minimisation is achieved with various measures such as reuse and recycling of building materials during construction. Wider and deeper landscape zones (excluding deep) have been included where possible.	Yes

Design Quality Principle 5: Landscape		
Objectives	Proposed Development	Compliance
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.	A landscape plan has been provided with the application which demonstrates landscaping to soften the building, and ensure accessible amenity for residents to open areas and attractive street frontages. Street trees have been retained and/or replaced with complimentary landscape inherent within the proposal.	Yes

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Design Quality Principle 6: Amenity		
Objectives	Proposed Development	Compliance
Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident wellbeing. *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.*	The proposed development is compliant with the Apartment Design Guide with respect to amenity. The design achieves above and beyond the minimum criteria setout in the ADG for each of the types of amenity, such as room dimensions, solar access and ventilation, outdoor space, and efficient layouts. This is demonstrated throughout the architectural documentation.	Yes

Design Quality Principle 7: Safety		
Objectives	Proposed Development	Compliance
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.*	The proposed development is consistent with the principle for providing a safe and secure environment for residents and visitors to the site. The development optimises safety and security, with clearly defined private and public domains, secure entry points, and considered approach to passive surveillance.	Yes

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Design Quality Principle 8: Housing Diversity and Social Interaction		
Objectives	Proposed Development	Compliance
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.*	The design provides an abundance of apartment type, each with features which will appeal to various demographics, living needs and budgets. Sizes ranges from studios to 3 bedroom apartments. Adaptable and liveable housing Australia silver standard apartments are provided to meet DCP and Sepp65 requirements. Living spaces are designed in every unit to offer some flexibility of furniture layout. Top level apartments are designed to give a luxurious feel with ample floor space and high ceilings (respectively) as well as glazing for access to views and vistas. All apartments include balconies of sufficient sizes. Double level apartments are also provided, adding to the diversity.	Yes

Design Quality Principle 9: Aesthetics		
Objectives	Proposed Development	Compliance
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.*	The proposed amended development will enhance the future character and visual appearance of the streetscape and is congruent with the future desired character where there will be an increase of shop-top housing as well as other residential development. The proposed development has been well designed with an emphasis on simplicity, legibility, and proper use of articulation, and will have an appropriate scale and appearance with a mix of materials, colours and textures in the design of the building.	Yes

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Part 2 – Apartment Design Aims

Table of Compliance with Relevant Aims

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Compliance with Relevant Aims:

2F Building Separation	Proposed Development	Compliance
Aims: *ensure that new development is scaled to support the desired future character with appropriate massing and spaces between buildings* *• assist in providing residential amenity including visual and acoustic privacy, natural ventilation, sunlight and daylight access and outlook* *• provide suitable areas for communal open spaces, deep soil zones and landscaping.* *• provide access to light, air and outlook for neighbouring properties and future buildings* *• provide for adequate privacy between neighbouring apartments* *• retain or create a rhythm or pattern of spaces between buildings that define and add character to the streetscape* *• achieve setbacks that maximise deep soil areas, retain existing landscaping and support mature vegetation consolidated across sites* *• manage a transition between sites or areas with different development controls such as height and land use.*	The proposed development consists of 1 building of a suitable scale. Although slightly over the maximum height limit, the massing of the building is appropriate to the future desired character of the area, being in continual growth with an increase in multi-unit developments. The building is heavily terraced in relation the the sloping streetscape. Thus, the perceived building mass is minimised. The development is able to satisfactorily meet the aims of the side and rear setbacks provisions, both standard and merit based. Access to light, air and outlooks are achieved through design and appropriate privacy between apartments is achieved. There is a certain rhythm to the building design in plan which is reflected in elevations, with regular glazing areas and a regular pattern of balcony placement. The building is visually divided in to two, by the central core and lobby spaces which gives opportunity for a break in the buildings floor space. Along the new street frontages existing trees will be reatined with new street trees will be planted. Most tree will be retained where possible. The surrounding zones are also part of the Freshwater Village – or B2 Local Centre, aside from the area to the west, which remains Low-Desnity Residential. The height of the buildings in this development follow the natural fall of the land – terracing down along Oliver and Dowling streets towards the north – respecting the height plane and adjoining properties present and future building heights.	Yes

