

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0744
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Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 1 DP 571975, 50 Lawrence Street FRESHWATER NSW 2096
Proposed Development:	Demolition works and construction of shop top housing
Zoning:	Warringah LEP2011 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Lawrence Street Nominees Pty Ltd
Applicant:	Lawrence Street Nominees Pty Ltd

Application Lodged:	07/06/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	18/06/2021 to 09/07/2021
Advertised:	18/06/2021
Submissions Received:	50
Clause 4.6 Variation:	4.3 Height of buildings: 2.7%
Recommendation:	Approval

Estimated Cost of Works:	\$ 4,348,000.00
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EXECUTIVE SUMMARY

The application seeks consent for the construction of a shop top housing development, comprising 11 apartments and 2 retail/business tenancies, at the western end of the Freshwater Village. The site is narrow and irregularly shaped, with three street frontages and a cross-fall of approximately 11%, which present unique challenges for the redevelopment of the B2 Local Centre zoned site.

Whilst the proposal involves minor variations and departures from applicable standards and controls, the development is a well resolved scheme that is an appropriate response to the context, character and individual circumstances of the site. The proposal has been skilfully designed to minimise impacts upon adjoining properties and the public domain, whilst providing a high level of internal amenity for future occupants of the development. The proposal is supported by all relevant referral bodies, specifically Council's Design and Sustainability Advisory Panel (**DSAP**), who "commend the overall

design approach" presented.

Whilst 50 submissions were received in objection to the development, no matters were raised that warrant the refusal of the application or that cannot be addressed via the imposition of conditions.

Given the level of public interest, the proposal is referred to the Northern Beaches Planning Panel (**NBLPP**) for determination, with a recommendation of approval subject to the draft conditions attached.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the the construction of a shop top housing development at the subject site. Specifically, the application proposes:

- demolition of all existing site improvements,
- the construction of a three-four storey shop top housing development comprising:
 - 11 residential apartments (2 x studio, 4 x 1 bedroom and 5 x 2 bedroom)
 - Two retail/business tenancies with a total GFA of 77.82m²
 - Off-street parking for 18 cars, inclusive of 1 service vehicle space
- landscaping, and
- associated infrastructure.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - Zone B2 Local Centre
Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - D2 Private Open Space

Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - 4. Street facades and shopfront design
Warringah Development Control Plan - 10. Front setback
Warringah Development Control Plan - 11. Side and rear setbacks

SITE DESCRIPTION

Property Description:	Lot 1 DP 571975 , 50 Lawrence Street FRESHWATER NSW 2096
Detailed Site Description:	<p>The site is an irregular shape, with a 10.365m wide frontage to Lawrence Street (north), a 43.285m wide frontage to Oliver Street (west), a 45.75m wide frontage to Dowling Street (east) and a total area of 590m². The northern half of the site currently contains a two storey commercial building, with the southern portion of the site containing an informal parking area accessed via Oliver Street and a single storey garage accessed from Dowling Street. The site does not feature any significant landscaping or natural features.</p> <p>The site experience a fall of approximately 5.13m from the south-western corner of the site (RL32.82m AHD) down towards the north-eastern corner of the site (RL 27.69m AHD), with a maximum gradient of approximately 11%.</p> <p>Lawrence Street is a two-four lane local road. The portion of the public road reserve immediately adjoining the site is paved with no overhead infrastructure or street trees.</p> <p>Oliver Street is four lane regional road. The portion of the public road reserve immediately adjoining the site contains a footpath and street trees. A portion of the public road reserve immediately adjacent to the existing building has been excavated and is supported by a retaining wall.</p> <p>Dowling Street is a two lane local road. The portion of the public road reserve immediately adjacent to the site is partially paved, with a footpath extending half way along the length of the site, overhead infrastructure and street trees. A bus stop/bus zone is located in front of the existing building.</p> <p>The site is zoned B2 Local Centre and is located at the western end of the Freshwater Village. Whilst the B2 zoning extends to the east and north-east, the site is predominately surrounding by land zoned R2 Low Density Residential (to the north-west, west, south and south-east) The land to the opposite side of Lawrence Street is zoned RE1 Public Recreation and contains community facilities.</p> <p>Despite the low density zoning of surrounding and nearby land, the site is surrounded by development of varied density and scale, with three storey residential flat buildings</p>

to the west, a two storey church building to the north-west and two-storey dwellings to the south and south-east.

The site is located in the vicinity of two items of local heritage significance, being the Harbord Literacy Institute (directly opposite to the north) and the Harbord Early Childhood Health Centre (to the north-east).

Map:



SITE HISTORY

On 11 June 2019, a pre-lodgement meeting was held in relation to a four storey shop top housing development at the subject site. The development included 14 residential apartments, with a maximum height of approximately 12.4m and numerous other areas of built form non-compliance. Whilst the concept of a shop top housing development at the site was supported, the height, scale and intensity of the development was not.

On 26 May 2020, development application DA2020/0543 was lodged with Council, seeking consent for a shop top housing development at the subject site.

On 7 September 2020, Council requested the withdrawal of DA2020/0543 due to concerns relating to:

- bulk and scale, with a need for a finer grain approach along Oliver and Dowling Streets,
- number of storeys,
- street activation,
- front setbacks,
- sustainability,
- landscaping,
- building height,
- communal open space, and
- deep soil zones.

On 16 October 2020, DA2020/0543 was withdrawn.

On 7 June 2021, the subject development application was lodged with Council.

On 11 August 2021, Council wrote to the applicant advising of concerns with regard to the following:

- vehicular access,
- encroachments within the road reserve,
- works within the road reserve,
- solar access, and
- waste management.

The correspondence also advised of potential issues relating to view sharing, however noted that due to the COVID 19 restrictions, inspections to confirm the potential impacts were unable to be undertaken.

On 26 August 2021, Council wrote to the application to advise of additional concerns raised in relation to heritage.

On 8 September 2021, amended plans and supporting documentation were presented to Council.

On 22 October 2021, TfNSW raised concerns in relation to the proposed driveway access to Oliver Street.

On 29 October 2021, further amended plans were presented to Council to clarify driveway levels/details. Further view analysis was also presented.

On 8 November 2021, concurrence was obtained from TfNSW.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for business/retail purposes for an extended period of time, with no history of any previous uses that may have resulted in contamination of the site.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested over the course of the assessment process and was subsequently presented.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any	See discussion on “Notification & Submissions Received” in this

Section 4.15 Matters for Consideration'	Comments
submissions made in accordance with the EPA Act or EPA Regs	report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 18/06/2021 to 09/07/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 50 submission/s from:

Name:	Address:
Mrs Denise Faith Keeping	36 Oceanview Road FRESHWATER NSW 2096
Mr Phillip Malcolm Curry	406 / 168 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Charl Justus Potgieter	4 Hill Street QUEENSCLIFF NSW 2096
Mrs Carolyn Susan Mcpherson-Smith	30 Dowling Street QUEENSCLIFF NSW 2096
Mr John Oliver	47 Evans Street FRESHWATER NSW 2096
Chloe Elisabeth Jenkins	4 / 28 Cavill Street FRESHWATER NSW 2096
Mrs Kristy Kerry Warneford	18 Oliver Street FRESHWATER NSW 2096
Friends Of Freshwater Inc	4 Marmora Street FRESHWATER NSW 2096
Mr Benjamin John Cohen	36 / 33 Palomar Parade FRESHWATER NSW 2096
Ms Sonya Michelle Watson	5 / 16 Soldiers Avenue FRESHWATER NSW 2096
Ms Tiziana Beninati	13 Nenagh Street NORTH MANLY NSW 2100
Emma Staniland	11 Evans Street FRESHWATER NSW 2096
Jeff Hudson	13 / 7 Rowe Street FRESHWATER NSW 2096
Mrs Simone Baker	4 Martin Street FRESHWATER NSW 2096
Mr Michael Robert Scheel	105 / 11 Lawrence Street FRESHWATER NSW 2096
Mrs Victoria Ramsbottom-Isherwood	108 Crown Road QUEENSCLIFF NSW 2096
Kevin William Tuckey	15 Undercliff Road FRESHWATER NSW 2096
Mrs Camilla Margareta Rundqvist	9 / 6 Hill Street QUEENSCLIFF NSW 2096
Lisa Rahem	9 / 61 Wyndora Avenue FRESHWATER NSW 2096

Name:	Address:
Damian Paul McNamara	24 Cavill Street QUEENSCLIFF NSW 2096
Ms Geraldine Mary Grace	3 / 64 Harbord Road FRESHWATER NSW 2096
Mrs Sharyne Therese Mullens	4 / 69 Evans Street FRESHWATER NSW 2096
Mr Geoffrey Donald Stewart	34 Curban Street BALGOWLAH HEIGHTS NSW 2093
Amanda Jane Kivovitch	3 / 68 Crown Road QUEENSCLIFF NSW 2096
Ms Karen Suzanne Conlon	14 / 33 Cavill Street FRESHWATER NSW 2096
Mr Ian Hall Henderson	15 Marlborough Avenue FRESHWATER NSW 2096
Mae Madikian	Address Unknown
Ainslie Williams	16 / 102 - 108 Lawrence Street FRESHWATER NSW 2096
Ms Jennifer Lesly Brooker	7 / 52 Lawrence Street FRESHWATER NSW 2096
Mr Michael Philip Mol	18 / 102 - 108 Lawrence Street FRESHWATER NSW 2096
Oliver Michael Hitchcock	13 / 128 Lawrence Street FRESHWATER NSW 2096
Mr Ian Horswill	10 Wilson Street FRESHWATER NSW 2096
Mrs Natalie Jayne Gray	14 Palomar Parade FRESHWATER NSW 2096
Ms Jennifer Gaye Leete	5 / 32 Undercliff Road FRESHWATER NSW 2096
Bronwyn O'Brien	Address Unknown
Mrs Geraldine Catherine Mol	18 / 102 - 108 Lawrence Street FRESHWATER NSW 2096
Ms Diane Jayne Dromgold	221 McCarrs Creek Road CHURCH POINT NSW 2105
Ms Diana Margaret Ryall	50 Undercliff Road FRESHWATER NSW 2096
Mrs Sandra Elizabeth Young	29 Aranda Drive DAVIDSON NSW 2085
Mr Geoffrey Charles Young	29 Aranda Drive DAVIDSON NSW 2085
Deirdre Hatton	29 Aranda Drive DAVIDSON NSW 2085
Lesley Anne McQuade	126 A Lawrence Street FRESHWATER NSW 2096
Withheld Ms Wendy Ann Machon	FRESHWATER NSW 2096
Withheld Ms Wendy Ann Machon	1 / 24 Soldiers Avenue FRESHWATER NSW 2096
Ms Jacqueline Rita Summerhayes	11 / 33 Cavill Street FRESHWATER NSW 2096
Mr Gary John Wearne	6 Undercliff Road FRESHWATER NSW 2096
Ms Catherine Jessica Sturrock	127 McIntosh Road NARRAWEENA NSW 2099
Stacey Berkman	16 / 35 - 43 Dalley Street QUEENSCLIFF NSW 2096
Ms Daini Louise Phillips	145 Crown Road QUEENSCLIFF NSW 2096
Mr Luke Benjamin Elliott Phillips	145 Crown Road QUEENSCLIFF NSW 2096
Joshua Kennedy Wall	16 / 18 Albert Street FRESHWATER NSW 2096

The concerns raised in the submissions are addressed, as follows:

- **Building height**

Submissions have been received in objection to the height of the development, which exceeds the 11m height plane by a maximum of 300mm. As discussed with regard to clauses 4.3 and 4.6 of WLEP 2011, the area of non-compliance is limited to a minor portion of the upper roof form, with the majority of the development maintained well below the height plane. The height non-compliance is reasonably attributable to the fall of the land, and does not result in any unreasonable impacts or excessive built form.

- **Number of storeys**

Submissions have been received in objection to the height of the development as measured in storeys, with submissions suggesting that the four storey nature of the development is inconsistent with the three storey height limit prescribed by WDCP 2011. Whilst the proposed development comprises four levels, the proposed development does not exceed three storeys in any one place, noting that the basement does not extend more than 1m above ground below the footprint of the upper most level. The development has been carefully and skilfully designed to step up the slope of the land with no more than three storeys in any one place.

- **Bulk and scale**

Submissions have been received in objection to the bulk and scale of the proposed development, specifically in relation to the length of the Oliver Street facade. The western facade has a two and three storey presentation to Oliver Street, and comprises a high level of articulation to break down the length of the facade. The bulk and scale of the proposal is well resolved and appropriate in light of the B2 Local Centre zoning and with respect to the applicable controls.

- **Landscaped area**

Submissions have been received that suggest that the proposal is inconsistent with the provisions of WDCP 2011 that require a minimum landscaped area of 25%. However, the landscaped area controls of WDCP 2011 do not apply to the site. The same submissions also cite non-compliance with the minimum deep soil requirements, however with a deep soil zone of 43.62m² or 7.4% of the total site, the proposal complies with the 7% minimum deep soil zone prescribed by the ADG.

- **Landscaping**

In addition to concerns raised regarding the area of landscaping proposed, submissions have been received in objection to the location of the deep soil landscaping and the quality of the landscaping proposed. The quantum and quality of the landscaping proposed is appropriate with regard to the zoning of the site, and has been supported by Council's DSAP and Landscape Officers. The location of the proposed deep soil is also supported from a planning perspective, as it provides a necessary buffer to the adjoining low density residential zoned land.

