

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1425
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Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot C DP 39108, 1 Kenneth Road MANLY NSW 2095 Lot 3 DP 975160, 265 Condamine Street MANLY VALE NSW 2093
Proposed Development:	Demolition works and construction of a shop top housing development
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:	Co-Ordinated Projects Pty Limited
Applicant:	Co-Ordinated Projects Pty Limited

Application Lodged:	12/11/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	19/03/2021 to 02/04/2021
Advertised:	19/03/2021
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 39%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 12,057,675.00
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### EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of DA2020/1425 for the demolition of existing buildings and the construction of a shop top housing development, comprising 31 apartments, 3 retail tenancies and basement car parking at 265 Condamine Street and 1 Kenneth Road, Manly Vale (the site).

The proposed development is reliant upon a variation to the maximum building height development standard prescribed by clause 4.3 of *Warringah Local Environmental Plan 2011* (WLEP 2011), with a maximum variation of 39%. The variation is not limited in height or area, with the entire upper floor protruding above the 11m height plane by up to 4.3m. The applicant's written request to vary this standard has not satisfactorily demonstrated that compliance with the standard is unreasonable or

unnecessary, nor that there are sufficient environmental planning grounds to warrant the variation proposed, and the consent authority cannot be satisfied of the relevant matters of clause 4.6 of WLEP 2011.

The proposal is contrary to a number of the design principles of *State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development* (SEPP 65), and the requirements and objectives of the *Apartment Design Guide* (ADG), WLEP 2011 and *Warringah Development Control Plan 2011* (WDCP 2011), with specific concerns regarding solar access, spatial separation/setbacks, bulk and scale, and general amenity. Further concerns are also raised with regard to potential contamination, with inconsistency with the relevant provisions of *State Environmental Planning Policy No. 55 - Remediation of Land* (SEPP 55).

As the application relates to a four-storey shop top housing development that is subject to the provisions of SEPP 65 and involves a variation to the building height development standard greater than 10%, the application is referred to the Northern Beaches Local Planning Panel for determination with a recommendation of refusal.

## **PROPOSED DEVELOPMENT IN DETAIL**

The application seeks consent for the demolition of all structures and the construction of a four storey shop top housing development, comprising:

- 11 x one bedroom apartments
- 19 x two bedroom apartments
- 1 x three bedroom apartment
- 3 x retail tenancies (229m<sup>2</sup> retail GLFA)
- 38 x residential car spaces
- 7 x residential visitor car spaces
- 11 x retail car spaces
- 42 x bicycle spaces
- residential storage cages
- residential roof top communal open space

Note: Whilst the application seeks consent for demolition of existing structures, it is apparent that all existing structures have already been demolished.

## **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 Local Environmental Plan 2011 - 6.2 Earthworks  
Warringah Development Control Plan - B2 Number of Storeys  
Warringah Development Control Plan - B6 Merit Assessment of Side Boundary Setbacks  
Warringah Development Control Plan - B7 Front Boundary Setbacks  
Warringah Development Control Plan - B10 Merit assessment of rear boundary setbacks  
Warringah Development Control Plan - C2 Traffic, Access and Safety  
Warringah Development Control Plan - C9 Waste Management  
Warringah Development Control Plan - D2 Private Open Space  
Warringah Development Control Plan - D6 Access to Sunlight  
Warringah Development Control Plan - D8 Privacy  
Warringah Development Control Plan - D9 Building Bulk  
Warringah Development Control Plan - D18 Accessibility and Adaptability  
Warringah Development Control Plan - F1 Local and Neighbourhood Centres

## SITE DESCRIPTION

<b>Property Description:</b>	Lot C DP 39108 , 1 Kenneth Road MANLY NSW 2095 Lot 3 DP 975160 , 265 Condamine Street MANLY VALE NSW 2093
<b>Detailed Site Description:</b>	<p>When consolidated, the site will be irregular in shape with a 15.262m wide frontage to Condamine Street to the east, a 19.2m wide frontage to Kenneth Road to the north, a maximum east-west depth of 63.535m, a maximum north-south depth of 45.64m and a total area of 1561m<sup>2</sup>. The site experiences a fall from Kenneth Road (north) down to the southern boundary of approximately 2.5m (5%) and a fall from the western boundary down to Condamine Street (east) of approximately 6m (9%).</p> <p>The site previously contained one and two storey commercial and wholesale premises that were in a state of disrepair, and had been vacated for a number of years. These structures have now been demolished. Vehicular and pedestrian access is available from both Condamine Street and Kenneth Road.</p> <p>Condamine Street is a seven lane classified road, with bus lanes and intermittent parking restrictions on both sides of the street. The Condamine Street road reserve immediately adjacent to the site comprises a narrow footpath, with no street trees or overhead infrastructure. Kenneth Road is a three lane local road, that lacks formal</p>

kerb and guttering for the majority of the frontage of the site. Traffic lights control the intersection of Condamine Street and Kenneth Road, with signalised pedestrian crossings on the western, northern and eastern sides of the intersection.

The site is surrounded by a variety of different land uses and buildings of varied age and character, with a number of recent development approvals under construction or yet to be acted upon. Low density residential development is located immediately to the north of the site, on the opposite side of Kenneth Road.

Map:



## SITE HISTORY

On 5 May 2020, a prelodgement meeting was held with regards to a four storey shop top housing development comprising 37 residential apartments and 2 retail tenancies. The prelodgement minutes advised:

*The proposal has a number of substantial non-compliances and critical design issues that will not enable Council to support the proposal as presented as it represents an overdevelopment of the site. The significant issues relates to solar access to the common open space and the lower level apartments and in turn issues with height exceedance and setbacks. In addition, insufficient retail space has been provided and a redesign of the ground level is required to address this issue and in turn issues relating to building entry and street setbacks.*

On 12 November 2020, the subject development application was lodged with Council. The application initially sought consent for 36 units with off-street parking for 59 vehicles.

On 17 December 2020, the application was put before the Design and Sustainability Advisory Panel (DSAP) for review. Whilst the full suite of commentry is provided further in this report, the DSAP concluded:

*The Panel does not support the proposal in its current form.*

*A complete re-design is required to provide adequate amenity and meet the objectives of the ADG. A benchmark complying scheme should be prepared to demonstrate how any non complying proposal would be better in relation to ADG objectives.*

*The Panel notes the extensive legal precedents provided in the SEE in relation to the s4.6 application, but does not consider these a justification for the low amenity.*

On 28 January 2021, the assessing officer met with the applicant to discuss concerns with the proposal. The applicant requested an opportunity to address the concerns raised by DSAP and any matters from Council.

