

13th June 2019

The General Manager
Northern Beaches Council
PO Box 82
Manly NSW 1655

Attention: Rebecca Englund – Principal Planner

Dear Ms Englund,

**Development Application DA2019/0114
Supplementary Statement of Environmental Effects
Amended Clause 4.6 variation request – Height of buildings
Proposed Shop Top Housing Development
267 – 269 Condamine Street, Manly Vale**

Reference is made to the revised plans issue H and J, dated 14th May and 5th June 2019, prepared by Gartner Trovato Architects which were previously submitted to Council in response to a number of concerns raised during initial assessment of the application. This amended clause 4.6 variation request has been prepared having regard to the amended plans as detailed above.

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

The objectives of this control are as follows:

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

Building height is defined as follows:

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

The proposed development has a variable upper parapet height of between 11.6 and 13.57 metres representing a building height non-compliance of between 600mm (5.45%) and 2.55 metres (23.18%). The centrally located lift overrun has a maximum height above ground level (existing) measured to its eastern edge of 14.55m representing a building height non-compliance of 3.55 metres or 32%. The extent of non-compliance is depicted in the plan extracts at Figures 1, 2 and 3 below and over page

Should Council consider the height of the lift overrun to be excessive, a low head height lift could, and significant cost, be introduced with no objection raised to a condition of consent requiring the lift overrun to be lowered by 850mm to a maximum RL of 27.60. This would reduce the extent of lift overrun non-compliance to 2.7 metres or 24.5%.