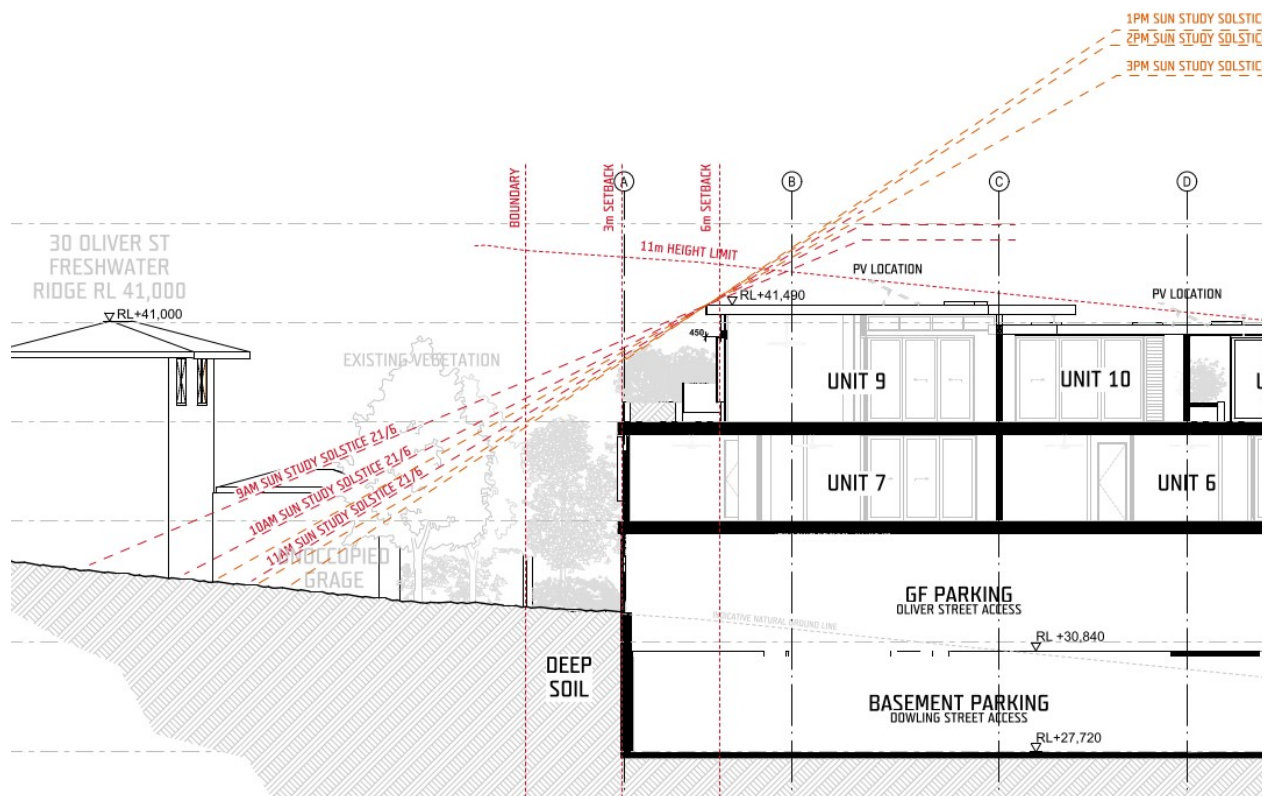
- **Southern setback**

Objection has been raised with respect to the proximity of the proposed development to the southern boundary and the adjoining dwelling at 30 Dowling Street. Whilst the proposal is inconsistent with the side setback requirements of the ADG, the proposal exceeds the 2m minimum setback prescribed by the Freshwater Village DCP and is consistent with the setbacks of other recent development throughout the local centre. The setbacks of the development do not attribute to any unreasonable impacts upon the amenity of the adjoining property or the surrounding environment. See further discussion with regard to the ADG and Part 11 of clause G5 of WDCP 2011.

- **Solar access**

A number of residents, including the relevant property owners, have raised objection to the degree in which the proposal will overshadow the adjoining property to the south at 30 Dowling

Street. As discussed with regard to clause D6 of WDCP 2011, whilst the proposal will result in additional overshadowing of the adjoining property, the overshadowing is limited to a portion of the garden and former garage, with solar access to all areas of private open space and windows associated with living rooms unaffected by the development. As shown in the Section A (extract below), the upper floor is setback 6m from the rear southern boundary and maintained below the height limit at that point to ensure that overshadowing is reasonably minimised.



The submissions also raise concerns with regard to the impact of overshadowing upon the established plantings at the northern end of 30 Dowling Street. The impact highlighted in the shadow diagrams represents mid-winter, when the impact of overshadowing will be at its worst. Additional sunlight will be received throughout the year. The landscaped area in question comprises a number of mature palms that are of a sufficient height that will ensure that sunlight to the canopy is still achieved, even in the middle of winter. Nonetheless, potential impacts to vegetation associated with overshadowing is not considered to warrant the refusal of the subject application.

- **Visual privacy**

Submissions have been received from the owners of 30 Dowling Street in objection to the extent of overlooking arising from the proposed development. As discussed with regard to the visual privacy provisions of the ADG and clause D8 of WDCP 2011, the proposed development has been designed to minimise overlooking between properties by virtue of fixed screens, opaque glazing, landscaping and spatial separation.

- **View loss**

Two submissions have been received in objection to potential impacts upon existing views. As discussed with regard to clause D7 of WDCP 2011, the proposed level of impact upon existing filtered views towards the ocean is minor and not unreasonable in the circumstances of this application.

- **Off-street parking**

Submissions have been received in objection to the amount of off-street parking proposed. The proposal provides 18 off-street parking spaces, one parking space short of the minimum requirements of clause C3 of WDCP 2011. The minor non-compliance is supported on merit with regard to the objectives of the parking control and Council's Traffic Engineer raises no concerns in this regard.

- **Size of retail tenancies**

Submissions have been received in objection to the size of the proposed retail tenancies, questioning whether the proposal is consistent with the shop top housing definition. Whilst the proportion of retail space is low when compared to the residential floor space, WLEP 2011 does not contain any minimum requirements in relation to retail floor space within a shop top housing development. The size and location of retail floor space is considered to be appropriate with regard to the location and constraints of the subject site.

Submissions were also received in objection to the height of the retail tenancies. The western retail tenancy has a ceiling height of 3.14m, which is inconsistent with the 3.3m minimum ceiling height prescribed by clause F11 of WDCP 2011 and the ADG. Despite the minor area of non-compliance, the ceiling height of the western retail tenancy is acceptable in light of size of the space and the amount of glazing to both the Oliver St and Lawrence Street facades.

A number of submissions also object to the size of the retail spaces and the inability to accommodate an IGA supermarket. With a width of less than 13m, the dimensions of the site do not facilitate the incorporation of a supermarket. Furthermore, an IGA Supermart is scheduled to open further along Lawrence Street in the near future.

- **Pedestrian safety**

Pedestrian safety has been raised as a concern in the submissions received, specifically in relation to the new driveway to Dowling Street and its proximity to the intersection and bus stop. A number of submissions suggest that all vehicular access should be achieved via Oliver Street.

In this respect, it is noted that Oliver Street is a regional road, and TfNSW do not support sole reliance upon Oliver Street for vehicular access. The amount of parking required for the development cannot be achieved on one level, and the depth and cross fall of the site prohibit the incorporation of an driveway ramp to join two levels internally. As such, the proposal has been designed with access to both Oliver Street and Dowling Street.

The proposed development achieves appropriate sight lines and incorporates other measures (speed hump, flashing lights and pedestrian alarms) to ensure that pedestrian safety is maximised. Council's Traffic Engineer has reviewed the proposal and raises no concerns in this regard.

- **Traffic**

The impact upon traffic conditions both during construction and long term has also been raised in the submissions received. Should the application be approved, a condition of consent can be imposed to ensure that construction traffic is appropriately managed during construction. In regards to long term impacts, it is noted that the proposed development does not generate significant volumes of traffic and Council's Traffic Engineer is satisfied that the proposal will not have an unreasonable impact upon traffic flows throughout the locality. This is somewhat assisted by the dual driveway approach, with the traffic generated by the development divided across two streets rather than one.

- **Acoustics**

A submission has been received from a resident of the apartment building at 33 Cavil Street in objection to the acoustic impacts associated with construction of the development and ongoing noise levels associated with the location of windows and balconies. Should the application be approved, conditions of consent can be imposed to ensure that noise levels associated with construction are appropriately minimised. Noise associated with the use of residential apartments is not unreasonable within the B2 Local Centre zone and will not be dissimilar to noise levels associated with other nearby or surrounding medium density residential development.

- **Shop top housing development**

Submissions have been received in objection to the concept of shop top housing development in general, with claims that Freshwater is already overdeveloped and requests for any further medium development in the town centre to be rejected. Shop top housing development is permitted and anticipated on the site under the provisions of WLEP 2011 and there has been no information presented to suggest that the density of the proposal is inappropriate within the Freshwater Village.

- **Non-compliance with DCP**

Submissions have been received which call upon Council to reject the development due to any area of non-compliance with WDCP 2011. It is acknowledged that the proposed development is non-compliant with provisions of WDCP 2011, specifically with regard to front setbacks, car parking and the need for emphasised vertical articulation. However, these aspects of the development have been considered on merit, and have been found to be acceptable as the intent of the control, or the objectives of the control, are otherwise achieved. This is consistent with the requirements of clause 4.15(3A) of the EP&A Act, which prescribes that the consent authority is to be flexible in applying the provisions of a DCP and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development.

- **Removal of Dowling Street bus stop**

Submissions have been received in objection to the removal of the bus stop on Dowling Street. The proposed development does not propose the removal of the bus stop, but rather the relocation of the bus stop further to the south, away from the intersection. Should the application be approved, conditions of consent are to be imposed in relation to the construction of the bus stop and necessary signage.

- **Public upgrade works**

Objection has been raised with regard to the perceived lack of public domain works proposed in the application. Should the application be approved, conditions of consent are to be imposed to require specific upgrades to the public domain, including new paving, street trees and footpaths, in accordance with the *Northern Beaches Public Spaces Vision & Design Guidelines*.

- **Clause 4.6 submission**

A submission was received that questions the validity of the clause 4.6 submission, which includes reference to Manly Local Environmental Plan. The reference is limited to one subheading, and appears to have been included in error. The content of the clause 4.6 submission is otherwise well-founded and satisfactorily addressed the relevant provisions of clause 4.6 of WLEP 2011.

- **Loss of ocean breeze**

A submission has been received from a property owner of a top floor unit on the opposite side of Oliver Street, objecting to the impacts of the proposal upon currently enjoyed ocean breezes. The proposed development is located down slope and more than 40m from the property in

question. Noting that a direct line of sight is to be maintained to the ocean, it is assumed that any existing breezes will also remain unaffected.

- **Accessibility**

Submissions have been received raising objection to the location of the communal accessible toilet, suggesting that it is located too far from the retail tenancies, resulting in an unacceptable length of travel for future customers of the retail premises. The application proposes one retail and one business tenancy, neither of which require the provision of a publicly accessible bathroom. Nonetheless, should the owners of the premises choose to make the facilities publicly accessible, the distance is not unreasonably excessive, and an accessible path of travel is available (as confirmed by the Access Report provided to support the application).

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	<p>No objection, with conditions.</p> <p><i>Environmental Health have undertaken a review of the acoustic's of the proposal of shop top housing with 11 residential units and 2 commercial tenancies including the potential future use of the commercial tenancies.</i></p> <p><i>As part of the submissions an acoustic report has been provided that addresses how the acoustic amenity of the residential units will be maintained through RW ratings for walls and windows. The assessment focuses on existing background levels and modelling for future traffic noise to propose suitable minimum acoustic treatments to units. The acoustic report fails to undertake a detailed assessment of plant noise due to a current lack of information.</i></p> <p><i>Based on the submitted plans and design of the commercial units it is likely that they may be utilised as fixed food businesses. Based on there being no information provided for the use or fit out of the commercial units, a condition is to be applied requiring any fixed food premise fit out in these locations to be determined through a development application that addresses compliance with AS 4674 (Design, construction and fit-out of food premises) and AS 1668 (The use of mechanical ventilation).</i></p> <p><i>Future use of commercial tenancies may require mechanical ventilation which has the potential to alter findings of the acoustic report. At this initial stage there should be inbuilt provisions in the development to accommodate ducting of any future mechanical ventilation to prevent retrofitting ventilation on the outside of the building. Condition to be applied for details of any internal ducting that may service commercial tenancies.</i></p>
Landscape Officer	<p>No objection, with conditions.</p> <p><i>The application seeks consent for the demolition of existing site structures and the construction of a shop top housing development</i></p>

Internal Referral Body	Comments
	<p><i>with provided over 2 levels with access provided from both the Dowling and Oliver Street frontages.</i></p> <p><i>Councils Landscape Referral section has considered the application against the Warringah Local Environmental Plan 2011 Zone B2 Local Centre , and the following Warringah DCP 2011 controls: D1 Landscaped Open Space and Bushland Setting E1 Preservation of Trees or Bushland Vegetation G5 Freshwater Village</i></p> <p><i>The plans indicate deep soil planting at the rear of the site, adjoining R2 Zoned land. The species selected are capable of growing to maturity and once mature, are considered to be able to provide adequate separation to the adjoining R2 Land.</i></p> <p><i>Amended architectural and landscape plans are noted.</i></p> <p><i>The plans indicate additional planting to the Oliver Street frontage and further clarity of the vertical planting proposal for building walls.</i></p> <p><i>The plans show some additional planting within the road reserve to provide for more soft landscape around the building.</i></p> <p><i>No objections are raised form a landscape perspective to the proposed landscape treatments in the road reserve, however comment from Roads Assets should be sought regarding this aspect of the proposal.</i></p> <p><i>If the proposal is to be approved, recommended conditions have been provided.</i></p>
NECC (Coast and Catchments)	<p>No objection, no conditions.</p> <p><i>The subject land has been included on the 'Coastal Environment Area' but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13 and 15 of the CM SEPP apply for this DA.</i></p> <p><i>On internal assessment, the DA satisfies the requirements under clauses 13 and 15 of the CM SEPP.</i></p> <p><i>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</i></p>
NECC (Development Engineering)	<p>No objection, with conditions.</p>

Internal Referral Body	Comments
	<p><i>The submitted stormwater design including OSD has been reviewed and is satisfactory.</i></p> <p><i>The revised plans have addressed the previous issues with respect to the driveway grade and services conflicts. The proposal has been supported by Council's Traffic and Road Asset Engineers and has received concurrence from TfNSW.</i></p> <p><i>Development Engineering support the proposal, subject to conditions as recommended.</i></p>
NECC (Water Management)	<p>No objection, with conditions.</p> <p><i>Due to the significant intensification of development on this lot and the inclusion of 18 car spaces all of which will increase pollution of runoff and the volume of runoff entering the stormwater system, the applicant is required to incorporate filter cartridges into the OSD basin to remove pollutants from the stormwater prior to discharge from the land. This requirement has been conditioned. The applicant is also encouraged to connect the rainwater tank to toilets and laundries in the apartments to reduce the amount of stormwater discharged from the land.</i></p> <p><i>No groundwater was identified during geotechnical investigations. If any water collects in an excavation, the applicant should contact Council for advice on disposal as per the dewatering management condition.</i></p> <p><i>The applicant has provided a suitable sediment and erosion control plan.</i></p>
Road Reserve	<p>No objection, with conditions.</p> <p><i>The proposed development has limited impact on existing road infrastructure assets.</i></p> <p><i>The proposal to have bifold windows opening into the footpath space is not supported due to obstruction of the public road reserve, especially if the properties are not used for cafe/restaurant.</i></p> <p><i>The relocation of the bus stop on Dowling Street will require the consent of <u>Transport Network Team</u> to be addressed as part of S138 Road Act application together with relocation of street furniture (Council bus seat) against the building frontage at the bus stop. Pedestrian footpath access to be provided as part of Road Act Consent on the Dowling Street frontage.</i></p> <p><i>A Road Act consent for the retaining wall on the Oliver Street frontage will be required to formalise responsibility for ongoing maintenance of the structure by the property owner/strata. It is clearly an existing private structure given the use of the same type of brick as the building. No objection to proposed changes to extent of wall.</i></p>