On 2 February 2021, additional information was requested to address concerns relating to:

- Building height non-compliance
- Setbacks to adjoining sites
- Residential amenity, specifically non-compliance with a number of ADG criteria
- Limited extent of retail floor space
- Traffic and parking
- Stormwater management
- Insufficient information

On 8 March 2021, additional information was provided, as follows:

- Amended architectural drawings indicating a reduction in density from 36 apartments to 31 apartments, an increase in retail GLFA and other refinements
- Amended clause 4.6 submission
- Amended BASIX Certificate
- Amended stormwater management plans
- Solar access diagrams
- Waste management plan

On 6 April 2021, the assessing officer met with the applicant to discuss ongoing concerns with the proposal.

On 7 April 2021, the applicant was advised in writing of Council's ongoing concerns and was provided with an opportunity to withdraw the application. The concerns raised include:

- Building height non-compliance
- Setbacks to adjoining sites
- Residential amenity, specifically non-compliance with a number of ADG criteria
- Traffic and parking
- Insufficient information

On 12 April 2021, the applicant advised that they did not wish to withdraw the application.

## **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 commercial purposes for an extended period of time. As discussed with regard to SEPP 55, the application has not satisfactorily demonstrated that there is an acceptable level of risk with regard to potential contamination.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;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&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested and submitted.</p> <p><u>Clause 92</u> of the EP&amp;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>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;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&amp;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 can be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts	<p><b>(i) Environmental Impact</b></p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the</p>

Section 4.15 Matters for Consideration'	Comments
on the natural and built environment and social and economic impacts in the locality	Warringah Development Control Plan section in this report.  (ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.  (iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	One submission received - See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirements of WLEP 2011, WDCP 2011 and SEPP 65 and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 19/03/2021 to 02/04/2021 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 1 submission/s from:

Name:	Address:
Phillip Fagan	6 Pitt Street MANLY VALE NSW 2093

The concerns raised in the submission received are addressed, as follows:

- **Building height**  
The submission received raises concerns with regard to the non-compliant height of the

proposal and resultant overshadowing of the property to the south-west at 6 Pitt Street, Manly Vale. The application indicated that the proposal will result in additional overshadowing of this property at 9am in mid-winter. The applicant has not demonstrated that this impact is reasonable in circumstances where the impact is likely attributable to a portion of the development that protrudes above the height plane.

The non-compliant height of the development is considered to warrant the refusal of the subject application.

- **Precedence**

The submission raises concern regarding the precedence that would be established if this development was to be approved. Each individual application, and each clause 4.6 request for variation in particular, is considered on it's own merits and supporting a height non-compliance in relation to one application does not create an automatic entitlement for the next.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>Supported, with conditions.</b></p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate stage.</p>
Environmental Health (Contaminated Lands)	<p><b>Not Supported.</b></p> <p>Application is for demolition works and construction of a shop top housing development.</p> <p>The applicant has provided a Preliminary Site Contamination Investigation by Alliance Geotechnical Pty Ltd dated 28 August 2020 (reference: 11416-ER-1-1 Rev 2).</p> <p>The report concludes the following:</p> <p><i>AG consider that soil contamination is likely to be present onsite given long-term historical use of the site for commercial-light industrial purposes. Possible groundwater contamination is also likely due possible use of solvent, inks and dyes, and PFAS containing compounds.</i></p> <p>And Recommends:</p>



Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>· <i>A search of the SafeWork NSW dangerous goods database and Council records pertaining to relevant development approvals associated with historical commercial-light industrial activities.</i></li> <li>· <i>If not yet conducted, a Hazardous Materials Survey (HMS) should be completed by a suitably qualified and experienced consultant prior to commencement of any demolition works to identify any hazardous materials that may be present within existing structures.</i></li> <li>· <i>A Detailed Site Investigation (DSI) should be completed post-demolition to identify possible risks posed to end users of the site from any contamination that may be present. This investigation should include a program of soil sampling and groundwater assessment, and depending on findings, potential soil gas (vapour). The finding of this investigation can be utilised to derive a method of management should any risk to end users be identified.</i></li> <li>· <i>AG recommends that (if required) the HMS can be carried out post-DA approval, prior to demolition, and that the DSI be carried out post-DA approval and post-demolition. These items can be incorporated within any development consent conditions, to be executed prior to construction stage. Due to current access constraints associated with partial basement and building structures at the site, the collection of soil and groundwater data at pertinent locations is likely to be impeded by these current constraints. Demolition of existing structures prior to detailed investigation will aid characterisation of both soil and groundwater, and any subsequent contaminated land management (CLM) decision making required.</i></li> </ul> <p>The Preliminary site Investigation has not undertaken a SafeWork NSW dangerous goods database and Council records search. This is an integral component of the Preliminary site Investigation and as per NSW EPA Guidelines (<i>The Guidelines for Consultants reporting on contaminated Land: Contaminated land guidelines</i>) and it also helps inform the Detailed Site Investigation and provide Council with better information if the site is safe or can be made safe through remediation.</p> <p>The Preliminary site Investigation has also indicated that soil contamination is likely to be present onsite given the long-term historical use of the site and that there could be possible groundwater contamination and has recommended that a Detailed Site Investigation be undertaken.</p> <p>If a Detailed Site Investigation Report is required this is typically required prior to Council proceeding with an assessment and determination of a DA. This is in order for Council to be satisfied that the land is suitable for the proposed use can be remediated. The</p>

Internal Referral Body	Comments
	<p>consultant has advised that due to access restraints from the current structure they recommend the Detailed Site Investigation be undertaken post-DA approval and post-demolition.</p> <p>Environmental Health will need to be satisfied that the site if required can be made safe through remediation. As such Environmental Health requests that the Preliminary site Investigation be updated to include SafeWork NSW dangerous goods database and Council records search and also either be prepared by, or reviewed and approved, by a certified consultant as per NSW EPA requirements.</p> <p>[Despite request during the assessment process, the information was not submitted by the applicant.]</p> <p>Environmental Health understands that the majority of the structures onsite have since been demolished, removing any access constraints that would have prevented a Detailed Site Investigation from being undertaken.</p> <p>As such Environmental Health recommends refusal pending a Detailed Site Investigation that has been prepared, or reviewed and approved, by a suitably qualified and experienced certified contaminated land consultant as per NSW EPA Contaminated Land Consultant Certification Policy. The Detailed Site Investigation is to be conducted in accordance with SEPP 55 and NSW EPA guidelines. The Detailed Site Investigation is to include SafeWork NSW dangerous goods database and Council records search.</p> <p>If the land is found to be contaminated and not suitable for the proposed development, a Remedial Action Plan (RAP) in accordance with SEPP 55 and NSW EPA guidelines will also be required for the remediation of the land. The RAP if required is to be prepared, or reviewed and approved by a suitably qualified and experienced certified contaminated land consultant as per NSW EPA Contaminated Land Consultant Certification Policy.</p>
Environmental Health (Industrial)	<p><b>Supported, with conditions.</b></p> <p>Application is for demolition works and construction of a shop top housing development.</p> <p>Shop top housing developments can pose amenity concerns for residential occupants of the building and neighbouring properties. This includes noise concerns such as noise from mechanical ventilation.</p> <p>Another concern with shop top housing is that the retail tenancies often end up being food premises. During the building design stage there tends to be little thought given to any future mechanical ventilation that might need to be installed, subsequently creating potential future noise and odour issues. Despite food premises usually being assessed via individual DAs, the planning for mechanical</p>