Figure 1 – Plan extract showing extent of 11 metre building height breach

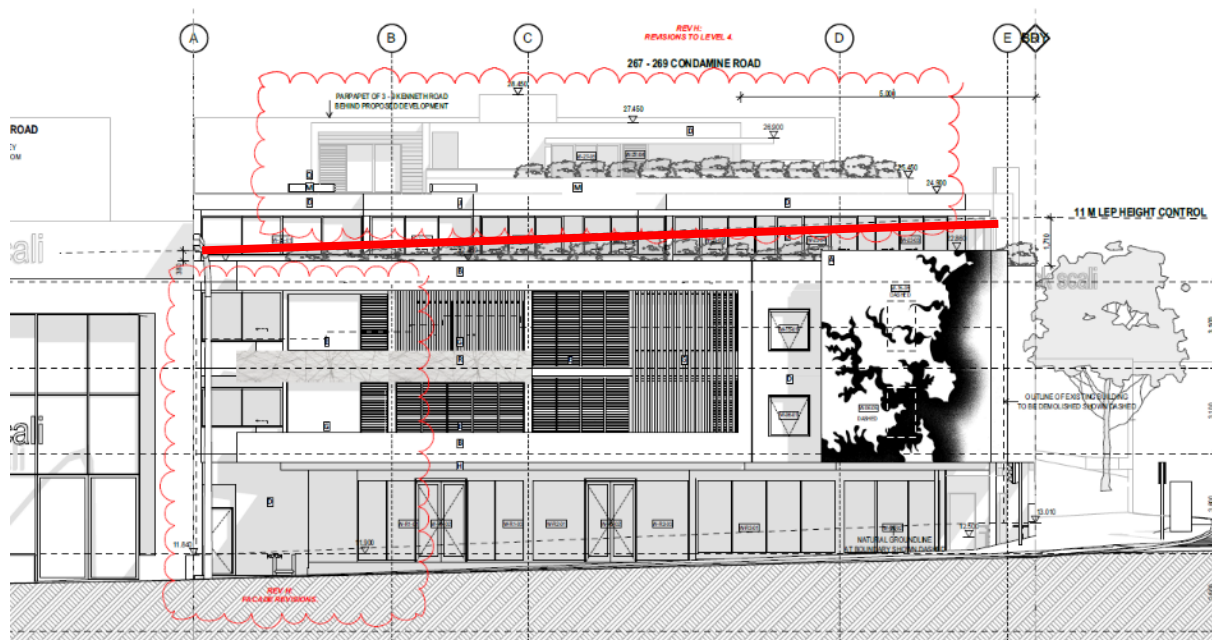


Figure 2 – Plan extract showing extent of 11 metre building height breach

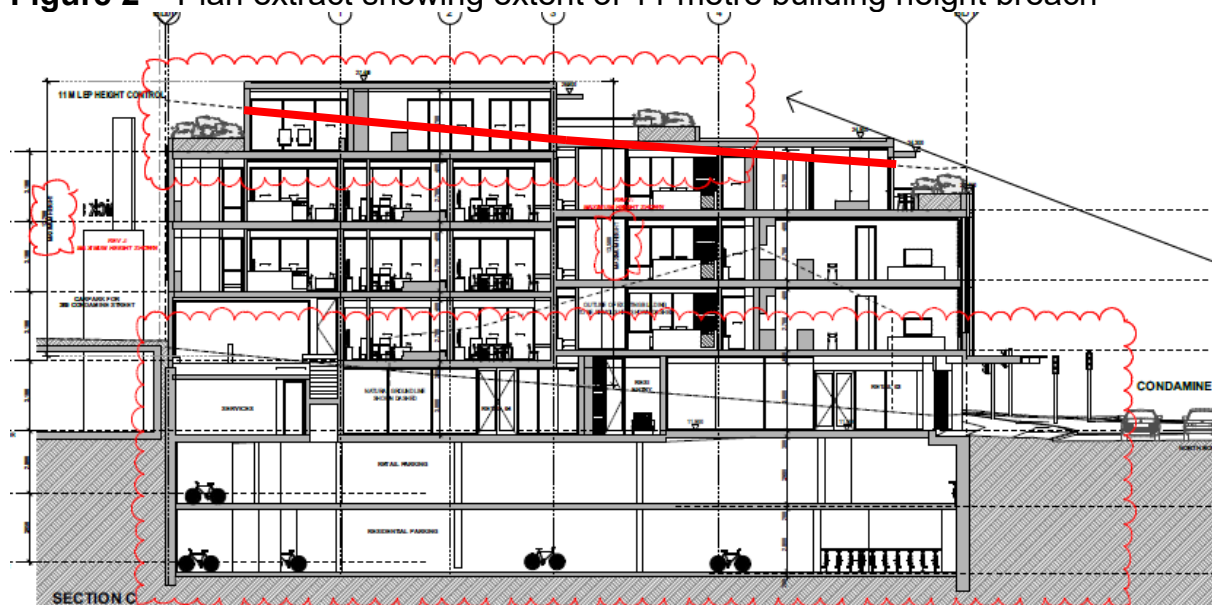


Figure 3 – Plan extract showing extent of 11 metre building height breach in section

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

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

Pursuant to clause 4.6(2) consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

This Clause applies to the Clause 4.3 Height of Buildings Development Standard. Clause 4.6(3) states that consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

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

Clause 4.6(5) states that in deciding whether to grant concurrence, the Director-General must consider:

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

Clause 4.6 Claim for Variation

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Zone and Zone Objectives

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

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

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

The development incorporates dwellings located above ground floor retail premises. Accordingly, the proposed design accords with the Land and Environment Court Judgement Sheahan J within *Hrsto v Canterbury Council* given that the proposed residential units sit entirely above the ceiling height of the ground floor retail tenancies.

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

It has been determined that the proposal will not give rise to adverse residential amenity or land use conflicts with the future development of No. 265 Condamine Street, for either commercial or shop top housing land uses anticipated, through

the provision of a highly articulated and modulated façade presentation to this property with opportunity for a combined internalised residential light well/ courtyard should a shop top housing form of development be proposed in the future. The proposal does not create any conflict between land uses on adjoining properties or the amenity of residential uses within adjoining zones.

The subject property is ideally suited to increased residential densities given its immediate proximity to the Manly Vale B-Line bus stop with the building design and streetscape enhancement works providing an environment for pedestrians that is safe, comfortable and interesting.

The consent authority can be satisfied that the proposal is consistent with the zone objectives as outlined. Accordingly, there are no statutory zoning or zone objective impediment to the granting of approval to the proposed development.

Building Height Objectives

Having regard to the objectives of the height standard as previously identified strict compliance has been found to be both unreasonable and unnecessary for the following reasons:

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

Comment: Development within the site's visual catchment, and within the 11 metre height precinct, is eclectic in nature and currently in transition with a number of older one and two storey commercial and mixed use buildings being replaced with more contemporary 4/ 5 level stepped storey shop top housing building forms. A predominant 4 storey building presentation has been established by recently approved and constructed shop top housing development along Condamine Street including the buildings having frontage to secondary streets including Kenneth Road and King Street.