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Part 3 – Apartment Design Guide - Objectives

Table of Compliance with All Objectives

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OBJECTIVE	SUMMARY	ACTIONS	Compliance
	SITING		
3A-1	Site Analysis illustrates that design decisions have been based upon the opportunities and constraints of the site.	The site is well located to current and planned public transport, services and amenity. The development fully harnesses the vistas and solar access provided by the location. The massing of the proposal responds to local neighbouring and site conditions.	Yes
3B-1	Building types and layouts respond to the streetscape and site while optimising solar access within the development	Apartments are all designed to maximise solar access. Apartments comply with street frontage setbacks, providing privacy with an appealing treatment to the street elevation. Many apartments benefit from having more than one aspects.	Yes
3B-2	Overshadowing of neighbouring properties is minimised during mid-winter	There is no adverse impact from overshadowing of the development during mid-winter.	Yes
3C-1	Transition between private and public domain is achieved without compromising safety and security	There are a limited number of clear and secure entry point into the development off the boundaries, with paths leading to the secure apartment entry foyer, as well as ground floor retail/business spaces with their respective entries.	Yes
3C-2	Amenity of the public domain is retained and enhanced	There is no negative impact on the amenity of the public domain from this development. Services and carparking is concealed from the street, and the landscaping along the streets enhances the visual appearance.	Yes
3D-1	An adequate area of communal open space is provided to enhance residential amenity and provide opportunities for landscaping	Landscaped of open space is provided. Due to the sites location, the communal open space is the adjacent Freshwater Village.	N/A
3D-2	Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting	Due to the sites location, the communal open space is the adjacent Freshwater Village.	N/A
3D-3	Communal open space is designed to maximise safety	Units are positioned to provide passive surveillance to the street. All open space is to be well lit with entries to the building secure.	N/A

softening and screening between the apartment buildings. The landscaping is consistent with that expected from the building typology and location within the LGA.

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3D-4	Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood	Property is private residential; however, the public streetscape is to be improved by the design of the street-frontage of the development.	Yes
3E-1	Deep soil zones allow for and support healthy plant growth. Min. deep soil zones 650 – 1500m2 3m min dimension 7% site area	The design of the dwelling – whilst compliant with merit-based setbacks and other requirements – is unable to provide deep soil zones.	No
3F-1	Adequate building separation distances are shared equitably between neighbouring sites to achieve reasonable levels of external and internal visual privacy Height Habitable rooms/balconies Non habitable rooms Up to 12m 6m 3m	The subject site is located within an B2 Local Centre zone with building separation generally complying with the minimum set out in the ADG. However, the setbacks are merit based. The setback off the immediate neighbour is 3m.	Yes
3F-2	Site and building design elements increase privacy without compromising access to light and air and balance outlook and views between habitable rooms and private open space.	The required solar access as per DCP & ADG requirements area achieved, as well as the percentage of units with cross flow ventilation. Privacy is also achieved through building placement, and with the balconies being away from main intersections/public domains.	Yes
3G-1	Building entries and pedestrian access connects to and addresses the public domain	Building entry is clearly identifiable. Private entry is via the common lobbies. Street edges are activated by the pedestrian and vehicular entries. Similarly, the awning deisng clearly delineates acces for the business/retail spaces.	Yes
3G-2	Access, entries and pathways are accessible and easy to identify	The proposed development provides accessible entry for residents and visitors via the path leading to the front door of the lobby. Main entries are clearly identifiable through the building design – either signified by awnings or façade articulation.	Yes
3G-3	Large sites provide pedestrian links for access to streets and connection to destinations	The merit-based setbacks allow immediate pedestrian links to the Freshwater Village	Yes