Internal Referral Body	Comments
	<p>ventilation generally needs to be addressed at the building approval stage.</p> <p>The applicant has provided an Acoustic Report by Wilkinson Murray Pty Limited dated 21 July 2020 (reference: Report No. 20220 Version A).</p> <p>Due to traffic noise ingress into to the apartments the report has recommended glazing as per Table 4-1 within the report for some of the apartments.</p> <p>The report also recommends the following regarding Mechanical Noise Emissions:</p> <p><i>No details of mechanical plant have been determined at this early stage of the project. Likely sources of mechanical noise from the proposed development will be the air-conditioning and ventilation plant located on the roof, basement level carpark fan ventilation shafts and possibly some pumps within the basement.</i></p> <p><i>Mechanical plant such as rooftop exhausts, air-conditioning and refrigeration associated with the development should be assessed at the time of detailed design and selection, having regard to nearby residential and commercial properties surrounding the development and the noise criteria detailed in Section 3-3.</i></p> <p><i>Any noise control measures can be incorporated into the development to ensure the acoustic amenity of nearby residences is protected. Therefore no particular difficulty is foreseen in meeting the noise emission requirements from the development.</i></p> <p>Environmental Health have no objections subject to conditions regarding further acoustic assessment of mechanical plant for the building at the detailed design phase of the development and following the installation of the plant.</p> <p>Environmental Health also recommends that the buildings design allows for adequate provisions for mechanical ventilation to be installed for the retail tenancies for any future food premises that may require mechanical ventilation.</p>
Landscape Officer	<p><b>Supported, with conditions.</b></p> <p>This application is for the demolition of existing buildings and structures, excavation for basement parking and the construction of a shop-top housing development.</p> <p>Council's Landscape Referral section have considered the application against the following documents relevant to landscape assessment:</p> <ul style="list-style-type: none"> <li>• Warringah DCP 2011</li> <li>• State Environment Planning Policy No. 65 - Design Quality of</li> </ul>

Internal Referral Body	Comments
	<p>Residential Apartment Development</p> <ul style="list-style-type: none"> <li>• The Apartment Design Guide 2015</li> </ul> <p>Landscape Plans are provided within the application and the works proposed include on-slab planters to the ground floor internal courtyard, and to the building facade facing Condamine St. At grade planting is proposed on the level 1 pedestrian and vehicle entry facing Kenneth St, alongside on-slab planters to internal courtyards and terraces facing the western boundary. On-slab planters have been proposed to level 2 terraces facing both the western boundary and internal courtyards, on level 3 facing Condamine St, and on level 4 facing both internal courtyards and Kenneth Rd.</p> <p>The landscape component of the proposal is acceptable subject to the additional vegetative privacy screening on level 4 terraces facing Kenneth Rd.</p>
NECC (Development Engineering)	<p><b>Not Supported.</b></p> <p><u>Stormwater</u> The drainage concept plans submitted at lodgement were unsatisfactory. The amended hydraulic plans are satisfactory subject to conditions. It is noted that the development proposes to connect the stormwater from the site to an existing RMS pit in Condamine St. It is considered that the application must be referred to Transport for NSW for their comments and conditions with respect to the proposal and impact upon Condamine Street.</p> <p><u>External Works</u> With respect to the driveway crossing, the levels shown do not comply with the requirements of the required Council's Normal profile and the gradient for the first 6 metres from the boundary into the basement must be at a maximum gradient of 1 in 20 (5%) with the transitions beyond this point in accordance with AS/NZS 2890.1:2004. The details on the drawings do not confirm that these gradients have been achieved in the design. Also the existing driveway crossing on Condamine St has not been amended as per the previous comments.</p> <p>Development Engineers cannot support the application due to insufficient information to address Clauses C2 of Warringah DCP.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p><b>Supported, with conditions.</b></p> <p>The proposed development generally complies with the DCP and LEP.</p> <p>The south-east corner of 265 Condamine St is affected by the Medium Flood Risk Precinct, and the 1% AEP flood extent is only just inside the boundary.</p> <p>The 1% AEP flood level is 11.1m AHD.</p> <p>The habitable floor levels are above the FPL, and there is no reduction of storage below the 1% AEP flood level.</p>

Internal Referral Body	Comments
Strategic and Place Planning (Urban Design)	<p><b>Not Supported.</b></p> <p>The proposal has not addressed the issues and apply the recommendations of the Design and Sustainability Advisory Panel (DSAP) - meeting held on 17 december 2020. In summary, The panel does not support the proposal in its current form. A complete re-design is required to provide adequate amenity and meet the objectives of the ADG. A benchmark complying scheme should be prepared to demonstrate how any non complying proposal would be better in relation to ADG objectives. The Panel notes the extensive legal precedents provided in the SEE in relation to the s4.6 application, but does not consider these a justification for the low amenity.</p> <p>1. The proposal breaches the building height of 11m on the top floor. The non-complying building bulk over the 11m height should not cast additional shadow to the neighbouring residential units (existing or approved to be constructed).  <b>Response:</b> The building height breach on the top floor is still severe where it is almost a full storey over the 11m limit. The sun access diagrams indicate that the bottom units (southern neighbour and proposed units) facing the courtyard will gain better solar access with a complying 11m high scheme. As such the top floor residential units should be deleted and replaced with a communal landscaped open space on the roof as suggested by DSAP.</p> <p>2. The proposed design incorporating seven internal courtyards is not in accordance with the Apartment Design Guide (ADG pg81) of not using courtyard as primary exposure for main living areas. A preferred solution will be to combine the smaller courtyards into bigger courtyards (12mx12m minimum) for main habitable rooms of internal units to face into.  <b>Response:</b> The internal courtyards are now consolidated into a main large courtyard where living areas face into. The smaller courtyard only opens to bedroom windows. Issue of noise nuisance and visual privacy should be addressed and minimised further. Windows to living rooms should not face each other directly across the courtyard.</p> <p>3. Solar access of 3 hours during winter solstice will be required for 70% of the units as the site is not located in a Metropolitan area.(ADG pg79) Future submissions including PLM proposal should provide comprehensive solar analysis to demonstrate internal courtyards will allow adequate sunlight access.  <b>Response:</b> The solar analysis submitted indicates that the building height breach especially the top floor will cast additional shadow into the internal courtyards facing units and neighbouring residential units (existing and future approved units).</p> <p>4. More retail spaces at ground floor should be provided for shops fronting Condamine Street to continue the existing established retail strip. As such the applicant should consider moving the entrance to residential lobbies proposed from Condamine Street to enter from the</p>