We note that the 4th Level building element maintains an appropriate setback to Condamine Street such that it will be recessive in a streetscape context consistent with that of other recently approved and constructed 4 storey shop top housing development both within this street block and more broadly along this section of Condamine Street between Burnt Bridge Creek and King Street. The topography of Kenneth Road rises relatively steeply and facilitates the provision of 2 additional upper level apartments which like the Condamine Street frontage represents a 4th storey relative to adjacent street levels. That said, these upper level apartments maintain significant setbacks from all boundaries of the property with such setbacks extensively landscaped through the provision of integrated planter boxes.

Such setback and landscape characteristics ensure that this upper level will not be readily discernible as viewed from Condamine Street or Kenneth Road nor will it contribute to any measurable extent to the perceived bulk and scale of the development as viewed from the neighboring properties or in a broader streetscape context. This built form/ streetscape outcome is demonstrated in Figure 4 below.



Figure 4 – Perspective view from Kenneth Road demonstrating that due to available sight lines the upper level apartments are not readily discernible in a streetscape context.

The building and design are entirely appropriate for this prominent corner site as it reinforces the building as a strong, robust and defining element within the street block it being noted that a majority of properties have now been approved/ constructed with a 4 storey building form to Condamine Street. In this regard, we have formed the considered opinion that the height, bulk and scale of the development including its 4 storey stepped form are entirely consistent with the height and scale of surrounding and nearby development.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development by virtue of its height offensive, jarring or unsympathetic in a streetscape and urban context. In this regard, it can be reasonably concluded that the development is compatible with surrounding and nearby development and accordingly the proposal is consistent with this objective.

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

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

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

Comment: The non-compliant building height elements will not be readily discernible as viewed from the street or coastal foreshore area. The proposal is consistent with this objective.

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

Comment: The non-compliant building height will not be visually prominent as viewed from the street or any public area. Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development, in particular the non-compliant portions of the building, offensive, jarring or unsympathetic in a streetscape context.

We have also formed the considered opinion that the proposal will maintain appropriate amenity in terms of solar access and privacy and will not give rise to any adverse public or private view affectation. In this regard, the development satisfies the objectives of the height of buildings standard and accordingly strict compliance is unreasonable and unnecessary under the circumstances. It can also be argued that the 11 metre height standard has been effectively abandoned along this particular section of Condamine Street in favour of a consistent and cohesive streetscape and urban design outcome.

In our opinion, there are sufficient environmental planning grounds to justify the variation it being noted that the building has been pulled away from the western boundary of the property with the lower level apartments (Level 03) sitting approximately 2.2 metres below the 11 metre height standard. An alternate outcome would be to delete the upper level apartment and raise all floor levels in this location by 2.2 metres to achieve a significantly larger ground floor retail tenancy. This outcome would result in a higher building in the streetscape, and as presenting to the adjoining properties, with significantly greater basement parking excavation and retail parking demand/ traffic generation than is currently proposed.

The proposal provides for the contextually appropriate distribution of floor space on this particular site with a better urban design outcome achieved through the variation to the building height standard sought.

The additional height proposed will ensure that the development maintains a complimentary and compatible streetscape height and form consistent with the heights and form of recently approved and constructed shop top housing development along this section of Condamine Street. The proposal will provide for a complimentary and compatible building presentation to that of recently approved and constructed shop top housing development within the site's visual catchment. The sloping nature of the site facilitates a 4 level stepped building form.

The building is of exception design quality and represents the orderly and economic use and development of the land consistent with objectives 1.3(c) and (g) of the Act.

In accordance with Clause 4.6(5) the contravention of the development standard does not raise any matter of significance for State or Regional environmental planning with the public benefit maintained by Council's adoption of an application specific merit based assessment as it relates to building height within the 11 metre height precinct in which the site is located.

Conclusions

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- a) that the site specific and contextually responsive development is consistent with the zone objectives, and
- b) that the site specific and contextually responsive development is consistent with the objectives of the building height standard, and
- c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and
- e) that given the design quality of the development, and the developments ability to comply with the zone and building height standard objectives that approval would not be antipathetic to the public interest, and
- f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

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

Please not hesitate to contact me to discuss any aspect of this submission.

Yours sincerely

Boston Blyth Fleming

A handwritten signature in black ink, appearing to read 'Greg Boston', with a stylized flourish at the end.

Greg Boston

B Urb & Reg Plan (UNE) MPIA

Director