Internal Referral Body	Comments
	<p><i>The use of the area for outdoor dining adjacent to the retaining wall shall be dependent upon Council approval. Such approval shall be subject to receiving concurrence from Transport for NSW in relation to the Oliver Street frontage which is a classified regional road, as required by s125 Roads Act 1993. Given the lack of activation on this frontage and that it does not provide access to the building, the requirement to keep the retaining wall is questionable.</i></p> <p><i>Development Engineering to require extension of the footpath network on the Dowling Street property frontage and reconstruction of full width paving on the Oliver Street frontage (including the removal of "gravel") as determined as part of Road Act Application in materials sympathetic to the Freshwater Village Landscape Masterplan.</i></p> <p><i>Development Engineering to require submission of Road Act Application for all works on the public road reserve in relation to retaining walls, footpaths, landscaping and any other works.</i></p>
Strategic and Place Planning (Heritage Officer)	<p>No objection, with conditions.</p> <p><i>The proposal has been referred to Heritage as the subject site is within proximity to two heritage items, listed in Schedule 5 of Warringah LEP 2011:</i></p> <ul style="list-style-type: none"> <p>Item I71 - Building known as 'Harbord Literary Institute' - Corner Lawrence and Oliver Street</p> <p><u>Statement of significance:</u> <i>"Harbord Literary Institute" has great social & historical significance for the community, having been part of community life since early 1900's. Historically the buildings indicate the growing need for facilities for the increasing permanent community.</i></p> <p><u>Physical description:</u> <i>Essentially two buildings with original building at rear which is a single storey brick building with 2 stringcourses of darker brick in line with top & bottom of windows. Gabled corrugated iron roof. Brick flat roofed addition on eastern side. Building on corner-single storey brick with hipped tiled roof. Brick gable located over entrance with arched opening & semi-circular plain leadlight. Timber weatherboards under eaves. Flag poles.</i></p> <p>Item I72 - Building known as 'Early Childhood Health Centre' - 29 Lawrence Street</p> <p><u>Statement of significance:</u> <i>A representative example of inter-war fire station architecture displaying high integrity of fabric. Strong social significance as the 1st permanent fire station building in Freshwater & in its continual use for the provision of community services.</i></p> <p><u>Physical description:</u> <i>Single storey brick building with multi-gabled roof and detailed</i></p>

Internal Referral Body	Comments
	<p><i>parapet on front facade. Roof of slate with terracotta capping & finials. Timber louvres to small gable ends. Facade partly rendered. Changes to entrance when changed to baby health centre. Canopy over entrance door. Brick course around door. Public toilets have been added to rear of building. Tree still exists to east of building adjacent to public pathway. Timber flag pole on top.</i></p> <p><u>Original Plans:</u> <i>The proposal seeks consent for the demolition of the existing site structures and the construction of a shop top housing development, which represents a four-storey development in parts of the proposal.</i></p> <p><i>A previous application (DA2020/0543) for this proposal had been withdrawn for a number of concerns raised by Council, including the fine grain detailing of the façades, building height, street activation, setbacks, building bulk/ massing and facade articulation.</i></p> <p><i>Heritage raised concerns regarding the heritage items, located to the north of the site across Lawrence Street as the subject site is mapped under DCP Maps 2 and 3 Freshwater, meaning that means that clause 18 in G5 Freshwater Village under the Warringah DCP 2011 applies to the site. The objectives of this clause is as follows: "To ensure that any proposed development within the vicinity of a heritage listed item does not have an adverse impact on and complements the heritage significance of the item(s)" Requirements R1-R3 detail what the HIS must address and it is noted that the brief HIS provided with this application has not addressed the requirements of clause 18, that would assist with assessing the impact of the proposal on the heritage items.</i></p> <p><i>Although, the current proposal demonstrates improvements to the proposed development previously assessed, the overall bulk and scale is still overwhelming, and it is dominating the low scale heritage items opposite Lawrence Street, when viewed from a number of view points, as the subject site is in a high prominent location, forming a key gateway entrance to Freshwater Village. Providing more articulation to the facades - not only the materiality but adding some recessed sections to the western and eastern facades - or dividing the mass into sections should be explored to minimise the visual impact on the heritage items and to respond better to its context and the low scale, coastal character of the Freshwater Village. Designing in context does not mean imitation or following inflexible design rules. A wide range of design solutions may emerge after careful analysis of surrounding buildings.</i></p> <p><i>Therefore, Heritage considers that the proposal should be further revised to minimise the bulk and scale and requires a more detailed heritage response.</i></p> <p><u>Amended Plans:</u></p>

Internal Referral Body	Comments
	<p><i>The bulk and scale of the proposal including the unarticulated façade treatment is still a concern from a heritage perspective. It is believed that the requirement of Warringah DCP 2011 – G5 Freshwater Village – Clause 4. Street facades and shopfront design has not been achieved:</i></p> <p><i>R1 The design and proportions of the façade elements are to continue and respect the narrow lot frontages</i></p> <p><i>R2 The maximum length of a shopfront is to be between 5 – 10m. Frontages greater than 10m must be broken into smaller vertical sections</i></p> <p><i>R3 Facades are to have a predominantly vertical emphasis</i></p> <p><i>However, if the proposal to be approved by the Development Assessment Team, no objections are raised to the proposal on heritage grounds, subject to one condition.</i></p> <p><u>Planner comment:</u> Council's Heritage Officer has recommended the imposition of the following condition of consent:</p> <p><i>The glazed stairwells should be 500mm recessed from the western boundary to provide vertical articulation to the western façade.</i></p> <p><i>Reason: To minimise the impact on the heritage items and the streetscape.</i></p> <p>It is noted that the glazed stairwells referred to in the recommended condition are already setback 300mm from the western boundary, and as such, only an additional 200mm setback is required.</p>
Traffic Engineer	<p>No objection, with conditions</p> <p><u>Traffic Generation</u> <i>Traffic generation from the site will not be excessive with the traffic report indicating that the development will generate 10 trips in both the am and pm peak periods however given that existing uses on the site would generate traffic the overall increase in traffic flow would be less. These volumes are unlikely to impact to a significant extent upon traffic conditions in the surrounding road network.</i></p> <p><u>Car Parking</u> <i>The Warringah DCP requires parking at a rate of 1 space per dwelling for 1 bedroom apartments, 1.2 spaces for 2 bedroom apartments and 1 space per 5 dwellings for visitors. For retail uses 1 space per 16.4 sqm is required and 1 space per 40 sqm for business uses. This equates to a parking requirement of 17.7 spaces.</i></p> <p><i>The amended plans have widened the driveway to Dowling Street to 5.5m however this has resulted in the loss of one off-street parking space. There are now 8 parking spaces accessed off Dowling Street and 9 spaces accessed off Oliver Street, a total of 17 spaces. This is</i></p>

Internal Referral Body	Comments
	<p><i>one less than the DCP requirement however is considered acceptable on this occasion given the proximity of the development to the Freshwater town centre, to bus services and to proposed bicycle routes along Dowling St all of which would act to reduce the demand for parking generated by the development.</i></p> <p><u><i>Bicycle Parking</i></u> <i>The Warringah DCP bicycle parking requirement is for 1 bicycle space per dwelling and 1 per 12 dwellings for visitors. For retail and business uses a space per 200 sqm is required. This would equate to approximately 13 bicycle parking spaces. The developer proposes secure bicycle parking areas for 13 bicycles spread over the two carparking levels. This is adequate</i></p> <p><u><i>Servicing</i></u> <i>Section C3 of the DCP requires that adequate provision for staff, customer and courier parking should be provided. Given the retail uses on the site it is considered appropriate to provide a parking bay for courier and service vehicles. This would be in addition to the carparking requirements of the development. The developer has provided a single service vehicle bay capable of accommodating a small rigid vehicle. This bay could also be used for removalist vans and the like to meet the needs of residential premises. It appears that the level 1 carpark may have a clearance of 3.5m which would be sufficient for access by Small Rigid Vehicles however this should be confirmed on the plans</i></p> <p><u><i>Driveways</i></u> <i>The amended plans including plan No. DA1102 level 01 dated 5/11/21 showing the proposed left in/left out driveway detail have been reviewed. It is noted that TfNSW have confirmed in their correspondence dated 9/11/21 that they are satisfied with this means of preventing right turns to and from the Oliver Street driveway, and as such the amended plans have addressed all of the concerns previously raised and the development is now supported in terms of traffic matters subject to conditions</i></p> <p><u><i>Bus stop</i></u> <i>The amended plans have also proposed relocation of the bus stop to the south of the Dowling Street driveway which eases potential congestion issues at the driveway and the intersection with Lawrence Street.</i></p>
Waste Officer	No objection, with conditions.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7(1)(a) of SEPP 55 requires the consent authority to consider whether land is contaminated. Council records indicate that the subject site has been used for business/commercial purposes for a significant period of time with no prior land uses. Upon review of the history of the site and noting the current state of the site, it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7(1)(b) and (c) of SEPP 55 and the land is considered to be suitable for the shop top housing development proposed.

SEPP 65 - Design Quality of Residential Apartment Development

The application seeks consent for 3/4 storey shop top housing development, comprising 11 dwellings, and as such, the provisions of SEPP 65 apply to this development.

Design and Sustainability Advisory Panel

The application was referred to the DSAP on 22 July 2021 for review, the notes from which are attached to this report. The DSAP was highly supportive of the proposal and provided a series of recommendations to ensure design excellence, which are addressed as follows:

1. *Provide view from sun analysis demonstrating adequate solar access to southern neighbour*

Comment: The applicant has provided solar access diagrams which confirm that the proposed development does not result in any unreasonable impacts upon the adjoining dwelling with regard to solar access. The amended proposal has adequately responded to this recommendation.

2. *Provide confirmation of terrace drainage and constructional tolerances demonstrating adequacy of stated building heights or else, amend building heights to accommodate adequate tolerances.*

Comment: The applicant has provided additional sectional detail to confirm that the proposed development can achieve appropriate clearances and ceiling heights. The amended proposal has adequately responded to this recommendation.

3. *Ensure planter volumes are adequate to contain growing medium, tolerances and drainage infrastructure required to support extent of climbing plants illustrated*

Comment: The applicant has provided additional sectional detail to ensure that the proposed planters can adequately accommodate the plantings proposed. This has been confirmed by Council's Landscape Officer. The amended proposal has adequately responded to this recommendation.

4. *Consider including a condition for establishment and initial maintenance for architectural plantings.*

Comment: A condition of consent is recommended in this regard.

5. *Provide greater detail of planters on the Dowling Street frontage*

Comment: Additional detail has been provided and is supported by Council's Landscape Officer. The amended proposal has adequately responded to this recommendation.

6. *In consultation with Council investigate the possibility of small planting beds at ground level in the public domain to 'soften/green' the building /footpath interface.*

Comment: The application has been amended to include additional small planting beds at the ground level presenting to both Oliver Street and Dowling Street. The proposed landscape solution is supported by Council's Landscape Officer. The amended proposal has adequately responded to this recommendation.

7. *Investigate enhanced privacy to south-west apartment on Level 02.*

Comment: The application has been amended to include fixed louvres along the southern elevation and landscaping to the western elevation of the balcony of Unit 8 to enhance privacy. The amended proposal has adequately responded to this recommendation.

8. *Concrete slab edge profile, integrated facade planting, screens and sandstone base to be retained and refined.*

Comment: Whilst the application has been amended to provide additional integrated planting, the proposal maintains the exposed concrete slab, vertical screening and sandstone base, consistent with this recommendation.

9. *Consider full electrification of apartments in lieu of gas.*

Comment: The applicant has considered the full electrification of apartments in lieu of gas. However, noting that the proposal exceeds the minimum BASIX requirements, has opted to retain gas facilities within the proposed apartments.

10. *Consider design aspects of the car parking spaces that may enhance and allow for post-vehicle adaptation of the garage spaces.*

Comment: The proposed car park has been arranged to meet the requirements of WDCP 2011. Nonetheless, should Council's car parking requirements change in the future or if there is a notable drop in demand for parking within the development, the ceiling heights and structural detail of the car park provide for future adaptation.

Overall, the amended proposal has appropriately responded to the recommendations provided by the DSAP.

Design Quality Principles

Clause 28 of SEPP 65 requires a consent authority to take into consideration (in addition to any other

matters that are required to be, or may be, taken into consideration) the design quality of the development when evaluated in accordance with the design quality principles identified in Schedule 1 of SEPP 65, and the Apartment Design Guide ('ADG').

The proposal is considered with regard to the design quality principles of SEPP 65, as follows:

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

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.

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

Comment: The proposed development is located at the western end of the Freshwater Village B2 Local Centre zone. Whilst primarily surrounded by land zoned R2 Low Density Residential, the scale, massing and density of surrounding development is highly varied, with no distinct character or architectural style. Nonetheless, the proposal is considered to appropriately respond to the site's unique and constrained context, as supported by the DSAP, who provided the following comment:

The site is located at the highest point and western extremity of the 'Freshwater Village' Local Centre. It is bound by three streets and as such the proposal is able to be read 'in the round'. Each of the bounding streets has distinctly varied character; vehicle dominated to the west, civic and cosmopolitan along the north and residential along the east. Furthermore, a significant grade change exists about the site, amounting to a complex array of challenges for development.

The panel is supportive of high-quality shop top housing in this location as it will serve to support, enhance, and provide greater access to the outstanding local character of Freshwater. The proposal consolidates ground floor retail at the northern end of the site where it serves as an appropriate continuation of the prevailing strip retail condition of Lawrence Street and where it is least encumbered by topography. The housing component is comprised of considered single and double level apartments which respond well to environmental conditions of the site.

The proposal mediates sensitively to its surroundings through form, articulation and materiality and makes use of the topography to efficiently consolidate parking and services on the lower levels of the building. A zone interface about the southern boundary is addressed with setbacks to create a clear delineation between zones and to allow for seemingly acceptable solar access to the southern neighbour.

- **Principle 2: Built Form and Scale**

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

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.

Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment: The massing of the proposed development is skilfully resolved, with a high degree of articulation achieved through varied materiality, feature glazed elements, landscaping and the exposed horizontal slabs. The architectural expression of the development is supported by the DSAP, who provided the following comment:

The proposal is set over four (4) storeys, however is articulated into a series of horizontal planes which set back incrementally in response to the site's topography to create a broadly three (3) storey form. There is a commendable cohesiveness between the form and the quality outdoor spaces it creates including the integration of the street awning into the 'language' of the building as well as private open space in the form of terraces open to the sky.

The proposal exhibits a minor exceedance of the height limit. The panel agrees that there are negligible environmental effects to the public domain as a result of this exceedance.

- **Principle 3: Density**

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

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

Comment: There are no provisions within WLEP 2011 or WDCP 2011 that relate to the density anticipated on the subject site, and as such, the appropriateness of the density proposed is appraised based on the amenity of the development, the size/scale of the development and the impact of the development upon the surrounding environment. The proposed development provides a high level of amenity for each of the units proposed, without unreasonably impacting upon surrounding properties or the natural environment. The proposed massing is consistent with that anticipated under the provisions of WLEP 2011 and WDCP 11, and overall, the density of the proposed development is considered to be appropriate for the site.

- **Principle 4: Sustainability**

Good design combines positive environmental, social and economic outcomes.

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

Comment: The application was supported by a BASIX Certificate, which includes recommendations to ensure that the building exceeds minimum industry standards.

- **Principle 5: Landscape**

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

Good landscape design enhances the development's environmental performance by retaining

positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.

Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.

Comment: The site is located within a medium density local centre that has no landscaped area requirements prescribed by WDCP 2011. The proposed development is considered to achieve an appropriate landscaped solution in light of the zoning of the site.

- **Principle 6: Amenity**

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

Comment: As detailed in the assessment against the ADG and WDCP 2011, the proposed development performs well against the relevant design criteria, guidance and amenity controls. The proposal will achieve a high level of amenity for future occupants of the development, without unreasonably impacting upon the amenity of adjoining and nearby residences.

- **Principle 7: Safety**

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

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

Comment: The proposed development achieves a high degree of causal surveillance to each of the three street frontages, and has been designed to optimise safety of future residents moving to/from the development and the general public moving around the development within the public road reserve.

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

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

Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.

Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.

Comment: The application provides a reasonable mix of apartment sizes, with the appropriate level of liveable and adaptable apartments, as required by the ADG and WDCP 2011.

- **Principle 9: Aesthetics**

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

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

Comment: The proportions of the proposed development appropriately respond to the context and unique challenges of the site. As above, the treatment of the facade is well resolved and is highly supported by the DSAP.

ADG Assessment

The following table is an assessment against the ADG as required by SEPP 65:

DC – Is the development consistent with the Design Criteria?

DG – Is the development consistent with the Design Guidance?

O – Is the development consistent with the Objective?

ADG reference	Subclause	Design Criteria	DC	DG	O
Part 3 Siting the Development					
3A Site analysis	3A-1	Design decisions based on site analysis.	-	Y	Y
3B Orientation	3B-1	Layouts respond to the streetscape and optimise solar access.	-	Y	Y
	3B-2	Overshadowing of neighbouring properties is minimised during mid winter.	-	Y	Y
3C Public domain interface	3C-1	Transition between private and public places is achieved without compromising safety and security.	-	Y	Y
	3C-2	Amenity of the public domain is retained and enhanced.	-	Y	Y
3D Communal and public open space	3D-1	Communal open space has a minimum area equal to 25% of the site.	N	N	N
		Development must achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (midwinter).	N	N	N
	3D-2	Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting.	-	N	N
	3D-3	Communal open space is designed to maximise safety.	-	N	N
	3D-4	Public open space is responsive to the existing pattern and uses of the neighbourhood.	-	-	-
3E Deep soil zones	3E-1	At least 7% of the site are shall comprise deep soil zones.	Y	Y	Y
3F Visual privacy	3F-1	A minimum setback of 6m is to be provided between habitable rooms and balconies and side or rear setbacks, and a minimum setback of 3m is to be provided between non-habitable rooms and side and rear setbacks.	N	Y	Y
	3F-2	Building design elements increase privacy without compromising access to light and air and balance	-	Y	Y

ADG reference	Subclause	Design Criteria	DC	DG	O
		outlook from habitable rooms and private open space.			
3G Pedestrian access and entries	3G-1	Entries and pedestrian access connects to and addresses the public domain.	-	Y	Y
	3G-2	Access, entries and pathways are accessible and easy to identify.	-	Y	Y
	3G-3	Large sites provide pedestrian links for access to streets and connection to destinations.	-	-	-
3H Vehicle access	3H-1	Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.	-	Y	Y
3J Bicycle and car parking	3J-1	Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.	-	-	-
	3J-2	Parking and facilities are provided for other modes of transport.	-	Y	Y
	3J-3	Car park design and access is safe and secure.	-	Y	Y
	3J-4	Visual and environmental impacts of underground car parking are minimised.	-	Y	Y
	3J-5	Visual and environmental impacts of on-grade parking are minimised.	-	-	-
	3J-6	Visual and environmental impacts of above ground enclosed car parking are minimised.	-	Y	Y

Part 4 Designing the building

Amenity

4A Solar and daylight access	4A-1	Living rooms and private open space of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at midwinter.	Y	Y	Y
		A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Y	Y	Y
	4A-2	Daylight access is maximised where sunlight is limited.	-	Y	Y
	4A-3	Design incorporates shading and glare control, particularly for warmer months.	-	Y	Y
4B Natural ventilation	4B-1	All habitable rooms are naturally ventilated.	Y	Y	Y
	4B-2	The layout and design of single aspect apartments maximises natural ventilation.	-	Y	Y
	4B-3	At least 60% of all apartments are naturally cross ventilated.	Y	Y	Y
		Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Y	Y	Y
4C Ceiling heights	4C-1	As measured from the finished floor level, the minimum ceiling height for: - habitable rooms is 2.7m, - non-habitable rooms is 2.4m, and - ground floor non-residential uses is 3.3m.	N	Y	Y
	4C-2	Ceiling height increases the sense of space in	-	Y	Y

ADG reference	Subclause	Design Criteria	DC	DG	O																
4D Apartment size and layout		apartments and provides for well proportioned rooms.																			
	4C-3	Ceiling heights contribute to the flexibility of building use over the life of the building.	-	Y	Y																
	4D-1	Apartments are required to have the following minimum internal areas:	Y	Y	Y																
		<table><tr><th>Apartment Type</th><th>Min. internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 Bedroom</td><td>50m²</td></tr><tr><td>2 Bedroom</td><td>70m²</td></tr><tr><td>3 Bedroom</td><td>90m²</td></tr></table>		Apartment Type	Min. internal area	Studio	35m ²	1 Bedroom	50m ²	2 Bedroom	70m ²	3 Bedroom	90m ²								
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		Studio	35m ²																		
		1 Bedroom	50m ²																		
		2 Bedroom	70m ²																		
	3 Bedroom	90m ²																			
	The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each.																				
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.		Y	Y	Y																
	4D-2	Habitable room depths are limited to a maximum of 2.5 x ceiling height.	Y	Y	Y																
In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.		Y	Y	Y																	
4D-3	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobes).	N	Y	Y																	
	Bedrooms have a minimum dimension of 3m (excluding wardrobes).	Y	Y	Y																	
	Living rooms or combined living/dining rooms have a minimum width of 3.6m for 1 bedroom apartments and 4m for 2 bedroom apartments.	N	Y	Y																	
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	Y	Y	Y																	
4E Private open space and balconies	4E-1	All apartments are required to have primary balconies as follows:	N	Y	Y																
		<table><tr><th>Apartment Type</th><th>Min. area</th><th>Min. depth</th></tr><tr><td>Studio</td><td>4m²</td><td>-</td></tr><tr><td>1 Bedroom</td><td>8m²</td><td>2m</td></tr><tr><td>2 Bedroom</td><td>10m²</td><td>2m</td></tr><tr><td>3 Bedroom</td><td>12m²</td><td>2.4m</td></tr></table>		Apartment Type	Min. area	Min. depth	Studio	4m ²	-	1 Bedroom	8m ²	2m	2 Bedroom	10m ²	2m	3 Bedroom	12m ²	2.4m			
		Apartment Type	Min. area	Min. depth																	
		Studio	4m ²	-																	
		1 Bedroom	8m ²	2m																	
		2 Bedroom	10m ²	2m																	
	3 Bedroom	12m ²	2.4m																		
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m ² .		-	-	-																
4E-2	Primary private open space and balconies are appropriately located to enhance liveability for	-	Y	Y																	

ADG reference	Subclause	Design Criteria	DC	DG	O										
		residents.													
	4E-3	Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.	-	Y	Y										
	4E-4	Private open space and balcony design maximises safety.	-	Y	Y										
4F Common circulation and spaces	4F-1	The maximum number of apartments off each circulation core on a single level is eight.	Y	Y	Y										
	4F-2	Common circulation spaces promote safety and provide for social interactions between residents.	-	Y	Y										
4G Storage	4G-1	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is to be provided:	Y	Y	Y										
		<table><tr><th>Apartment Type</th><th>Min. area</th></tr><tr><td>Studio</td><td>4m³</td></tr><tr><td>1 Bedroom</td><td>6m³</td></tr><tr><td>2 Bedroom</td><td>8m³</td></tr><tr><td>3 Bedroom</td><td>10m³</td></tr></table>				Apartment Type	Min. area	Studio	4m³	1 Bedroom	6m³	2 Bedroom	8m³	3 Bedroom	10m³
		Apartment Type				Min. area									
		Studio				4m³									
		1 Bedroom				6m³									
		2 Bedroom				8m³									
	3 Bedroom	10m³													
At least 50% is to be located within the apartment.															
4G-2	Additional storage is conveniently located, accessible and nominated for individual apartments.	-	Y	Y											
4H Acoustic privacy	4H-1	Noise transfer is minimised through the siting of buildings and building layout.	-	Y	Y										
	4H-2	Noise impacts are mitigated within apartments through layout and acoustic treatments.	-	N	Y										
4J Noise and pollution	4J-1	In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings.	-	Y	Y										
	4J-2	Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.	-	Y	Y										
Configuration															
4K Apartment Mix	4K-1	A range of apartment types and sizes is provided to cater for different household types now and into the future.	-	Y	Y										
	4K-2	The apartment mix is distributed to suitable locations within the building.	-	Y	Y										
4L Ground floor apartments	4L-1	Street frontage activity is maximised where ground floor apartments are located.	-	-	-										
	4L-2	Design of ground floor apartments delivers amenity and safety for residents.	-	-	-										
4M Facades	4M-1	Building facades provides visual interest along the street while respecting the character of the local area.	-	Y	Y										
	4M-2	Building functions are expressed by the facade.	-	Y	Y										
4N Roof design	4N-1	Roof treatments are integrated into the building	-	Y	Y										

ADG reference	Subclause	Design Criteria	DC	DG	O
4O Landscape design		design and positively respond to the street.			
	4N-2	Opportunities to use roof space for residential accommodation and open space are maximised.	-	Y	Y
	4N-3	Roof design incorporates sustainability features.	-	Y	Y
	4O-1	Landscape design is viable and sustainable.	-	Y	Y
	4O-2	Landscape design contributes to the streetscape and amenity.	-	Y	Y
4P Planting on structures	4P-1	Appropriate soil profiles are provided.	-	Y	Y
	4P-2	Plant growth is optimised with appropriate selection and maintenance.	-	Y	Y
	4P-3	Planting on structures contributes to the quality and amenity of communal and public open spaces.	-	Y	Y
4Q Universal design	4Q-1	Universal design features are included in apartment design to promote flexible housing for all community members.	-	Y	Y
	4Q-2	A variety of apartments with adaptable designs are provided.	-	Y	Y
	4Q-3	Apartment layouts are flexible and accommodate a range of lifestyle needs.	-	Y	Y
4R Adaptive reuse	4R-1	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	-	-	-
	4R-2	Adapted buildings provide residential amenity while not precluding future adaptive reuse.	-	-	-
4S Mixed Use	4S-1	Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement.	-	Y	Y
	4S-2	Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents.	-	Y	Y
4T Awnings and signage	4T-1	Awnings are well located and complement and integrate with the building design.	-	Y	Y
	4T-2	Signage responds to the context and desired street character.	-	-	-
Performance					
4U Energy efficiency	4U-1	Development incorporates passive environmental design.	-	Y	Y
	4U-2	Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer.	-	Y	Y
	4U-3	Adequate natural ventilation minimises the need for mechanical cooling.	-	Y	Y
4V Water management and conservation	4V-1	Potable water use is minimised.	-	Y	Y
	4V-2	Urban stormwater is treated on sit before being discharged to receiving waters.	-	Y	Y
	4U-3	Flood management systems are integrated into site design.	-	-	-
4W Waste management	4W-1	Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.	-	Y	Y
	4W-2	Domestic waste is minimised by providing safe and	-	Y	Y

ADG reference	Subclause	Design Criteria	DC	DG	O
4X Building maintenance		convenient source separation and recycling.			
	4X-1	Building design detail provides protection from weathering.	-	Y	Y
	4X-2	Systems and access enable ease of maintenance.	-	Y	Y
	4X-3	Material selection reduces ongoing maintenance costs.	-	Y	Y

Detailed ADG Discussion

- **Communal open space (3D-1, 3D-2 and 3D-3)**

With no communal open space, the proposal is non-compliant with the design criteria of Objective 3D-1 of the ADG that requires an area of communal open space of at least 147.5m², being 25% of the area of the site. With no communal open space, the proposal is also inconsistent with the second design criteria of this Objective, which requires good solar access to 50% of the communal open space in midwinter. In circumstances where each of the proposed units comprise functional and appropriately sized areas of private open space, the lack of communal open space is not considered to be detrimental to the proposed development

- **Visual privacy (3F-1)**

Objective 3F-1 of the ADG prescribes a 6m minimum setback between habitable rooms/balconies and the side boundary, with recommendations for increased setbacks where the site adjoins a different zone that permits lower density residential development. With this in mind, a 9m setback is required between Levels 2/3 and the southern boundary. With a 3m setback to Level 2 and a 4.5m - 6.0m setback to Level 3, the proposal is inconsistent with this requirement.

The specified intent of the setback requirement is to ensure that adequate separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy. On Level 2, the development has been designed with only minimal openings orientated towards the common southern boundary. On Level 3, a 6.0m setback is achieved to the external facade of the development, with landscaping proposed within the setback to offset any impacts associated with the proposed development, including those associated with the narrow balcony located 4.5m from the setback.

The arrangement of the adjoining residential property to the south is also considered to be relevant in this instance, with the habitable area of the dwelling located approximately 11m from the common boundary, with established landscaping in the setback area. Overall, the combined spatial separation combined with the existing and proposed landscaping will ensure appropriate privacy between properties is achieved.

It is also relevant to note that the minimum requirements of the ADG significantly differ from the requirements of the Freshwater Village DCP, which prescribes a 2m setback between shop top housing development and adjoining residential land. In this instance, the site specific requirements of the Freshwater Village DCP, that were developed in consultation with the Freshwater community, are considered to hold greater determinative weight.

Overall, the 3.0m - 6.0m setbacks proposed are considered to be a contextually appropriate response for the site.

- **Ceiling heights (4C-1)**

Unit 3, a studio unit on the eastern side of Level 1, is a split level apartment where the bedroom

space is elevated 690mm above the remainder of the unit. This is to accommodate appropriate clearance for the residential lobby below. As a result, the ceiling height in the bedroom space is 2.5m, slightly less than the 2.7m ceiling height prescribed by Objective 4C-1 of the ADG. However, this is not considered to result in unacceptable amenity for this unit, noting that the reduced ceiling height is limited to the bedroom, and as remainder of the studio has ceiling heights of 3.2m, in excess of the 2.7m minimum prescribed.

The ceiling height of the western retail space is 3.16m, just shy of the 3.3m minimum requirement of Objective 4C-1 of the ADG. The slight non-compliance is considered acceptable in light of the limited depth of the retail premises and noting the extent of glazing that wraps around the facade of the development. Furthermore, the ceiling height is consistent with the 3m minimum ceiling height prescribed by clause F1 of WDCP 2011 for retail premises within the B2 Local Centre zone.

- **Apartment size and layout (4D-3)**

The size of master bedroom of Unit 4 (9.7m²) and Unit 8 (9.5m²) is slightly less than the 10m² minimum prescribed by Objective 4D-3 of the ADG. The function, use and amenity of the bedrooms are not compromised by the minor areas of non-compliance proposed, and consistency with the intent of the clause is nonetheless achieved.