Internal Referral Body	Comments
	<p>Kenneth Road frontage. This would also consolidate all residential entry points to the same level as the central courtyard which would improve the entry experience.</p> <p><b>Response:</b> The entry to lift lobbies 1 &amp; 2 have been moved to arrive from Kenneth Road. Only lift lobby 1 is accessed from Condamine Street. Lift lobby 2 entry experience could be further improved by entering from the bigger central courtyard and converting unit C.05 into a communal room. That will minimise the long and windowless corridor effect. Further improvement to lift lobby 2 will be to relocate the front doors of residential units to not face the lift door directly.</p> <p>5. Deep soil zone could be provided on the south-western corner of the site by cutting back the basement extent to keep clear of the 6m boundary building setback area.</p> <p><b>Response:</b> Deep soil has been provided as suggested by DSAP.</p>
Traffic Engineer	<p><b>Not Supported.</b></p> <p><u>Traffic Comments on amended plans:</u></p> <p>The amended plans do not address the concerns raised in the previous comments. The issues below are considered outstanding:</p> <ul style="list-style-type: none"> <li>• Sightline to pedestrians: a 2m by 2.5m clear sight triangle shall be provided at the property line with no reliance on the adjacent property.</li> <li>• Driveway and driveway crossing gradients: The grade of the first 6m of the driveway from the property boundary into the car park, shall be a maximum of 1:20 (5%). Also, the proposed driveway crossing shall be amended to comply with the Council's driveway crossing profile.</li> <li>• Pedestrian Access: Given the location of the pedestrian entries next to the vehicular access of the adjacent properties both on Condamine Street and Kenneth Road, consideration shall be given to pedestrians' safety by the provision of a 2m separation between the pedestrian entries and the adjacent driveways at the property boundary. This could be achieved by placement of planter boxes within the property (at the property boundary into the property) for both pedestrian entries, as well as provision of set back in the southern wall at the common boundary with No.263 Condamine Street to maintain the clear sightline to the pedestrian for the vehicles exiting the driveway of 263 Condamine Street.</li> <li>• Provision of on-site services and deliveries bay: as per the previous comments.</li> </ul> <p>Given the location of the proposed driveway within less than 100m from a signalised intersection, the proposed development application should be referred to Transport for NSW for their concurrence. In view of the above, the proposal cannot be supported by transport team.</p>

Internal Referral Body	Comments
	<p><u>Earlier Comments:</u> The development proposal involves the demolition of the existing buildings and construction of a new mixed-use building comprising 2 retail shops with a combined floor area of 131m<sup>2</sup> and 36 residential apartments.</p> <p><u>Parking Provision:</u> The proposed development is served by a 2 level basement containing a total of 59 off-street car parking spaces comprising 43 resident spaces, 8 resident visitor spaces, and 8 retail spaces. In addition to the car parking provision, there are 2 motorbike spaces and 42 bicycle racks proposed throughout the basement. The proposed parking provision satisfies the DCP requirements and is considered acceptable.</p> <p><u>Traffic Impact:</u> The applicant has assessed the development as a high density residential flat building in accordance with the 'RMS Guide to Traffic Generating Developments'. Council would consider this development a medium density flat building as the assessment of high density dwellings is based on units that are greater than 6 storey. This will result in a higher level of traffic generation for the site, calculated as 25 vtpd during the weekday peak periods. However, the anticipated traffic generation is not considered to have a significant adverse impact on the road network and is deemed acceptable.</p> <p><u>Service Bay:</u> Given the proposed number of units as well as two retail shops, the development will require providing an appropriate loading bay to accommodate the deliveries, removalists, and other services. The reliance on a future on-street Loading Zone on Kenneth Road which is subject to Local Traffic Committee Approval is not supported. The loading bay shall be provided within the site with convenient access to the lifts to provide an appropriate connection to residential, and retail component. Therefore, the provision of an on-site service bay accommodating a small rigid truck (SRV) at minimum will be required. The vehicular access and car park are to be designed in compliance with AS2809:2:2002 to accommodate the appropriate size service vehicles. In this regards a longitudinal driveway and swept path analysis is to be provided to demonstrate the convenient access of the service vehicles from the frontage street to the loading bay.</p> <p><u>Pedestrian, Vehicular Access and driveway</u> The driveway is to be designed in accordance with Australian Standards AS2890.1:2004. In accordance with the relevant standards, the gradient of the first 6m of the driveway from the boundary into the basement must be at a maximum gradient of 1 in 20(5%) with the transitions beyond this point. There is no detail on the drawings to confirm the gradients have been achieved in the design.</p> <p>The vehicular access is to be positioned at least 1m away from the</p>