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3H-1	Vehicle access points are designed to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes	Vehicular entry will be off both Oliver Street and Dowling Street. Therefore there are two carpark vehicular access points to provide efficient access to residents parking bays. The new driveways will be safe and add to the high quality street scape with the caroarking being screened with landscape.	Yes
3J-1	Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas	Car parking is compliant with the controls stipulated within Waringah DCP.	Yes
3J-2	Parking and facilities are provided for other modes of transport	Bicycle parking is compliant with the controls stipulated within Waringah DCP	Yes
3J-3	Car park design and access is safe and secure	Security system will be provided along with secure roller shutter for the carpark entries.	Yes
3J-4	Visual and environmental impacts of underground car parking are minimised	Car parking situated mostly underground to minimise visual impact. Where the minimal penetration occurs due to sloping site, vegetation is introduced to soften protrusion. Exposure of basement is compliant with DCP allowances and only are visible from the rear of the building.	Yes
3J-5	Visual and environmental impacts of on-grade car parking are minimised	N/A	Yes
3J-6	Visual and environmental impacts of above ground enclosed car parking are minimised	Where the minimal visibility of the carpark occurs due to sloping site, vegetation is introduced to soften protrusion	Yes
	DESIGNING THE BUILDING		
4A-1	Optimise the number of apartments receiving min. 3 hours sunlight to habitable rooms, primary windows and private open space between the hours of 9am and 3pm A max. of 15% receive no sun in mid-winter	90% of the apartments achieve the minimum 3hrs required sunlight to habitable rooms, primary windows and private open spaces. No more than 10% of apartments receive no sun in mid-winter.	Yes
	2 hours min sunlight midwinter in Sydney/Newcastle/Wollongong	See above	Yes
	All other areas a min. of 3 hours	See above	Yes

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4A-2	Daylight access is maximised where sunlight is limited	In accordance with the guidance contained in the ADG, any spaces (interior and exterior) with limited sun have been given light coloured finishes, and balconies to provide large amounts of ambient light.	Yes
4A-3	Design incorporates shading and glare control, particularly for warmer months	Balconies provide winter sun penetration and exclude summer sun. Most windows are shaded by the balcony.	Yes
4B-1	All habitable rooms are naturally ventilated	All habitable rooms are naturally ventilated.	Yes
4B-2	The layout and design of single aspect apartments maximises natural ventilation	All of the single aspect apartment considers maximising natural ventilation through adequate amount of openings.	Yes
4B-3	The number of apartments with cross ventilation is maximised At least 60% of apartments are naturally cross ventilated Overall depth of cross over apartments is 18m max.	At least 60% of apartments are naturally cross ventilated as they have two aspects. The cross over apartments are no deeper than 18m.	Yes Yes
4C-1	Ceiling height achieves sufficient natural ventilation and daylight access. Min height of – Habitable rooms 2.7m Non habitable rooms 2.4m Two storey apartments 2.7m main living floor 2.4m for second floor (max. 50% area) Attic spaces 1.8m at edge of room 30º ceiling slope	All habitable rooms have ceiling heights of ≥ 2.7m All non-habitable rooms have ceiling heights of ≥ 2.4m	Yes Yes
4C-2	Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms	Proposal has adequate floor to ceiling heights, see above	Yes
4C-3	Ceiling height contributed to flexibility of building use over the life of the building	Ceiling heights comply	Yes
4D-1	Layout of rooms within an apartment is functional, well organised and provides a high standard of amenity	Layout of rooms is functional, articulated to make best use of the design's character and provide a high standard of amenity	Yes

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	Min. areas Studio 35sqm 1 bed 50sqm 2 bed 70sqm 3 bed 90sqm	 Between 33-35sqm Complies Complies Complies	Yes
	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.	All habitable rooms have operable windows in excess of the 10% minimum requirement.	Yes
4D-2	Environmental performance of the apartment is maximised	See above	Yes
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height	See Below	Yes
	In open plan layouts the maximum habitable room depth is 8m from a window	No habitable room location is more than 8m from a window.	Yes
4D-3	Apartment layouts are designed to accommodate a variety of household activities and needs	Layouts incorporate flexible open plan living areas with a variety of multi-purpose storage.	Yes
	Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobes)	Most master bedrooms have above standard dimensions.	Yes
	Bedrooms have a minimum dimension of 3m (excluding robes)	Complies.	Yes
	Living rooms or open plan living have min width of 3.6m for studios/1beds 4m for 2/3beds	Complies.	Yes
	Width of cross over apartments are at least 4m internally to avoid narrow layouts	Not applicable	NA
4E-1	Apartments provide appropriately sized private open space and balconies to enhance residential amenity	All dwellings have generous private open spaces in the form of balconies. All ground floor dwellings have garden spaces.	Yes