The living areas of Unit 6 and Unit 7 have been designed to wrap around the adjacent balcony. Whilst a portion of the living areas have a minimum depth of 3m-3.5m, being slightly less than the 3.6m prescribed, the L-shaped configuration and connectivity of the living space to the balcony ensures that the use and function of the space is not compromised.

- **Private open space and balconies (4E-1)**

At 8.0m², the primary balcony for Unit 9 is non-compliant with the 10.0m² minimum prescribed by Objective 4E-1 of the ADG. Nonetheless, the balcony has been designed with two sides opening to the adjacent living areas to maximise the use of the available space. Furthermore, the minor non-compliance is offset by a secondary balcony (9.6m²) along the southern side of the unit. As such, despite minor non-compliance, the amenity of the unit is not unreasonably compromised.

- **Acoustic privacy (4H-2)**

There are some instances where bedrooms of one unit are proposed immediately adjacent to living rooms of another unit, inconsistent with the guidance of Objective 4H-2 of the ADG. The occurrence of this has been limited in the proposal, and should the application be approved, conditions could be imposed to ensure appropriate construction methodology to minimise noise transmission.

Whilst minor elements of the proposal are inconsistent with the minimum requirements of the ADG, the proposal is considered to be a skilful design solution for the constrained site. In accordance with clause 30 of SEPP 65, the consent authority can be satisfied that the proposal has had adequate regard to the objectives of the ADG and the design quality principles of SEPP 65.

SEPP (Infrastructure) 2007

In accordance with clause 45 of this policy, the application was referred to Ausgrid, who raised no objection subject to the imposition of conditions of consent.

Clause 101 of SEPP (Infrastructure) requires the consent authority to be satisfied of certain

matters relating to development with a frontage to a classified road (Oliver Street). These matters are addressed, as follows:

- *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*

Comment: The proposal relies upon access to both Oliver Street and Dowling Street. Given the constraints of the site, this is considered to be both the most practical and safe access arrangement for the development.

- *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
 - (i) *the design of the vehicular access to the land, or*
 - (ii) *the emission of smoke or dust from the development, or*
 - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*

Comment: The proposed development will not have an adverse impact upon the safety, efficiency or ongoing operation of Oliver Street. The traffic generation associated with the development is not excessive or unreasonable, and the amount of vehicles entering and existing the site from Oliver Street is not dissimilar to current arrangements at the site.

- *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Comment: The application was supported by an Acoustic Report (Koikas Acoustics, dated 19 March 2021) which includes specific construction details to ensure that noise levels associated with the ongoing use of Oliver Street is appropriately mitigated within the proposed apartments.

As such, the consent authority can be satisfied that the proposed development is consistent with the relevant provisions of SEPP Infrastructure.

SEPP (Coastal Management) 2018

The site is identified as being within the Coastal Environment Area under the provisions of *State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP)*, and the provisions of this policy are applicable in relation to the proposal. Following detailed assessment of the proposal development, the consent authority can be satisfied of the following:

- the proposal is not likely to cause an adverse impact upon the matters listed in clause 13(1) of the CM SEPP,
- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 13(1) of the CM SEPP,
- the proposal is not likely to cause increased risk of coastal hazards on the site or other land.

As such, the proposal is consistent with the provisions of the CM SEPP, including the matters prescribed by clauses 13 and 15 of this policy.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	11.3m	0.3m or 2.7%	No

Compliance Assessment

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

Detailed Assessment

Zone B2 Local Centre

The proposed shop top housing development is permissible on the land and is consistent with the objectives of the B2 Local Centre zone, 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.*

Comment: The proposal will provide retail and business premises in the northern end of the Ground Floor presenting to Lawrence Street, consistent with the alignment of other retail and business premises within the Freshwater Village.

- To encourage employment opportunities in accessible locations.*

Comment: The proposed development provides both retail and business floor area, contributing to the range of employment opportunities within the Freshwater Village.

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

Comment: The site has convenient access to public transport, and is sited in close proximity to a range of retail premises, services, restaurants, parks and Freshwater Beach, which actively encourages future residents to walk and cycle. The proposal also provide ample bike storage, in addition to designated residential parking spaces.

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

Comment: The proposed development includes upgrades to the road reserve to improve public safety and amenity along each of the three street frontages. The proposal also significantly enhances casual surveillance of the public domain.

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

Comment: The proposed development has been designed to follow the slope of the land and is well articulated to ensure that the massing of the development is commensurate and/or compatible with surrounding built form. The proposal provides appropriate landscaped setbacks to the southern boundary, where the development adjoins low density residential zoned land.

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

Comment: The proposal has been designed to focus the retail/commercial portion of the development to the north (away from the low density residential development to the south) to minimise conflict with adjoining properties.

4.3 Height of buildings

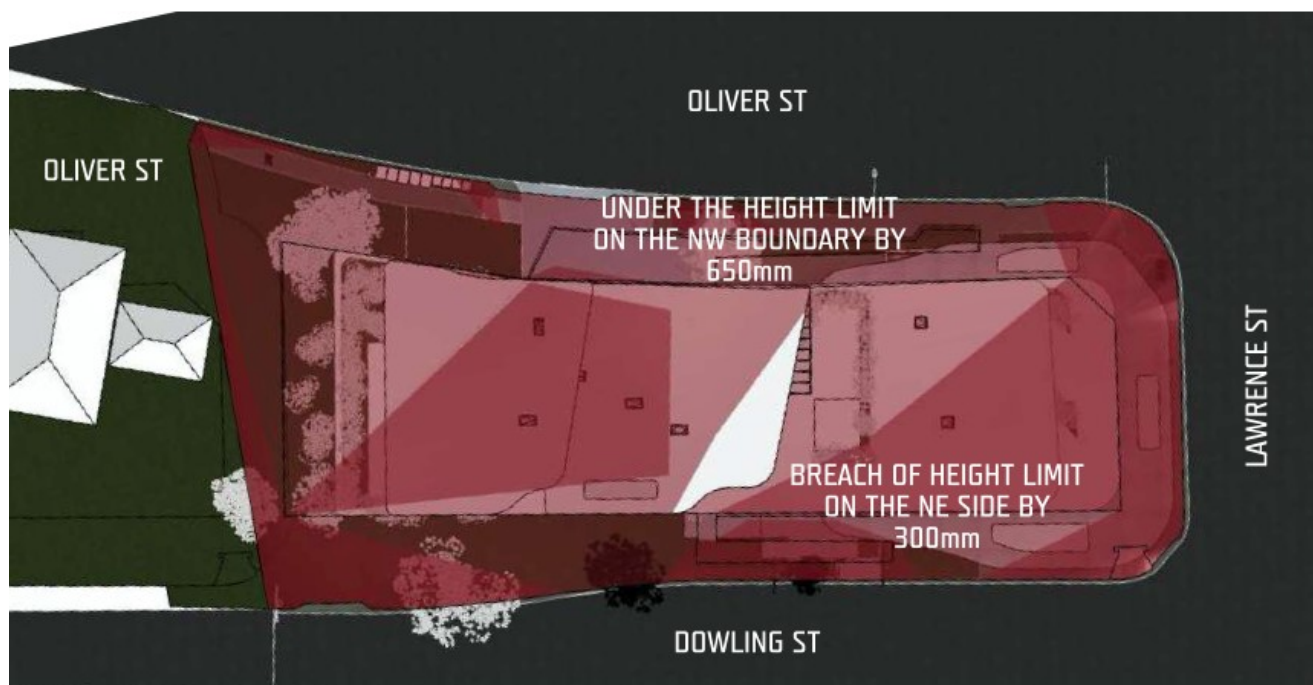
and clause 4.6 Exceptions to development standards

With a maximum building height of 11.3m, the proposed development is non-compliant with the 11m maximum building height prescribed by clause 4.3 of WLEP 2011. The maximum building height is a development standard, as defined by the EP&A Act, and as such, the provisions of clause 4.6 of WLEP 2011 can be applied.

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

What is the extent of the breach?

The proposed development reaches a maximum height of 11.3m, representative of a 0.3m or 2.7% variation to the 11m maximum building height development standard. The maximum height occurs in the north-eastern corner of the upper floor roof, as demonstrated in the diagram below (the portion of the roof shown in white).



Has the applicant's submission addressed the relevant criteria?

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

- a. *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,*

Comment: In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard. The applicant's submission has satisfactorily demonstrate that the proposed development will achieve consistency with the objectives of the building height development standard.

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

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

- The proposal promotes the orderly and economic use and development of the land (Object 1.3 (c)), in so far that the minor non-compliance arises as a result of the irregular geometry and topography of the land. Further, the extent of the non-compliance, that is appropriately described as both quantitatively and qualitatively as minor, is off set by the balance of the building that is maintained below the height plane.

- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (Object 1.3(h)),
- The development represents good design (Object 1.3(g)), in so far that the building is of exceptional design quality, with minimal excavation to achieve a development that responds appropriately to the constraints of the site.

The applicant's submission has established sufficient environmental planning grounds to justify the proposed contravention of the building height development standard.

Therefore, the consent authority can be satisfied that the applicant's request has satisfactorily addressed the matter required by clause 4.6(3) of WLEP 2011.

Is the proposal in the public interest?

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

The proposal is considered to be consistent with the objectives of the building height development standard, as follows:

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

Comment: The proposed development has been sensitively designed to ensure that the built form responds to the cross fall of the land, with no element that exceeds three storeys in height in any one place. This, combined with a high degree of articulation, has ensured that the proposal is compatible with the height and scale of surrounding and nearby development. It is noted that the proposal does not need to be the same height or scale as surrounding built form to be compatible. Nonetheless, the proposal is considered to appropriately respond to that of surrounding development, whilst also appreciating the zoning, constraints and challenges of the site.

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

Comment: The visual impact of the proposed development has been appropriately minimised to a degree that is commensurate with development anticipated within the B2 Local Centre zone. The proposed development demonstrates consideration of the amenity of neighbouring and nearby development, and does not result in any unreasonable impacts upon views, privacy or solar access.

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

Comment: The proposed development presents a high quality architectural response that is consistent with the desired character and coastal environment of the Freshwater Village.

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

Comment: The proposed development features a range of materials and finishes that are appropriate for the Freshwater Village. The variation in materials, the strategic use of

landscaping and the composition of the facades actively ensures that the visual impact is appropriately minimised as viewed from the public domain.

Furthermore, as discussed separately above, the proposal is consistent with the relevant objectives of the B2 Local Centre Zone.

Therefore, the consent authority can be satisfied that the proposal is in the public's interest.

Has concurrence been obtained?

Pursuant to clause 4.6(4) of WLEP 2011, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with the Local Planning Panels Direction issued by the Minister for Planning and Public Spaces on 30 June 2020, the Secretary's concurrence may be assumed by the NBLPP.

Conclusion

Overall, the consent authority can be satisfied of the matters prescribed by clause 4.6 of WLEP 2011, and the proposed building height variation can be supported.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	Variation	Complies
G5.2 Number of storeys	3	3	-	Yes
G5.4 Street facades and shopfront design	10m (max)	7.8m (max)	-	Yes
G5.10 Front Setback	Ground - Nil	Nil	-	Yes
	Level 1: Nil	Nil	-	Yes
	Level 2: Nil - 5m	Nil - 5.2m	5m (max)	No
	Level 3: 5m	Nil - 19m	5m (max)	No
G5.11 Side and rear setbacks	2m	3m - 6m	-	Yes
C3 Parking facilities	17.8 spaces	18 spaces	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	N/A	N/A
D3 Noise	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
F1 Local and Neighbourhood Centres	Yes	Yes
1. Built form in Freshwater	Yes	Yes
2. Number of storeys	Yes	Yes
3. Street activation	Yes	Yes
4. Street facades and shopfront design	No	Yes
5. Access and loading	Yes	Yes
6. Lighting	Yes	Yes
7. Safety and security	Yes	Yes
9. Awnings	Yes	Yes
10. Front setback	No	Yes
11. Side and rear setbacks	Yes	Yes
13. Roofs and building form	Yes	Yes
14. Building massing	Yes	Yes
15. Building sustainability	Yes	Yes
16. Materials and colours	Yes	Yes
17. Active travel links	Yes	Yes
18. Development in the vicinity of heritage items	Yes	Yes

Detailed Assessment

C3 Parking Facilities

The number of parking spaces proposed is inconsistent with the minimum requirements of this clause, as follows:

Type	Required	Proposed	+/-
Residential	12	12	0
Visitor	2.2	1	-1
Retail	3.5	4	0

Service	1	1	0
Total	19	18	-1

The proposed parking shortfall is supportable on merit, as the proposal is consistent with the objectives of this clause, as follows:

- *To provide adequate off street car parking.*

Comment: The proposed development comprises 18 off-street parking spaces, one shy of the minimum prescribed by this clause. The non-compliance is considered acceptable in this instance, as the demand for visitor parking can be off-set by the proposed retail parking spaces and on-street parking in the vicinity of the site. Despite the minor shortage of visitor parking spaces, the supply of off-street parking is considered to be adequate in light of the site's location within the Freshwater Village, where time restricted parking is provided.

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

Comment: The partially above ground design of the parking areas is attributable to the fall of the land and the narrow nature of the site, which prevents the incorporation of internal driveway ramps. The design is appropriately softened by landscaping and varied materials to ensure that an appropriate presentation to the public domain.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment: The proposed parking areas are to design to be perceived as a podium for the residential floor area above. The proposal is well articulated with appropriate landscaping to ensure that the parking structures do not dominate the streetscape.

D2 Private Open Space

Clause D2 of WDCP 2011 requires a total area of 10m² with minimum dimensions of 2.5m for each dwelling within a shop top housing development. However, these requirements are inconsistent with the minimum requirements of the ADG, and in accordance with clause 6A of SEPP 65, development controls that conflict with the provisions of the ADG in relation to private open space and balconies have no effect.

D6 Access to Sunlight

Proposed Units

Clause D6 of WDCP 2011 requires at least 50% of the required area of private open space for each dwelling to receive 3 hours of direct sunlight between 9am and 3pm in midwinter. However, this requirement is inconsistent with the minimum requirements of the ADG, and in accordance with clause 6A of SEPP 65, development controls that conflict with the provisions of the ADG in relation to solar access have no effect.

Adjoining development

Clause D6 of WDCP 2011 also requires at least 50% of the required area of private open space for each adjoining dwelling to receive 3 hours of direct sunlight between 9am and 3pm in midwinter. The ADG does not prescribe any minimum requirements in relation to impacts upon neighbours, and as

such, these provisions of clause D6 of WDCP 2011 are relevant to the proposal.

The proposal will overshadow the lower northern part of the adjoining property at 30 Dowling St throughout the day in midwinter. The portion of the adjoining property affected by the proposal comprises a storage area (a former garage) and densely vegetated gardens. Whilst it is acknowledged that the garden spaces are used for outdoor recreation, these areas are not the "required area of private open space" where sunlight is to be maintained and protected. In relation to the adjoining property at 30 Dowling Street, such areas would be the elevated balconies/decks on both the eastern and western sides of the dwelling, immediately adjacent to the upper level living areas, which are unaffected by the proposal.