Internal Referral Body	Comments
	<p>common Boundary and the provision of a 2.0m by 2.5m clear pedestrian triangle, as required by AS2890.1:2004, is to be demonstrated with no reliance on the neighbouring site.</p> <p>The proposed location of the pedestrian access raises a safety concern due to the provision of no separation between the pedestrian access and the adjoining driveway. This together with the presence of the extended wall at the common boundary between the vehicular and pedestrian access will result in a restricted sightline to pedestrians for the vehicles exiting the adjoining driveway.</p> <p>Conclusion: In view of the above, the proposal can not be supported in the current proposed form.</p>
Waste Officer	<p><b>Not Supported.</b></p> <p>Please be advised that the bin room and bulky goods room size and location complies with Council's requirements - it is only access to the rooms for residents and service staff that needs to be addressed.</p> <p>Specifically: Bulky Goods Room</p> <ul style="list-style-type: none"> <li>• The door is too narrow - <i>the door must be a minimum of 1200mm wide.</i></li> <li>• The door opens inwards - <i>the door must open outwards and away from the direction of travel when entering and leaving the room.</i></li> </ul> <p>Bin Storage Room</p> <ul style="list-style-type: none"> <li>• As stated previously, service access from Kenneth Rd to the binroom is through two doors, one immediately behind the other. - <i>Is it possible to remove one of the doors OR provide an explanation as to why two doors are needed.</i></li> <li>• The service access door/s leading to Kenneth Rd are too narrow - <i>the door/s must be a minimum of 1200mm wide.</i></li> <li>• The Condamine Street binroom and bulky goods room have been deleted from the amended plans. This leaves the occupants of the tower fronting Condamine St with a rather "onerous journey" to reach the binroom. Done their lift, across the full length of the underground carpark and up another lift. - <i>Can this be improved to provide easier access?</i></li> </ul>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the



External Referral Body	Comments
	relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. Should the application be approved, these recommendations can be included as a condition of consent.
NSW Roads and Maritime Services (Traffic Generating Development)	<p>The application was referred to Transport for NSW in accordance with s138 of the Roads Act. Transport for NSW advised that a referral response was not required and rejected Council's referral through the NSW Planning Portal.</p> <p>The application was also referred to Transport for NSW in accordance with s104 (Traffic Generating Development) of the Roads Act. No response was received during the 21 day period, and as such, it can be assumed that Transport for NSW do not wish to comment in this regard.</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

### SEPP 55 - Remediation of Land

Clause 7(1)(a) of SEPP 55 requires the consent authority to consider whether land is contaminated.

In response to the requirements of the SEPP, the applicant has submitted a Preliminary Environmental Site Investigation (prepared by Alliance Geotechnical Pty Ltd, dated 28 August 2020). In its conclusion, the investigation states:

*AG consider that soil contamination is likely to be present onsite given long-term historical use of the site for commercial-light industrial purposes. Possible groundwater contamination is also likely due possible use of solvent, inks and dyes, and PFAS containing compounds.*

Therefore, as the report indicates that there is a potential for contaminants to exist on the site, Clauses 7(1)(b) and 7(1)(c) of the SEPP must be considered.

Clause 7(1)(b) stipulates that "*if the land is contaminated, it [Council] is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out*".

Given the claimed potential of contamination on the site as noted in the Preliminary Environmental Site Investigation, a complete Phase 1 (and if necessary, Phase 2 Environmental Site Assessment) should

be provided to confirm whether contamination is actually present, at what levels and at what locations. However, the information provided to date is insufficient and given the claimed presence of contamination, Council cannot be satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

Clause 7(1)(c) stipulates that *"if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose"*.

The extent of any potential remediation of the site is uncertain due to the lack of appropriate information. Therefore, before any remediation of the site could be recommended and undertaken, a further assessment is required in accordance with the SEPP and the *Contaminated Lands Management Act 1997* to confirm the presence of contamination, what any such contamination may actually consist of and the precise locations and depths of any contamination.

The lack of appropriate consideration of the possible contamination of land is considered to warrant the refusal of the subject application.

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

The application seeks consent for a four storey shop top housing development, comprising 31 dwellings, and as such, the provisions of SEPP 65 apply to this development.

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 in the Manly Vale B2 Local Centre zone. Condamine Street is one of the main roadways through the Northern Beaches LGA, with an extremely high volume of passing traffic. Condamine Street is characterised by larger scale development with limited setbacks to the roadway. The building fronting Condamine Street is considered to be an appropriate response to the context and character of Condamine Street, which is now well established by development recently completed and under construction (but near completion).

Kenneth Road is a lesser order local road, with low density residential development located directly opposite the site. The architectural response to the Kenneth Road building is notably different to that of the Condamine Street building, which is a direct response to the differing contexts.

- **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 bulk and scale of the building fronting Condamine Street is generally considered to be an appropriate response in consideration of the established character of the street facade. The height and general four storey presentation is consistent with other development immediately adjacent to the site, and further to the north and south.

However, concern is raised with regard to the height and scale of the building fronting Kenneth Road, as discussed in further detail with specific regard to height and setbacks. The form of the Kenneth Road building is considered to be excessive in consideration of size and scale of surrounding development, and the siting of the building is not considered to be an appropriate response to the siting of adjoining development.

- **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.

Whilst a higher density may be appropriate in this general location, the proposed development does not appropriately respond to the constraints of the site and a high level of amenity for future occupants is not achieved.

- **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 performs in accordance with industry standards. In response to specific concerns raised by the DSAP, the application was amended to provide a deep soil zone at the rear of the site, and a water tank that collects rainwater runoff to be re-used for toilet flushing, laundries and garden irrigation. However, the proposal remains deficient with regard to the amount of natural daylight received by individual units and reliance upon

artificial lighting and heating will be high.

- **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 high density local centre that has no landscaped area requirements prescribed by WDCP 2011. Nonetheless, the proposal provides deep soil landscaping in the south-western corner of the site, with suspended landscaping incorporated in the central courtyard and on upper levels of the building. The landscape solution is considered to be appropriate for the site, however further information will be required to clarify common property and private property, and on-going maintenance of these spaces. Specific concern is raised in relation to the deep soil zone in the south-west corner of the site that is not accessible from a common area.

- **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 is not appropriately resolved and fails to provide a reasonable level of amenity for future occupants of the development. Furthermore, the proposal also attributes to impacts upon the amenity of adjoining properties.

- **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: Whilst the proposal is generally acceptable in this regard, concern remains with regard to the amenity of the access pathway between Kenneth Road and the apartments in the south-western corner of the site.

- **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: Whilst the application provides a reasonable mix of apartment sizes, the application fails to demonstrate the appropriate level of liveable or 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: Putting aside the concerns relating to the scale of the development, the architectural treatment of the facades of the development are considered to be of good design, utilising a variety of materials, colours and textures.