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	Primary balconies Studio 4sqm 1 bed 8sqm 2m min depth 2 bed 10sqm 2m min depth 3 bed 12sqm 2.4m min depth	 Complies Complies Complies Complies	 Yes Yes Yes Yes
4E-3	Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building	All balconies are designed and detailed as integral components of the façades. Balconies are designed to frame themselves within the skin of the exterior, blending into the overall form of the structure. Balconies maintain privacy for residents whilst maximising potential views and vistas.	Yes
4E-4	Private open space and balcony design maximises safety	All balconies to be designed and constructed in accordance with the BCA.	Yes
4F-1	Common circulation spaces achieve good amenity and properly service the number of apartments	Circulation space provides adequate amenity for residents as each floor services only a maximum of 8 apartments where possible. The appropriate number of lift are provided for each building, connecting to the carparks.	Yes
	Maximum number of apartments off a circulation core on a single level is 8	See above.	Yes
	For buildings 10 + storeys, maximum number of apartments sharing a single lift is 40	N/A	NA
4F-2	Common circulation spaces promote safety and provide for social interaction between residents	Circulation is direct and legible and secure. It is clearly defined as resident only space. The design considers separation between the retail/business access and the main lobby access.	Yes
4G-1	Adequate, well designed storage is provided in each apartment	All apartments are provided with storage within one or more locations; being bedrooms, kitchens, laundries and dedicated storage cupboards. Further storage is located in the basement in storage cages / rooms.	Yes

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		Apartments have adequate space to incorporate compliant storage, and will be included during detailing of design	Yes
4G-2	Additional storage is conveniently located, accessible and nominated for individual apartments.	See above	NA
4H-1	Noise transfer is minimised through the siting of buildings and building layout	Specifically, balcony placement away from intersections to consider noise transfer. All wall construction and glazing comply with acoustic requirements. Bedrooms are separated from noise sources where possible. Garage doors and other mechanical equipment is located away from bedrooms.	Yes
4H-2	Noise impacts are mitigated within apartments through layout and acoustic treatments	All separating construction to be in accordance with the BCA.	Yes
4J-1	In noisy or hostile environments, the impacts of external noise and pollution are minimised through careful siting and layout of buildings	The design considers any possible noise concerns. There are no significant noisy or hostile noise sources identified in the immediate vicinity which will impact heavily on the residents. However, the balcony and glazing placement away from the main road will provide appropriate noise minimisation.	Yes
4J-2	Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.	Party walls will comply with noise attenuation requirements. All External fenestration will provide adequate noise dampening through glazing and sealing.	Yes
4K-1	A range of apartment types and sizes is provided to cater for different household types now and into the future.	There are a large range of apartment types provided which are and adds diversity to the local housing stock.	Yes
4K-2	The apartment mix is distributed to suitable locations within the building.	Different apartment types are located to best utilise and accommodate the site's best attributes, such as lower level units, two level units, and upper level units with views.	Yes
4L-1	Street frontage activity is maximised where ground floor apartments are located.	Street frontage apartments all incorporate balconies / outdoor areas facing the street to maximise activity.	Yes