Despite additional overshadowing arising from the proposed development, the proposed development is consistent with the provisions of this control.

D7 Views

Ocean and district views are currently enjoyed over the subject site by nearby properties. In response to the notification of the application, two submissions were received raising concerns with regard to the potential impact of the development upon such views from the owners of two specific properties, being 7/52 Lawrence Street and 14/33 Cavil Street, Freshwater.

In response to these concerns, the applicant has undertaken a detailed view analysis, including a number of photomontages (prepared in accordance with the NSW LEC Photomontage Policy) demonstrating the potential impact upon views from multiple vantage points within each of these properties. The impacts depicted in these photomontages are considered with regard to the four step View Sharing Planning Principle, as follows:

7/52 Lawrence Street, Freshwater

1. Apartment 7 is located in the north-east corner of the top floor of 52 Lawrence Street, which is located upslope and to the west of the subject site, on the opposite side of Oliver Street. The occupants of Apartment 7 currently enjoy district views in both a northerly and easterly direction, with distant water views also available to the east.
2. Northerly district views are available from a bedroom and balcony at the northern end of the apartment. Easterly views are available from windows on the eastern elevation associated with the main bedroom, the dining area and the living room. All views in question are gained over front boundaries and are generally available from a seated and standing position, however the height of the window sill acts to obstruct the extent of the views available in a seated position.
3. The potential impact of the development is limited to the views available in an easterly direction from the main bedroom and the dining/living area. From the living area, where the impact is at its worst, the proposed development will obstruct a secondary view of the ocean, that is heavily filtered by immediate and distant vegetation, however the primary view corridor will remain unobstructed over the roof of the proposed development. The existing view from a seated position in the living room is shown in Image 1 (below), with the impact of the development shown in Image 2 (below).



Image 1 - Existing view seated in living room.



Image 2 - Resultant view impact from seated position in living room.

From a seated position in the main bedroom, the proposal will impact upon a portion of the

secondary ocean view, with the primary view maintained over the roof of the development. The existing view from a seated position in the bedroom is shown in Image 3 (below), with the impact of the development shown in Image 4 (below).



Image 3 - Existing view seated in main bedroom.



Image 4 - Resultant view impact from seated position in main bedroom.

Noting that the district views to the north remain entirely unaffected by the proposal, and that the primary ocean view is maintained from each available vantage point, the impact associated with the proposal is considered to be minor.

4. The northern end of the proposed development is maintained well below the height limit, which actively ensures the preservation of the primary views from Apartment 7. Whilst a minor portion of the building exceeds the height limits, this part of the building does not attribute to the impact upon views. In consideration of both the level of impact and the way in which the building responds to the relevant controls, the impact upon views from Apartment 7 at 52 Lawrence Street is considered acceptable and reasonable.

14/33 Cavil Street, Freshwater

1. Apartment 14 is located in the north-east corner of the top floor of 33 Cavil Street, which is located up slope and to the south-west of the subject site, on the opposite side of Oliver Street. The occupants of Apartment 14 currently enjoy district views in both a northerly and easterly direction, with distant water views also available to the east.
2. Northerly and easterly district views are available from the primary living area and balcony at the northern-east corner of the apartment. Easterly views are available from a window on the eastern elevation associated with the main bedroom. Views to the east include distant ocean views to Freshwater Beach. The northerly views are gained over the properties side boundary, with the eastern views gained over the secondary frontage to Oliver Street. All views in question are generally available from a seated and standing position, however the height of the window sill or balustrade act to obstruct the extent of the views available in a seated position.
3. From the living room in a seated position, where the potential impact is at its worst, the proposed

development will remove a portion of the district views of Freshwater Village, with all ocean views to be retained. The existing view from a seated position in the living room is shown in Image 5 (below), with the impact of the development shown in Image 6 (below).



Image 5 - Existing view seated in living room.



Image 6 - Resultant view impact from seated position in living room.

The full suite of photomontages presented by the Applicant (DA-8001 - DA8004 by CKDS Architecture) also confirms that the proposal will not impact upon the water views available from a seated or standing position in the main bedroom.

Noting that the district views to the north remain entirely unaffected by the proposal, and that all oceans view are maintained from each available vantage point, the impact associated with the proposal is considered to be negligible.

4. The southern end of the building, being that part of the building that is closest to the building at 33 Cavil Street, is maintained well below the height limit and is setback 6m from the southern boundary, 4m greater than that anticipated by WDCP 2011. In consideration of the negligible impact upon views, the impact upon views from Apartment 14 at 33 Cavil Street is considered acceptable and reasonable.

Overall, the proposed development does not result in any unreasonable impacts upon existing views and the proposal is consistent with the requirements of this control.

D8 Privacy

The development comprises balconies and openings on the southern elevation that are located within 9m of the adjoining dwelling to the south. These areas are considered individually, as follows:

- Balcony of Unit 8 (south-western corner of Level 2)

The balcony in the south-western corner of Unit 8 has a primary orientation towards Oliver Street to the west, with fixed louvres proposed along the southern elevation to prevent overlooking of the adjoining dwelling to the south.

- Master bedroom of Unit 9 (south-western corner of Level 3)

The primary orientation of the master bedroom of Unit 9 is to Oliver Street to the west, with one narrow window proposed on the southern elevation. The window is to comprise opaque glass to prevent overlooking of the adjoining dwelling to the south. Impacts associated with this window are also mitigated by the 6m setback to the southern boundary and the landscaping proposed at both the ground floor and within the elevated planter immediately adjacent to the window.

- Bedroom 1 of Unit 9 (southern end of Level 3)

Bedroom 1 of Unit 9 features two narrow windows on the southern elevation. The windows are to comprise opaque glass to prevent overlooking of the adjoining dwelling to the south. Impacts associated with these windows are also mitigated by the 6m setback to the southern boundary and the landscaping proposed at both the ground floor and within the adjacent terrace.

- Living Room of Unit 9 (south-eastern corner of Level 3)

The primary orientation of the living room of Unit 9 is to the east and north-east. The windows proposed along the southern elevation comprise fixed louvres that enable views in a south-easterly direction, whilst restricting views in a southerly direction towards the adjacent dwelling to the south. A glass door, comprising opaque glazing, is also proposed on the southern elevation to facilitate access to the balcony. Visual privacy impacts associated with this door are also mitigated by the 6m setback to the southern boundary and the landscaping proposed at the ground floor and within the adjacent terrace.

- Southern balcony associated with Unit 9 (south-eastern corner of Level 3)

Unit 9 comprises a narrow balcony that runs part way along the southern elevation. The balcony is designed to enable access for maintenance of the elevated planters along the southern elevation and is not the primary area of open space associated with Unit 9 (which is separately located in the north-eastern corner of the apartment). The resultant spatial separation between the proposed development and the adjacent dwelling, in addition to proposed and existing landscaping, is considered to provide an appropriate level of privacy between properties in consideration of the intended limited use and function of the balcony.

The current outlook from 30 Dowling Street is shown in Image 7 (below). The existing palms located at 30 Dowling Street will provide a high degree of screening in their own right and will be complemented by plantings proposed at the subject site.



Image 7 - Northerly outlook from 30 Dowling Street

All other windows proposed along the southern elevation are highlight windows, which prevent overlooking of the adjoining property. Occupants of the adjoining property may be able to look down into these spaces, however this is acceptable noting that it can be managed with internal blinds, and noting the generous separation (approximately 14m) and the high level of vegetation between properties. Overall, the proposed development has been appropriately designed to ensure optimal privacy for occupants of the proposed development and adjoining properties, consistent with the requirements of this control.

4. Street facades and shopfront design

Part 4 of the Freshwater Village DCP prescribes that the design and proportions of facade elements are to continue and respect the narrow lot frontages. Specifically, the maximum length of a shop front is to be between 5 - 10m, with any frontages greater than 10m broken into smaller vertical sections. The northern-most portion of Ground Level comprises two retail/business tenancies, that have been designed to wrap around the corners of the development, with no frontage greater than 10m in width. Both the size/scale of the tenancies, and the way that the spaces have been designed to interact with the public domain, ensure a fine grain design solution that appropriately responds to the character of Freshwater Village.

The street facade and shopfront design requirements of the Freshwater Village DCP also prescribe that facades are to have a predominantly vertical emphasis, in order to reduce apparent bulk and scale. Whilst the proposed development, which features exposed concrete slabs that emphasis the horizontal form of the development, is inconsistent with this requirement, the objective to reduce the apparent bulk and scale of the development is nonetheless achieved. As identified by the DSAP, the *"considered*

facade expression and a well-considered hierarchy of materials and facade devices that relate well to the context. The panel recognises that details such as the deeply articulated concrete slab edge profile, integrated facade planting and sandstone base are integral to the scheme's success". Furthermore, whilst the design features strong horizontal elements, the desire for vertical emphasis has not been ignored, with vertical timber-look screening elements aligned in a vertical plane to actively break down the length of both the Oliver Street and Dowling Street facades.

Overall, despite the constraints and challenges of the site, the proposal provides a high quality design solution that appropriately responds to the character of the Freshwater Village and the scale of surrounding built form.

10. Front setback

Part 10 of the Freshwater Village DCP prescribes that new buildings may be built to the boundary at the ground and second storey, with a 5m minimum setback at the third storey. The control is silent with respect to setbacks for secondary street frontages and does not include any expressed variations.

With a nil setback to the northern boundary at the Ground Floor and Level 1, and a 5m setback on Level 2, the proposal is consistent with the minimum setbacks prescribed in relation to Lawrence Street. However, in consideration of the limited depth of the site, 5m setbacks at the upper levels to both Oliver Street and Dowling Street cannot be reasonably achieved. The 5m setback requirement is further complicated by slope of the site, resulting in differing setback requirements along the two upper floors, dependant upon the point at which the lowest level protrudes far enough above ground to be considered a "storey".

The third storey setbacks range between Nil and 0.8m along the Oliver Street facade and 0.2m to 2.4m on the Dowling Street facade. Despite non-compliance with the 5m minimum setback requirement for the upper levels of these secondary street facades, the proposal is consistent with the objectives of the upper level setback control, as follows:

- *To create a sense of openness*

Comment: The proposal comprises setbacks of up to 2.4m from the Dowling Street front boundary. Whilst short of the 5m requirement, the setback ensures that the upper level of the proposal is recessive and that the massing of the development appropriately responds to the natural fall of the land (which is at its lowest on the Dowling Street facade).

Whilst the setbacks to the Oliver Street front boundary are lesser than those to Dowling Street, the setbacks are appropriate with regard to the character and nature of Dowling Street, being a regional road with higher traffic levels. Furthermore, the scale and massing of the proposal is consistent with that of existing development on the western side of the street. The lack of the necessary setbacks at the upper level is offset by the high degree of articulation along the western facade, particularly the screening that sits forward of the glass line to give a sense of depth, despite the limited setbacks proposed.

The sense of openness achieved in the proposed development is appropriate in light of the B2 zoning of the site and the scale of development anticipated on the site.

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

Comment: The proposed development is a high quality architectural solution that will be a positive contribution to the Freshwater Village. Further, the proposal includes upgrades to the public domain to improve the streetscape and enhance the visual quality of the public domain.

As noted by the DSAP:

"There is a commendable cohesiveness between the form and the quality outdoor spaces it creates including the integration of the street awning into the 'language' of the building as well as private open space in the form of terraces open to the sky".

11. Side and rear setbacks

Part 11 of the Freshwater Village DCP prescribes that 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. This setback area is to be landscaped and densely planted. The proposed development provides a 3m (minimum) setback to the adjoining residential property to the south, increasing to 6m at the upper floor. and as such, the proposal is compliant with this requirement. The 3m setback area is entirely deep soil and is to incorporate landscaping to screen/soften the proposal as viewed from the south. The proposal exceeds the minimum side/rear setback prescribed by this control.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of \$43,480 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$4,348,000.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the

conditions contained within the recommendation.

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

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

The consent authority can be satisfied that:

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

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

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

The proposed development is a high-quality architectural design solution for a challenging and irregular site. Whilst objection has been raised by the community, the proposal is in keeping with the character of the area and the development outcome anticipated by WLEP 2011 and the Freshwater Village DCP. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the WLEP 2011 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest as it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/0744 for Demolition works and construction of shop top housing on land at Lot 1 DP 571975, 50 Lawrence Street, FRESHWATER, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA-0001 Legends, Issue D	25 October 2021	CKDS Architecture
DA-0101 Demolition Plan, Issue D	25 October 2021	CKDS Architecture
DA-1002 Site Plan, Issue D	25 October 2021	CKDS Architecture
DA-1101 Ground Floor Plan, Issue E	25 October 2021	CKDS Architecture
DA-1102 Level 01 Plan, Issue E	5 November 2021	CKDS Architecture
DA-1103 Level 02 Plan, Issue E	25 October 2021	CKDS Architecture
DA-1104 Level 03 Plan, Issue D	25 October 2021	CKDS Architecture
DA-2001 North/South Elevation, Issue D	25 October 2021	CKDS Architecture
DA-2002 East/West Elevation, Issue D	25 October 2021	CKDS Architecture
DA-3001 Section A, Issue D	25 October 2021	CKDS Architecture
DA-3002 Section B+C, Issue D	25 October 2021	CKDS Architecture
DA-7001 External Material Schedule 1, Issue D	25 October 2021	CKDS Architecture

Engineering Plans		
Drawing No.	Dated	Prepared By
SW.01 Cover Sheet, Revision A	24 March 2021	KYSU Structural & Civil Engineers
SW.02 Stormwater Drainage Concept Plan - Ground Level, Revision A	24 March 2021	KYSU Structural & Civil Engineers
SW.03 Stormwater Drainage Concept Plan - Level One, Revision A	24 March 2021	KYSU Structural & Civil Engineers

SW.04 OSD Tank Details, Revision A	24 March 2021	KYSU Structural & Civil Engineers
SW.05 Stormwater Details, Revision A	24 March 2021	KYSU Structural & Civil Engineers
SW.06 Erosion Soil & Sediment Control Plan, Revision A	24 March 2021	KYSU Structural & Civil Engineers
SW.07 Erosion Soil & Sediment Controls Details, Revision A	24 March 2021	KYSU Structural & Civil Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Site Investigation 2020-050, Issue 1	22 March 2021	Crozier Geotechnical Consultants
BASIX Certificate 1096224M_02	23 March 2021	Chapman Environmental Services Pty Ltd
Acoustic Report, Version 3	19 March 2021	Koikas Acoustics Pty Ltd

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
LPDA 20-190/1 Site Plan - Public Domain, Revision D	25 August 2021	Conzept Landscape Architects
LPDA 20-190/2 Landscape Plan - Level 1, Revision D	25 August 2021	Conzept Landscape Architects
LPDA 20-190/3 Landscape Plan - Level 2, Revision D	25 August 2021	Conzept Landscape Architects
LPDA 20-190/4 Landscape Plan - Level 4, Revision D	25 August 2021	Conzept Landscape Architects
LPDA 20-190/5 Landscape Plan, Revision B	25 August 2021	Conzept Landscape Architects
LPDA 20-190/6 Sections, Revision B	25 August 2021	Conzept Landscape Architects
LPDA 20-190/7 Specifications, Revision A	26 February 2020	Conzept Landscape Architects

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	[undated]	BBF Planners - Greg Boston

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

In the event of any inconsistency between the Approved Plans and the Approved Landscape Plans, the Approved Plan will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	2 October 2021
TfNSW	TfNSW Referral Response Their reference: SYD21/01192/05	9 November 2021

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. **Approved Land Use**

This consent authorises a shop top housing development at the subject site. Shop top housing is defined, as follows:

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

This consent authorises the first use of the retail and business premises on the Ground Floor.

business premises means a building or place at or on which—

(a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or

(b) a service is provided directly to members of the public on a regular basis, and includes a funeral home and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital.

retail premises means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following—

(a) (Repealed)

(b) cellar door premises,

(c) food and drink premises,

(d) garden centres,

(e) hardware and building supplies,

(f) kiosks,

(g) landscaping material supplies,

(h) markets,
 (i) plant nurseries,
 (j) roadside stalls,
 (k) rural supplies,
 (l) shops,
 (la) specialised retail premises,
 (m) timber yards,
 (n) vehicle sales or hire premises,
 but does not include highway service centres, service stations, industrial retail outlets or restricted premises.