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
<b>Part 3 Siting the Development</b>					
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.	-	N	N
	3B-2	Overshadowing of neighbouring properties is minimised during mid winter.	-	N	N
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	Y	Y
		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).	Y	Y	Y
	3D-2	Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting.	-	N	Y

ADG reference	Subclause	Design Criteria	DC	DG	O
	3D-3	Communal open space is designed to maximise safety.	-	N	Y
	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.	N	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 is to be provided between non-habitable rooms and side and rear setbacks.	N	N	N
	3F-2	Building design elements increase privacy without compromising access to light and air and balance outlook from habitable rooms and private open space.	-	N	N
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.	-	N	N
	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.	-	N	N
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.	-	-	-

#### 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.	N	N	N
		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.	-	N	N
4B Natural	4B-1	All habitable rooms are naturally ventilated.	N	N	N

ADG reference	Subclause	Design Criteria	DC	DG	O										
ventilation	4B-2	The layout and design of single aspect apartments maximises natural ventilation.	-	N	N										
	4B-3	At least 60% of all apartments are naturally cross ventilated.	N	N	N										
		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.	Y	Y	Y										
	4C-2	Ceiling height increases the sense of space in apartments and provides for well proportioned rooms.	-	Y	Y										
	4C-3	Ceiling heights contribute to the flexibility of building use over the life of the building.	-	Y	Y										
4D Apartment size and layout	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	35m²	1 Bedroom	50m²	2 Bedroom	70m²	3 Bedroom	90m²			
		Apartment Type	Min. internal area												
		Studio	35m²												
		1 Bedroom	50m²												
		2 Bedroom	70m²												
	3 Bedroom	90m²													
	The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² 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.	N	N	N											
	4D-2	Habitable room depths are limited to a maximum of 2.5 x ceiling height.	N	N	N										
In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.		N	N	N											
4D-3	Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobes).	Y	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.	Y	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:	Y	Y	Y										
		<table><tr><th>Apartment Type</th><th>Min. area</th><th>Min. depth</th></tr></table>	Apartment Type	Min. area	Min. depth										
Apartment Type	Min. area	Min. depth													

ADG reference	Subclause	Design Criteria	DC	DG	O										
		Studio	4m²	-											
		1 Bedroom	8m²	2m											
		2 Bedroom	10m²	2m											
		3 Bedroom	12m²	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 15m² and a minimum depth of 3m².	N	N	N										
	4E-2	Primary private open space and balconies are appropriately located to enhance liveability for residents.	-	N	N										
	4E-3	Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.	-	N	N										
	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.	-	N	N										
4G Storage	4G-1	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is to be provided: <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	Y	Y	Y
Apartment Type	Min. area														
Studio	4m³														
1 Bedroom	6m³														
2 Bedroom	8m³														
3 Bedroom	10m³														
	4G-2	At least 50% is to be located within the apartment. 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	-	Y	Y										



ADG reference	Subclause	Design Criteria	DC	DG	O
		future.			
	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.	-	N	Y
	4L-2	Design of ground floor apartments delivers amenity and safety for residents.	-	Y	Y
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 design and positively respond to the street.	-	Y	Y
	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 Landscape design	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.	-	N	N
	4Q-2	A variety of apartments with adaptable designs are provided.	-	N	N
	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.	-	N	N
4T Awnings and signage	4T-1	Awnings are well located and complement and integrate with the building design.	-	-	-
	4T-2	Signage responds to the context and desired street character.	-	-	-
<b>Performance</b>					
4U Energy efficiency	4U-1	Development incorporates passive environmental design.	-	N	N
	4U-2	Development incorporates passive solar design to optimise heat storage in winter and reduce heat	-	Y	Y

ADG reference	Subclause	Design Criteria	DC	DG	O
		transfer in summer.			
	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 convenient source separation and recycling.	-	Y	Y
4X Building maintenance	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

- **Orientation (3B-1 and 3B-2)**

Objective 3B-1 of the ADG seeks to ensure that building types and layouts respond to the streetscape and the site while optimising solar access within the development. The proposal has been designed to present to both Condamine Street and Kenneth Road. However, with the exception of the units overlooking Kenneth Road, the proposal seems to miss an opportunity to capture any more of the northern orientation available deeper into the site.

Objective 3B-2 of the ADG provides that living areas, private open space and communal open space should receive solar access in accordance with the provisions of Objective 4A-1 of the ADG. As discussed further in the report, the proposal falls well short of the minimum solar access requirements prescribed. Objective 3B-2 also aims to minimise overshadowing of adjoining properties. As discussed with regard to building height and setbacks, the application is inconsistent in this regard, noting that the non-compliant height and siting of the proposal results in additional overshadowing of adjoining properties.

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

The application proposes a communal roof top terrace in the south-west corner of the site. The rooftop terrace has an area of approximately 44m<sup>2</sup> or 2.8% of the total site area, of which only 34m<sup>2</sup> (2.2%) is usable space. The proposal is well shy of the 25% communal open space requirement of Objective 3D-1 of the ADG. In circumstances where the vast majority of units receive little to no sunlight in mid-winter, and where the areas of private open space of number of units are sited in somewhat hostile environments, the provision high quality and usable private open space is of utmost importance.

Access to the terrace is as equitable as possible, with access from both the south-western lift core and the northern lift core. Furthermore, the setback and elevated siting of the space will afford a high level of amenity in good weather, consistent with the minimum requirements of Objective 3D-1 of the ADG. However, the space is undersized for the density of development proposed, and does not provide any protection from wind or rain or harsh sunlight in summer.

- **Deep soil zones (3E-1)**

The proposal provides a deep soil zone in the south-west corner of the site with an area of approximately 91m<sup>2</sup> or 5.8% of the total site, just shy of the 7% minimum requirement of Objective 3E-1 of the ADG. The deep soil zone provided is considered to be a positive contribution to the proposal, and despite non-compliance, the area proposed is sufficient in light of the B2 Local Centre zoning that applies to the land and the absence of any landscaped area requirements in WDCP 2011.

- **Visual Privacy (3F-1 and 3F-2)**

Elements of the proposed development do not provide sufficient spatial separation to ensure appropriate levels of amenity for future occupants of the proposed development and adjoining properties. Whilst specific examples are explored with regard to clause B6 and B10 of WDCP 2011, the application does not have appropriate regard to the context of the site, and lacks sufficient detail to ensure that reasonable outcomes will be achieved.

- **Pedestrian access and entries (3G-2, 4F-2, 4S-2)**

Pedestrian access between the street and the lift core at the east of the site (fronting Condamine Street) and the lift core to the north (fronting Kenneth Road) is acceptable, with direct and accessible access for future occupants and visitors to the site. However, access to the lift core in the south-west corner of the site is indirect, with a poor level of amenity in the lobby/hallway on each level. A higher level of amenity would be achieved by continuing the access path through to the central courtyard to align with the lift core, reducing the length of the internal hallway and removing an internal dog leg through the building. However, this would result in negative impacts upon the amenity of Apartment C.05, which is already compromised by virtue of its location on the site.