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4L-2	Design of ground floor apartments delivers amenity and safety for residents	Casual surveillance is provided from ground floor retail/business spaces on the Lawrence Street side. This also provides suitable amenity for the units.	Yes
4M-1	Building facades provide visual interest along the street while respecting the character of the local area.	The façade employs a tasteful composition of materials and forms including rendered finish, glass, aluminium window and door frames, and louvred screening, which complement the streetscape.	Yes
4M-2	Building functions are expressed by the façade	There is clear expression of building function, such as an obvious main entry. The driveway leads to the carpakrs via a ramp, and repetition of balconies and fenestrations.	Yes
4N-1	Roof treatments are integrated into the building design and respond positively to the street.	The roof design is with an architectural curve to reflect the same language as the rest of the building, with no negative imposition on the street.	Yes
4N-2	Opportunities to use roof space for residential accommodation and open space are maximised.	Access to the roof is limited to allow for more usuable floor space on the top-most level (the two level apartments eliminate the need for a corridor on the top level).	Yes
4N-3	Roof design incorporates sustainability features	Effective water catchment provided.	Yes
4O-1	Landscape design is viable and sustainable	The landscape design and species selection make intelligent and diverse use of species for all garden spaces and is in accordance with council guidelines.	Yes
4O-2	Landscape design contributes to the streetscape and amenity	Street trees and public landscaping has been selected and designed by the Landscape Architect to contribute to the streetscape. The landscaping incorporates species to thrive and contribute to a coastal environment. Boundary vegetation as well as carpakring screening plansts softens site boundaries and raises the pedestrian visual experience.	Yes
4P-1	Appropriate soil profiles are provided	Landscape Architect has provided appropriate plant species for proposed soil volumes in accordance with council guidelines	Yes

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4P-2	Plant growth is optimised with appropriate selection and maintenance	Plants have been selected by the Landscape Architect to suit the site conditions.	Yes
4P-3	Planting on structures contributes to the quality and amenity of communal and public open spaces	Planting is provided to soften hard landscaped areas and basement protrusions as well as masking apartment fenestration from public spaces.	Yes
4Q-1	Universal design features are included in apartment design to promote flexible housing for all community members	The required number of adaptable as well as LHA silver apartment are provided. An accessible path of travel is provided to all front doors as well as public space (retail/business).	Yes
4Q-2	A variety of apartments with adaptable designs are provided	As above	Yes
4Q-3	Apartment layouts are flexible and accommodate a range of lifestyle needs	A good mix of apartment types are provided, with all units responding to the site's particular opportunities.	Yes
4R-1	New additions to existing buildings are contemporary and complementary and enhance an areas identity and sense of place	Not applicable	Yes
4R-2	Adapted buildings provide residential amenity while not precluding future adaptive reuse	Not applicable	Yes
4S-1	Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement.	As per the Freshwater Village DCP (part of the Waringah DCP) retail/business space is also provided to maintain the retail village centre.	Yes
4S-2	Residential levels of the building are integrated within the development, and safety and amenity are maximised for residents	Residential only entry to the lobby and corridors.	Yes
4T-1	Awnings are well located and complement and integrate with building design	Awning use is appropriate for design in amenity along Lawrence Street as well as creating visual interest.	Yes
4T-2	Signage responds to the context and desired streetscape character	Signage is to be incorporated into the mailing area as a motif for a sense of place as well as for the retail/business spaces.	Yes
4U-1	Development incorporates passive environmental design	Beyond compliance with BASIX's numerical standards, the site planning and building design maximise the benefits of passive solar design to the dwellings, exceeding ADG minimum standards.	Yes

	separation and recycling		
4X-1	Building design detail provides protection from weathering.	Durable materials with appropriate flashing and capping are designed to shed water intelligently – reducing staining and maximising durability.	Yes
4X-2	Systems and access enable ease of maintenance.		Yes

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4U-2	Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer	Thermal mass in concrete and use of screening and balconies throughout will provide optimised passive solar design throughout the year.	Yes
4U-3	Adequate natural ventilation minimises the need for mechanical ventilation	All apartments are adequately naturally ventilated.	Yes
4V-1	Potable water use is minimised	TBC	Yes
4V-2	Urban stormwater is treated on site before being discharged to receiving waters	In accordance with DCP	Yes
4V-3	Flood management systems are integrated into site design	In accordance with DCP	Yes
4W-1	Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents	Waste storage is located in allocated basement bin room located out of sight from residents and public. Waste collection is a kerb-side colletion with ample consideration given to access from bin room to kerb.	Yes
4W-2	Domestic waste is minimised by providing safe and convenient source separation and recycling	Recycling provided in bin room.	Yes
4X-1	Building design detail provides protection from weathering.	Durable materials with appropriate flashing and capping are designed to shed water intelligently – reducing staining and maximising durability.	Yes
4X-2	Systems and access enable ease of maintenance.		Yes
4X-3	Material selection reduces ongoing maintenance costs.	Robust and durable materials have been specified.	Yes