Any variation to the use of the development for the purpose of shop top housing, or the Ground Floor tenancies beyond the scope of the above definitions will require separate development consent.

Reason: To ensure compliance with the terms of this consent.

4. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the

updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

5. **General Requirements**

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer

management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018

- (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$43,480.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$4,348,000.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

7. **Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

8. **Construction, Excavation and Associated Works Bond (Drainage works)**

The applicant is to lodge a bond of \$5,000 as security against any damage to Council's stormwater drainage infrastructure as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

9. **Construction, Excavation and Associated Works Security Bond (Crossing / Kerb)**

The applicant is to lodge a Bond of \$75,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

10. **On Slab Landscape Works**

Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall also be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following soil depths are required to support landscaping as proposed:

- i) 300mm for lawn
- ii) 600mm for shrubs
- iii) 1m for small trees

Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

For all new residential works with two or more dwellings and mixed use developments the maintenance activity schedule shall incorporate an on-going maintenance plan that shall be submitted to the Certifying Authority outlining a program to monitor and replenish soil levels as a result of soil shrinkage over time.

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

11. **Public Road Reserve Landscaping and Infrastructure**

An Amended Public Domain Plan is required. The Amended Public Domain Plan is to be generally based on the Landscape Plans referenced in Condition 1 of this consent and in compliance with Council's *Northern Beaches Public Spaces Vision & Design Guidelines* and shall be submitted as part of a Infrastructure Works on Council Roadway application under Section 138 of the Roads Act. The plan is to provide sufficient detail design information including the following development requirements:

- a. all existing street trees along the development frontage to Oliver Street and Dowling Street, and associated timber planters, shall be removed,
- b. full width pavement from the existing Urbanstone paving alignment at the corner of Oliver Street and Lawrence Street in a southward direction to the proposed driveway along Oliver Street (excluding the proposed garden bed), and the paving material shall match the existing paver along the Lawrence Street road reserve verge,
- c. four (4) street trees shall be indicated along the development frontage of Oliver Street, with two (2) street trees within the pavement area referred above in item ii) in accordance with Northern Beaches Council's Standard Drawing 1300 - Tree Pit Details, and the tree species shall be *Buckinghamiana celsissima* at a pre-ordered 200 litre container,
- d. full width pavement from the existing Urbanstone paving alignment at the corner of Dowling Street and Lawrence Street in a southward direction to align with the hydrant booster location and to incorporate the relocated bus stop facilities, and the paving material shall match the existing paver along the Lawrence Street road reserve verge,
- e. three (3) street trees shall be indicated along the development frontage of Dowling Street within the grass verge, and the tree species shall be *Tristanopsis laurina* 'Luscious' at a pre-ordered 200 litre container,
- f. documentation of alignment levels showing existing and proposed levels for altered driveway crossovers, and kerbs and gutters,
- g. existing and proposed pavement levels, with proposed gradients no more than a 2.5% fall from building openings to top of kerb, and to match existing levels along adjoining properties,
- h. details of any utility alignment and level changes,
- i. tactile ground surface indicators at kerb ramps crossings and crossovers in accordance with Australian Standard 1428.4.1-2009 - Design for Access and Mobility,

- j. existing utility pit lids are to be altered to paver infill types to accommodate the proposed pavement type,
- k. relocation of the bus stop and associated facilities shall be subject to the terms and conditions required by the relevant transport authority, and the applicant shall provide details to Council,
- l. the nominated groundcover planting in the Dowling Street public road reserve to the south of the proposed driveway shall be deleted and replaced with shrub planting capable of attaining at least 1.5 metres in height at maturity, and shall be shade tolerant specie(s).

The following works shall also be documented:

- m. any public seating in accordance with Council's *Northern Beaches Public Spaces Vision & Design Guidelines*,
- n. bicycle racks in accordance with Council's *Northern Beaches Public Spaces Vision & Design Guidelines*,
- o. kerb ramps in accordance with Council's *Northern Beaches Public Spaces Vision & Design Guidelines*,
- p. any other additional works shall be as documented on drawing number LPDA 20 -190/1 prepared by Conzept Landscape Architecture.

Note: the proposed outdoor dining seating shown on drawing number LPDA 20 -190/1 prepared by Conzept Landscape Architecture, is not approved under this development application, and is subject to a separate outdoor dining application.

Any work carried out upon public land shall have all the necessary prior approvals and permits from Council and utility authorities in place prior to commencement to conduct such works.

Reason: compliance with Council standards for works on public land.

12. **Stormwater Management**

The applicant must update the Approved Stormwater Management Plans referenced in Condition 1 of the consent (KYSU Structural and Civil Engineers) to incorporate filtration cartridges from either SPEL or Ocean Protect to remove pollutants from the stormwater prior to discharge of stormwater from the land. The cartridges must meet the stormwater quality targets of removing 85% of TSS, 65% of Total Phosphorus and 45% of Total Nitrogen, and may be located in the On-Site Detention Tank surrounded by a weir wall. All stormwater management measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the construction certificate.

Reason: Protection of the receiving environment.

13. **Detailed Design of Stormwater Treatment Measures - Major**

A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the approved plans, Council's Water Management for Development Policy, and any conditions of consent shall be submitted to the Certifying Authority prior to the release of the construction certificate.

Reason: Protection of the receiving environment.

14. **Vehicular Swept Paths**

Vehicular swept paths must be provided to demonstrate all vehicles (including service vehicles) can enter and depart the site via its Oliver Street driveway in a forward direction via the proposed left in/left out arrangement as detailed in the Approved Plans referenced in Condition 1 of this consent without encroaching on required car parking spaces. The drawings must be compliant with Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

Details demonstrating compliance with this condition must be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

15. **Construction Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

Due to heavy traffic congestion throughout the town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees

- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

16. Removal of Redundant Driveways

All redundant driveways shall be removed and reinstated to Council standard kerb and gutter. Suitably prepared plans shall be submitted to for an approval under and approved by Council prior to the issue of the Construction Certificate. All costs associated with the works shall be borne by the applicant.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approval.

Reason: To maximise on street car parking by removing driveways that are no longer needed in accordance with Council policy.

17. Geotechnical Report Recommendations

The recommendations of the Geotechnical Site Investigation referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

18. Boundary Identification Survey

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

19. On-site Stormwater Detention Details

The Applicant is to provide certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy and generally in accordance with the Stormwater Management Plans referenced in Condition 1 of this consent. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

1. The surface levels of the OSD tank are to be amended to suit the revised architectural plans.
2. All sub-soil drainage is to be connected to the piped drainage system in Lawrence Street.
3. Step irons are to be provided in OSD tank where the depth exceeds 1.2 metres.
4. The orifice plate is to be sized to ensure the PSD is not exceeded. The size of the orifice plate is to be shown on the plans.
5. Where the base of the OSD tank is on rock, the silt trap is to be deleted.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the construction certificate.

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development.

20. Submission Roads Act Application for Civil Works in the Public Road

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of the civil works along the frontage of the site which are to be generally in accordance with Council's specification for engineering works - AUS-SPEC #1. The plans shall be prepared by a qualified Civil Engineer. The design must include the following information:

1. The provision of two new driveway crossings. One 5.5 metres wide off Dowling Street and one 7.1 metres wide off Oliver St. The Oliver St driveway is to include a splitter island and separation at the kerb alignment to ensure left in and left out. Each driveway crossing is to be in accordance with Council's standard drawing A4/3330/1 Normal.
2. Details of the reconstruction of the existing kerb and gutter along the Dowling St

frontage. The kerb is to be 150mm high in accordance with Council standard drawing A4/2276/A. The existing asphalt is to be adjusted to suit.

3. The provision of a new 1.5 metre wide concrete footpath in accordance with Council standard drawing A4/10536 (typ.), along the Dowling St frontage up to the proposed Hydrant Booster Box. Turf is to be provided on either side of the new path between the site boundary and the kerb to suit the levels.
4. The provision of full width paving (matching the existing paving), along the Dowling St frontage between the proposed Hydrant Booster box and the existing full width paving.
5. The provision of a new 1.5 metre width concrete footpath along the Oliver St frontage between the driveway and the southern boundary of the site. Turf is to be provided on either side of the new path between the site boundary and the kerb to suit the levels.
6. The provision of full width paving (matching the existing paving) along the Oliver St frontage between the existing full width paving and the driveway (excluding the proposed garden bed).
7. Details of the reinstatement of all existing driveway crossings to kerb, footpath and turf.
8. Details of the surface finish to the existing retaining wall along the Oliver St frontage.
9. Details of the relocation of the existing power pole along Dowling St with written approval from the relevant service authority.
10. Details of any other service pit relocation required for the construction of the driveways with written approval from the relevant service authority.
11. Sign posting plan as required from Council's Traffic Committee.
12. Details of the proposed street tree planting.
13. Details of the relocation of the bus stop signs and seat.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

21. **Vehicle Driveway Gradients**

The Applicant is to ensure driveway gradients within the private property are in accordance with the requirements of AS/NZS 2890.1:2004. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure suitable vehicular access to private property.

22. **Utilities Services**

Prior to the issue of the Construction Certificate, the Applicant is to obtain the following:

- (a) A letter from the utility provider confirming that satisfactory arrangements have been made for the approved development have been made; and
- (b) Evidence that notification has been received from a utility authority that, requirements for the development can be provided.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the

issue of the Construction Certificate.

Reason: To ensure that services have been provided as required by this Consent.

23. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

24. **Shoring of Council's Road Reserve (Temporary road anchors)**

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

Written approval from Council under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Council's road reserve. The Owner's approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

25. **Articulation to western facade**

The glazed stairwells should be 500mm recessed from the western boundary to provide vertical articulation to the western façade.

Reason: To minimise the impact on the heritage items and the streetscape.

26. **Internalised Services**

Service ducts, drainage, plumbing, pipes, cables and conduits are to be internalised and must not be visible from the public domain. All service, communication and electricity connections must be provided underground.

Provision must also be made for any future ventilation or exhaust system required for the retail and business premises tenancies on the Ground Level.

Details demonstrating compliance with this requirement must be provided to the certifying authority prior to the issuance of the construction certificate.

Reason: To remove visual clutter and ensure a high-quality finish to the development.

27. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

28. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

Reason: To ensure compliance with the statutory requirements of Sydney Water.

29. **Acoustic Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the Acoustic Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate amenity.

30. **Access Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the Access Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is accessible.

31. **Waste and Recycling Requirements**

Details demonstrating compliance with *Northern Beaches Waste Management Guidelines* are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with the Northern Beaches Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans, a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

32. **Work Zones and Permits**

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

Reason: To ensure Work zones and associated permits are assessed, monitored and installed correctly.

33. **Road Occupancy Licence**

Prior to commencement of the associated works, the applicant shall obtain a Road Occupancy License from the Transport Management Centre of TfNSW for any works that may impact on traffic flows on Oliver St.

Reason: Requirement of TMC for any works that impact on traffic flow.

34. **Demolition Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to commencing any demolition work.

Due to heavy traffic congestion throughout the area, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Include a Traffic Control Plan prepared by an RMS accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for

the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

The DTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Demolition Traffic Management Plan is submitted.

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

35. Pre-Construction Dilapidation Report

A dilapidation reports, including photographic surveys, for 30 Dowling Street, Freshwater must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The report must detail the physical condition of the property, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected property prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

36. Public Liability Insurance - Works on Public Land

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council’s road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

37. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected including:
 - i) all trees and vegetation not indicated for removal on the approved plans, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
 - ii) all trees and vegetation located on adjoining private properties,
 - iii) all road reserve trees and vegetation not approved for removal.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by the Project Arborist,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with the Project Arborist,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by the Project Arborist on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with the Project Arborist including advice on root protection measures,
 - vii) should either or all of v), vi) and vii) occur during site establishment and construction works, the Project Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
 - viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
 - ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

- c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites do not occur within the tree protection zone of any tree and any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained on the site during the construction is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking or removal of any tree(s) is prohibited unless authorised in this consent.

Reason: Tree and vegetation protection.

38. **Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

39. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prepared by KYSU Structural and Civil Engineers prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

40. **Dewatering Management**

If water collects in your excavation during works and you need to pump it out to continue work, please comply with the following advice.

Please contact catchment@northernbeaches.nsw.gov.au for advice on Council's water quality requirements if you need to pump water out of an excavation on your property. If you are likely to pump water out of an excavation more than once, Council may require a dewatering permit application. The permit process can be quite simple and is often completed quickly. It may only require you to identify the rate at which your pump will discharge water.

If water is soaking or trickling into your excavation from the ground, you must contact council at catchment@northernbeaches.nsw.gov.au. This is groundwater, and you may require Council's permit and may also need to make an application for interference with an aquifer to the Natural Resources Access Regulator.

The water to be discharged must be compliant with the General Terms of Approval/Controlled

Activity permit issued by WaterNSW (if applicable), Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) (Blue Book), Council's Compliance and Enforcement Policy and legislation including Protection of the Environment Operations Act 1997 and Contaminated Lands Act 1997.

All approvals, water discharges and monitoring results are to be documented and kept on site. Copies of all records shall be provided to the appropriate regulatory authority, including Council, upon request.

Reason: Protection of the receiving environment and groundwater resources and to ensure discharges remain within the capacity of the local stormwater system or waterway.

41. Implementation of Demolition Traffic Management Plan

All works and demolition activities are to be undertaken in accordance with the required Demolition Traffic Management Plan (DTMP). All controls in the DTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.

42. Implementation of Construction Traffic Management Plan

All works and construction activities are to be undertaken in accordance with the required Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

43. Removing, Handling and Disposing of Asbestos

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

44. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

45. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

46. **Geotechnical Report Recommendations During Works**

The works are to be undertaken in accordance with the recommendations of the Geotechnical Investigation report referenced in Condition 1 of this consent.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure geotechnical risk is mitigated appropriately.