It is noted that the original design featured ground floor communal space, which has since been removed. In consideration of the concerns regarding the lack of sunlight to the ground floor south-western units and the amenity of the access arrangement for the units in the south-western portion of the site, it is considered that the ground floor of the south-western corner of the site would be more appropriately used for additional commercial/business purposes and internal communal floor space.

- **Vehicle access (3H-1)**

The application proposes the driveway entrance at the highest level of the site, inconsistent with the design guidance of Objective 3H-1. Whilst it is appreciated that access to Condamine Street has been restricted by TfNSW, the application has not demonstrated that the proposed driveway location is the most suitable egress point on Kenneth Road. Furthermore, the detail of the driveway design is not supported by Council's Development and Traffic Engineers.

The proposal put forward during the prelodgement process included a driveway on the eastern (low) side of the Kenneth Road, which is the preferred location for the subject site. The applicant could also explore shared access arrangements with the adjoining site currently under construction.

- **Solar and daylight access (4A-1 and 4A-3)**

The proposed development falls well short of the requirements of Objective 4A-1 of the ADG, which prescribes that 70% of units proposed should receive a minimum of 2 hours of direct sunlight to living room windows and areas of private open space between 9am and 3pm in mid-winter.

Note: The shadow diagrams provided are inconsistent with the proposal presented to Council and make reference to incorrect unit numbers. The below calculations are as accurate as

possible, noting the deficiencies in the information provided. It is noted that no similar analysis was provided by the applicant, despite request.

Unit No.	Internal	External	Compliance	Unit No.	Internal	External	Compliance
<b>C.01</b>	No*	No	No	<b>K.01</b>	Yes	Yes	Yes
<b>C.02</b>	No*	No	No	<b>K.02</b>	Yes	Yes	Yes
<b>C.03</b>	No	No	No	<b>K.03</b>	Yes	Yes	Yes
<b>C.04</b>	No	No	No	<b>K.04</b>	No	No	No
<b>C.05</b>	No	No	No	<b>C.15</b>	No*	Yes	No
<b>C.06</b>	No	No	No	<b>C.16</b>	Yes	No	No
<b>C.07</b>	No	No	No	<b>C.17</b>	Yes	No	No
<b>C.08</b>	No*	No	No	<b>C.18</b>	No*	Yes	No
<b>C.09</b>	No*	No	No	<b>C.19</b>	No*	No	No
<b>C.10</b>	No	No	No	<b>C.20</b>	No	No	No
<b>C.11</b>	No	No	No	<b>K.05</b>	Yes	Yes	Yes
<b>C.12</b>	No*	No	No	<b>K.06</b>	Yes	Yes	Yes
<b>C.13</b>	No*	No	No	<b>K.07</b>	Yes	Yes	Yes
<b>C.14</b>	No	No	No	<b>K.08</b>	No*	No	No
				<b>K.09</b>	Yes	Yes	Yes
				<b>K.10</b>	Yes	Yes	Yes
				<b>K.11</b>	No*	No	No

\*Achieves 2 hours if calculated from 8:30am

As outlined above, only 8 of the 31 (26%) apartments proposed receive 2 hours of direct sunlight to windows associated with living rooms and areas of private open space between 9am and 3pm in midwinter. The calculation is somewhat improved (9/31 or 29%) if you consider sunlight received prior to 9am (at 8:30am), however in most cases, this only improves solar access to windows of the living room, and not the area of open space. When looking at windows to living rooms in isolation, the proposal still falls short, with only 18/31 or 58% units receiving 2 hours of sunlight to living room windows between 8:30am and 3pm in midwinter.

Whilst the site is conveniently located with regard to shops and the B-Line bus stop, the proximity of the site to the main road impacts upon the amenity of the units. The amenity is also challenged by other unavoidable site constraints that impact upon the outlook of the proposal, such as the scale and proximity of adjoining development. As such, the proposal needs to succeed with regard to solar access to ensure an acceptable level of amenity for future residents.

A variation to the amount of sunlight required in relation to areas of private open space may be supportable in some instances. However, the provision of sunlight to living rooms would need to achieve strict compliance with the 70% requirement and a larger, usable area of communal open space would be required to ensure that occupants of the development have access to a sunny and protected area of open space.

Objective 4A-3 of the ADG also requires development to include appropriate shade and glare control, particularly for warmer months. It is noted that the upper floor areas of private open space and the communal area of open space lack sufficient shade structures. This appears to be a consequence of the need to minimise the extent of height non-compliance and to ensure that the development is hidden from view from the street. This is somewhat counter-productive to the amenity of the development for future occupants and further consideration of this objective is required in relation to upper floor units.

- **Natural ventilation (4B-1, 4B-2 and 4B-3)**

15 of the 31 units proposed (48%) have been designed with natural cross ventilation in the manner depicted by Objective 4B-1 of the ADG, inconsistent with the 60% minimum prescribed. However, the proposal incorporates operable skylights in a number of top floor units, which will facilitate ventilation to an additional six units, increasing the amount of ventilated apartments to 21/31 or 67%.

- **Apartment size and layout (4D-1, 4D-2)**

Objective 4D-1 of the ADG prescribes that every habitable room must have a window in an external wall of not less than 10% of the wall area, and that daylight and air must not be borrowed from other rooms. Whilst the study areas of Units K.04 and K.08 feature a window on an external wall of a reasonable size, the window comprises fixed glass blocks which do not facilitate air-flow, resulting in inconsistency with this requirement.

Objective 4D-1 of the ADG also advises that a window should be visible from every point in a habitable room. The design of the kitchens in Units K.01, K.05 and K.10 are inconsistent with this guidance. These units also have awkward layouts, with dark entrances at the end of long, dog legged hallways, with no access to light or ventilation.

Objective 4D-2 of the ADG prescribes that the maximum habitable room depth of an open plan living area shall be limited to 8m. Units K.02, K.03, K.06, K.07, K.09 and K.10 are all non-compliant with this design criteria.

- **Private open space and balconies (4E-1, 4E-2 and 4E-3)**

Objective 4E-1 of the ADG prescribes that the area of private open space should be increased to 15m<sup>2</sup>, with minimum dimensions of 3m, for ground floor units. None of the 5 ground floor units proposed (C.03, C.04, C.05, C.06 and C.07) meet these minimum requirements.

The balconies of Units C.04, C.05, C.11, C.13, C.17 and C.19 are also inconsistent with the design guidance of Objective 4E-2 of the ADG which advises that areas of private open space should be oriented with the longer side facing outwards to optimise daylight to adjacent rooms. In circumstances where daylight is limited, and noting that none of the units in question receive compliant levels of solar access, this is considered to be of greater importance.