47. **Progress Certification (Road & Subdivision)**

The applicant shall provide written certification is to be provided by a suitably qualified engineer upon completion and/or as and when requested by the Roads Authority for the following stages of works:

(a) Silt and sediment control facilities

(b) Laying of stormwater pipes and construction of pits

- (c) Proof Roll
 - (d) Sub-grade trimmed and compacted **
 - (e) Base-course laid and compacted **
 - (f) Kerb and gutter construction
 - (g) Pavement
 - (h) Landscaping and vegetation
 - (i) Clean-up of site, and of adjoining Council roadway and drainage system.
- (**To be tested by a recognised N.A.T.A. approved laboratory).

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works.

48. Civil Works Supervision

The Applicant shall ensure all civil works approved in the Section 138 approval are supervised by an appropriately qualified and practicing Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works.

49. Footpath Construction

The applicant shall reconstruct the footpath along the Oliver St and Dowling St frontages of the site. The works shall be in accordance with the following:

- (a) All footpath works are to be constructed in accordance with the Section 138 Road Act approval.
- (b) Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with the Section 138 Road Act approval for footpath.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure compliance of footpath works with Council's specification for engineering works.

50. Notification of Inspections (infrastructure works to be handed over to Council)

Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

- (a) Installation of Silt and Sediment control devices
- (b) Prior to backfilling of pipelines
- (c) Prior to pouring of stormwater gully pits
- (d) Prior to pouring of kerb and gutter, footpath
- (e) Subgrade level / basecourse level / subbase
- (f) Sealing road pavement

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification.

Reason: To ensure new Council infrastructure is constructed in accordance with Auspec 1 Council's design and specification standards.

51. **Vehicle Crossings**

The Applicant is to construct two vehicle crossings, 5.5 metres wide off Dowling St and 7.1 metres wide (including a splitter island) off Oliver St in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the Section 138 Roads Act application approval and approved consent plans. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to kerb, footpath and grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

52. **Kerb and Gutter Construction**

The Applicant is to construct kerb and gutter and associated works along the entire frontage of the site in accordance with Northern Beaches Council Drawing No. A4 2276/A. Prior to the pouring of concrete, the works are to be inspected by Council and an approval issued.

The approval is to be submitted to the Principal Certifying Authority.

Reason: To facilitate the preservation of on street parking spaces.

53. **Relocation of Dowling Street Bus Stop**

The location of the existing bus stop on Dowling Street along frontage of the site is to be relocated to a new location on property frontage south of the proposed driveway. Plans for the relocation of bus stop and Bus Zone signage together with construction of a DDA compliant paved waiting bay and tactile tiles to be submitted for approval by Council's Traffic Committee and all required works must be implemented at no cost to Council. A bus stop must remain in operation at the frontage of the site at all times.

Reason: To maintain suitable waiting and stopping facilities for bus services.

54. **Waste/Recycling Requirements (Waste Plan Submitted)**

During demolition and/or construction the proposal/works shall be generally consistent with the approved Waste Management Plan referenced in Condition 1 of this consent.

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided.

55. **Waste/Recycling Requirements (Materials)**

During demolition and/or construction the following materials are to be separated for recycling: timber, bricks, tiles, plasterboard, metal, concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible.

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE**

56. **Street Tree Planting**

a) Street trees shall be planted in accordance with the following:

- i) 2 x *Banksia integrifolia* located within the Oliver St road reserve generally as indicated on the Landscape Plan (to replace the indicated *Gleditsia tricanthos*); minimum pot size 75 litre

b) All street trees shall meet the requirements of Natspec - Specifying Trees.

c) All street trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained including a four post and top and mid rail timber tree guard and watered until established.

d) Details demonstrating compliance from a qualified horticulturalist, landscape architect or landscape designer are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To maintain environmental amenity.

57. Landscape Completion

a) Landscaping and planting are to be implemented in accordance with the approved Landscape Plans referenced in Condition 1 of this consent, as amended by any conditions of this consent.

b) Public Domain Works are to be completed in accordance with the Amended Public Domain Plan submitted as part of the Infrastructure Works on Council Roadway application under Section 138 of the Roads Act, and as approved by Council.

c) Prior to the issue of any Occupation Certificate details (from a qualified horticulturalist, landscape architect or landscape designer) shall be submitted to the Principal Certifying Authority certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

58. Certification for the Installation of Stormwater Treatment Measures

A certificate from a Civil Engineer, who has membership to Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures have been installed in accordance with the approved plans. The certificate must confirm that stormwater treatment measures are completed, online, in good condition and are not impacted by sediment. Vegetated measures must exhibit an 80 percent survival rate of plantings.

The certificate shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

59. Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater treatment measures in accordance with the standard requirements of Council, the manufacturer and as required by the Stormwater Treatment Measures Operation and Maintenance Plan.

A restriction as to user shall be created on the title over the stormwater treatment measures,

restricting any alteration to the measures.

The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements (available from Council) at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To identify encumbrances on land, ensure ongoing maintenance, and ensure modification to the stormwater treatment measures is not carried out without Council's approval.

60. **Stormwater Treatment Measures Operation and Maintenance Plan**

An Operation and Maintenance Plan is to be prepared to ensure the proposed stormwater treatment measures remain effective.

The Plan must be attached to the Positive Covenant (and the community or strata management statement if applicable) and contain the following:

1. Detail on the stormwater treatment measures:
 - a) Work as executed drawings
 - b) Intent of the stormwater treatment measures including modelled pollutant removal rates
 - c) Site detail showing catchment for each device
 - d) Vegetation species list associated with each type of vegetated stormwater treatment measure
 - e) Impervious area restrictions to maintain the water balance for the site
 - f) Funding arrangements for the maintenance of all stormwater treatment measures
 - g) Identification of maintenance and management responsibilities
 - h) Maintenance and emergency contact information
2. Maintenance schedule and procedure - establishment period of one year following commissioning of the stormwater treatment measure:
 - a) Activity description, and duration and frequency of visitsAdditionally for vegetated devices:
 - b) Monitoring and assessment to achieve an 80 percent survival rate for plantings
 - c) Management of weeds, pests and erosion, with weed and sediment cover limited to a maximum of 5 percent of the total area of the stormwater treatment measure
3. Maintenance schedule and procedure - ongoing
 - a) Activity description, and duration and frequency of visits
 - b) Routine maintenance requirements
 - c) Work Health and Safety requirements
 - d) Waste management and disposal
 - e) Traffic control (if required)
 - f) Renewal, decommissioning and replacement timelines and activities of all stormwater treatment measures (please note that a DA may be required if an alternative stormwater treatment measure is proposed)
 - g) Requirements for inspection and maintenance records, noting that these records are required to be maintained and made available to Council upon request.

Details demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

61. **Works as Executed Drawings - Stormwater Treatment Measures**

Works as Executed Drawings for the stormwater treatment measures must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

62. **Strata Management Statement**

The Strata Management Statement must specifically list the stormwater treatment measures that will be maintained under strata title.

Details demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: To ensure maintenance of all stormwater management assets and protection of the receiving environment.

63. **Traffic Islands, Signage and Linemarking – External**

A plan demonstrating the proposed signage, line marking and traffic islands within Council's Public Domain including:

- engineering details of the proposed traffic islands on the Oliver Street driveway
- signage and markings to control left in and left in movements to and from the Oliver Street driveway
- signage adjustments to facilitate relocation of the Dowling Street Bus Zone

shall be prepared by a suitably qualified person and submitted to and approved by the Local Traffic Committee and installed in accordance with the approved plans prior to the issue of any Occupation Certificate.

Note: The applicant is advised that the plan will require approval by the local Traffic Committee if the proposal requires change in existing parking conditions or prohibition of traffic movements and hence, adequate time (min 2 months) should be allowed for this process

Reason: To ensure consistent parking amenity and traffic safety.

64. **Shared Zone Bollard**

A bollard is to be provided at the shared zone between disabled spaces in accordance to Australian Standards AS2890.6:2009.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To ensure compliance with Australian Standards.

65. **Post-Construction Dilapidation Report**

A Post-Construction Dilapidation Report, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any occupation certificate.

Reason: To maintain proper records in relation to the proposed development.

66. Geotechnical Certification Prior to Occupation Certificate

A suitably qualified Geotechnical Engineer is to confirm that the development was constructed in accordance with the recommendations of the Geotechnical Investigation Report reference in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifying Authority prior to the issuance of any occupation certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

67. Access Certification Prior to Occupation Certificate

A suitably qualified Access Consultant is to confirm that the development has been constructed in accordance with the recommendations of the Access Report reference in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifying Authority prior to the issuance of any occupation certificate.

Reason: To ensure appropriate accessibility.

68. Plan of Management

A Plan of Management is to be produced for the management of the site and adjacent road reserves identifying:

- a. Consistency with all 'on-going' conditions of consent over the life of the development
- b. Outlining all required maintenance responsibilities for private infrastructure, including water management infrastructure and landscaping, and
- c. Space management strategies including activity coordination, site cleanliness, rapid repair of vandalism and graffiti, and the maintenance of lighting and landscaping.

The Plan of Management is to be submitted to the Principal Certifying Authority prior to the issuance of the occupation certificate.

The Plan of Management is to be adopted in the by-laws of any future Strata subdivision of the development.

Reason: To ensure the on-going management of the site over the life of the development.

69. Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures

The Applicant shall lodge a Legal Documents Authorisation Application with Council. The application shall include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plans (details overdrawn on a copy of the approved drainage plan) and Hydraulic Engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgment with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

70. Retaining Wall in Road Reserve

The retaining wall works within the Oliver Street public road reserve shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the occupation certificate.

Reason: Public and private safety

71. Maintenance contract for stormwater filtration cartridges

A minimum of a five-year contract with a suitably qualified provider is required for the maintenance of the stormwater filtration cartridges.

A copy of the maintenance contract must be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

Reason: To ensure maintenance of the stormwater treatment measures.

72. Garbage and Recycling Facilities

All internal walls of the waste rooms shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

Waste room floors shall be graded and drained to an approved Sydney Water drainage system.

Waste rooms shall be clear of any other services or utilities infrastructure such as gas, electricity air-conditioning, plumbing, piping ducting or equipment.

Reason: To prevent pollution of the environment, provide a safe workplace for contractors and residents and to protect the amenity of the area.

73. Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)

The units within the development are to be numbered in accordance with the Australia Post Address Guidelines

(https://auspost.com.au/content/dam/auspost_corp/media/documents/Appendix-01.pdf).

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website Unit Numbering for Multi-Unit Developments Form

External directional signage is to be erected on site at driveway entry points and on buildings and is to reflect the numbering in the table provided. Unit numbering signage is also required on stairway access doors and lobby entry doors.

It is essential that all signage throughout the complex is clear to assist emergency service providers in locating a destination within the development with ease and speed, in the event of an emergency.

Details are to be submitted with any Interim/Final Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

74. **Sydney Water**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure compliance with the statutory requirements of Sydney Water.

75. **Acoustic Certification Prior to Occupation Certificate**

A suitably qualified Acoustic Consultant is to confirm that the development was constructed in accordance with the recommendations of the Acoustic Report reference in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifying Authority prior to the issuance of any occupation certificate.

Reason: To ensure appropriate amenity.

76. **Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste and recycling facilities are provided.

77. Waste/Recycling Compliance Documentation

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled.

78. Positive Covenant for Council and Contractor Indemnity

A positive covenant shall be created on the title of the land prior to the issue of an Interim/Final Occupation Certificate requiring the proprietor of the land to provide access to the waste storage facilities. The terms of the positive covenant are to be prepared to Council's requirements, (Appendix E of the Waste Management Guidelines), at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities.

79. Authorisation of Legal Documentation Required for Waste Services

The original completed request form (NSW Land Registry Services form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

80. Landscape Maintenance

Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

81. Maintenance of Stormwater Treatment Measures - Major

Stormwater treatment measures must be maintained at all times in accordance with the Stormwater Treatment Measure Operation and Maintenance Plan, manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Where replacement cartridges or other necessary components for the system become

unavailable, an alternative system is required to be retrofitted into the development to achieve an equivalent pollutant reduction outcome. Evidence supporting the replacement must be retained on site and made available to Council as required.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

82. **Sight Lines**

The required sight lines to pedestrians and other vehicles in and around the car park(s) and entrance(s) are not to be obstructed by landscaping or signage. Proposed landscaping and planter beds adjacent to the Dowling Street driveway shall be ground cover only

Reason: To maintain unobstructed sight distance to pedestrians.

83. **Certification of Civil Works and Works as Executed Data on Council Land**

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed works have been constructed in accordance with this consent and the approved Section 138 plans. Works as Executed data certified by a registered surveyor in relation to boundaries and/or relevant easements, prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Assets' in an approved format shall be submitted to Council for acceptance and Council's acceptance is to be issued to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure compliance of works with Council's specification for engineering works.

84. **Hours of Operation**

The hours of operation of the Ground Floor retail and business premises are to be restricted to:

- Monday to Friday – 7:00am to 7:00pm
- Saturday – 7:00am to 7:00pm
- Sunday and Public Holidays – 8:00am to 4:00pm

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Deliveries of goods and waste collection associated with the Ground Floor retail and business premises must not occur outside of the hours of operation prescribed above.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

85. **Parking**

The development is to maintain the following parking allocation for the life of the development:

- 12 x residential parking spaces marked with the number of the respective unit,
- 1 x residential visitor space marked "visitor",
- 4 x retail parking spaces marked "retail",
- 1 x service bay marked "service vehicles only".

All spaces must be line-marked and identified accordingly.

Where a stacked parking arrangement is proposed, both spaces must be allocated to the same residential unit.

Manoeuvring areas must be kept clear of obstructions at all times. Vehicles must not be required to queue on public roads at any time.

Reason: To ensure the appropriate management of parking on site.

86. **Consistency with Plan of Management**

The development is to be maintained in accordance with the Plan of Management required by this consent.

Should separate development consent be obtained for the strata subdivision of the development, the Strata Management Statement must specifically require on-going consistency with the Plan of Management.

Reason: To ensure that the site is maintained in accordance with the standards required by this consent.

87. **Plant Equipment - Noise and Vibration**

Noise from all plant equipment including mechanical ventilation for car parks or commercial premises, extraction units and exhaust fans, air conditioning units and any motors of other equipment associated with the building must not generate noise above 5dBA at the property boundary and must not be audible within habitable rooms of units within complex and surrounding premises including when doors and windows to those rooms are open.

Above equipment must not create vibrations that can be detected within habitable rooms of units within complex and surrounding premises.

Reason: To ensure no ongoing negative impacts on persons living within the complex and surrounding premises.

88. **Plant Equipment**

With the exception of flush-mounted solar panels, no plant equipment is permitted on the roof or in a location that is visible from the public domain.

The solar panels must not be elevated/angled more than 250mm above the height of the membrane roof depicted on the Approved Plans.

Reason: To minimise visual clutter.