- **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.

- **Ground floor apartments (4L-1)**

Objective 4L-1 of the ADG advises that ground floor apartments should support small office home office (SOHO) use to provide future opportunities for conversion into commercial or retail areas. The ground floor units in the south-west corner of the development are particularly suited

to such use, yet the proposal has not been designed to facilitate flexibility in this regard.

- **Universal design (4Q-1 and 4Q-2)**

Objective 4Q-1 of the ADG prescribes that 20% of unit proposed should be designed in accordance with the Liveable Housing Guidelines Silver Level Standard. The cover page of the architectural plans indicate that Unit K.01 and K.11 (6% of the units proposed) have been designed to meet these requirements, inconsistent with the minimum requirement prescribed.

Objective 4Q-2 of the ADG advises that the development should provide adaptable housing units in accordance with Council policy. As discussed with regard to clause D18 of WDCP 2011, 10% (rounded up) of units should be designed in accordance with Class C of AS4299. The cover page of the architectural plans indicate that Unit C.15 and K.04 (6% of the units proposed) have been designed to meet these requirements, inconsistent with the minimum requirement prescribed.

The application was supported by an Access Report at lodgement, however it was not updated to reflect the amended plans and the recommendations no longer relate to the amended proposal.

- **Energy efficiency (4U-1)**

The application was supported by a BASIX Certificate to confirm that the development has been designed to meet industry standards. However, the low level of daylight to units and communal spaces increases reliance on artificial lighting and heating, inconsistent with the guidance of this objective.

The proposal is inconsistent with a number of key areas of the ADG, with specific concern raised in relation to general amenity and access to daylight/sunlight. The proposal is also deficient with regard to the design principles of SEPP 65. In accordance with clause 30 of SEPP 65, development consent must not be granted to the application, as the proposal does not have adequate regard to the objectives of the ADG and the design quality principles of SEPP 65.

#### Design and Sustainability Advisory Panel

The application was referred to the DSAP on 17 December 2020 for review, the notes from which are attached to this report.

The amended proposal has somewhat responded to the following concerns raised:

- lack of communal open space (a roof terrace has been introduced),
- lack of deep soil (an area of deep soil has been provided in the south-west corner of the site), and
- lack of sufficient retail floor space (retail floor space has been increased).

However, the amended proposal has not appropriately responded to the following key concerns:

- insufficient site analysis,
- excessive floor space/area,
- excessive height without adequate consideration of impacts to the amenity of adjoining premises,
- poor access to units in the south-west corner of the site, and
- poor amenity of single aspect units (consider more dual aspect units).

## SEPP (Infrastructure) 2007

The proposed development, which comprises parking for more than 50 motor vehicles, constitutes Traffic Generating Development and a referral to Transport for NSW is required in accordance with clause 104 of this policy. The application was referred to Transport for NSW, however no response was received.

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. The consent authority can be satisfied of these matters, noting that:

- Vehicular access is provided by the lower order street (Kenneth Road) and not Condamine Street,
- The safety, efficiency and ongoing operation of Condamine Street will not be adversely affected by the proposed development, and
- The application has been accompanied by an acoustic report and the proposal has been designed to incorporate measures to ameliorate potential traffic noise and vehicle emissions associated with the ongoing use of Condamine Street.

## 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?	No

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	15.3m	4.3m (39%)	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	No
6.2 Earthworks	No
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes

## Detailed Assessment

### **Zone B2 Local Centre**

The proposal development is considered with respect to the objectives of the B2 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 provides an adequate range of retail/business uses on the ground floor. Whilst it is considered that this could be enhanced with the incorporation of SOHO units in the south-western corner of the site, the proportion of retail/business floor space is not antipathetic with the zoning.

- *To encourage employment opportunities in accessible locations.*

Comment: The proposal provides adequate employment generation floor space in an highly accessible location.

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

Comment: The site is favourably sited in close proximity to the Manly Vale B1 bus stop, and cycling paths connecting to Manly, Brookvale and the Spit.

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

Comment: The proposal has been designed to maximise active street frontages to Kenneth Road and Condamine Street.

- *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: Concern is raised with regard to the scale of the proposal, particularly with how it responds to Kenneth Road. The height of the development works against the fall of the land, and the setback to Kenneth Road does not respond to the siting of the existing development up slope (to the west) or the R2 zoning on the opposite side of the street.

- *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 application has not been designed to minimise conflict between the use/nature of the adjoining site to the west and the residential dwellings proposed in the south-west corner of the site. Not only are these units compromised by the built form of the adjacent development (and the setbacks proposed), but the impacts upon the amenity of the west facing units immediately adjacent to openings in the eastern facade of the adjacent mixed use development have not been considered.

The proposal is not consistent with the objectives of the B2 Local Centre zone.

### **4.3 Height of buildings**

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



With a maximum height of 15.3m, 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 development 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 maximum building height is not expressly excluded and thus the clause can be applied in this instance.

#### Extent of the height breach

The height breach occurs across the entire upper level of the development, as follows:

- The entire roof form and upper-most portion of the building fronting Condamine Street protrudes beyond the height plane, with a maximum non-compliance of 2.8m at the south-east corner (where the building is also non-compliant with both the minimum front and side setbacks applicable).
- The proposed roof terrace (and access thereto) protrudes above the height plane, with a maximum height breach of 4.3m at the south-western lift-core. The non-compliance is not limited to the upper roof terrace, noting that vast majority of the roof of the level below also protrudes above the roof plane, with a maximum non-compliance of 2.3m at the south-eastern corner.
- The entire roof form and upper-most portion of the building fronting Kenneth Road protrudes above the height plane, with a maximum non-compliance of 4.1m at the south-west corner. The height non-compliance is not limited to the upper floor, with portions of the roof of Level 2 also protruding above the height plane.

The extent of non-compliance is demonstrated on the architectural drawings, with the 11m height plane shown on each elevation and section.

#### 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 submission (attached) addressing the provisions of clause 4.6 of WLEP 2011. The submission is 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*

Comment: In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Cc* to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard satisfactorily demonstrated that the proposed development will achieve consistency with the objectives is not considered to be unreasonable and unnecessary in the circumstances of this application.

In particular, the applicant has not demonstrated that the non-compliant portions of the development

- ensure that the development is compatible with the height and scale of surrounding and nearby

surrounding development.

- act to minimise the visual impact of the development and impacts upon overshadowing of adjoining scale, and impacts upon the amenity of adjoining properties with regard to solar access.

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

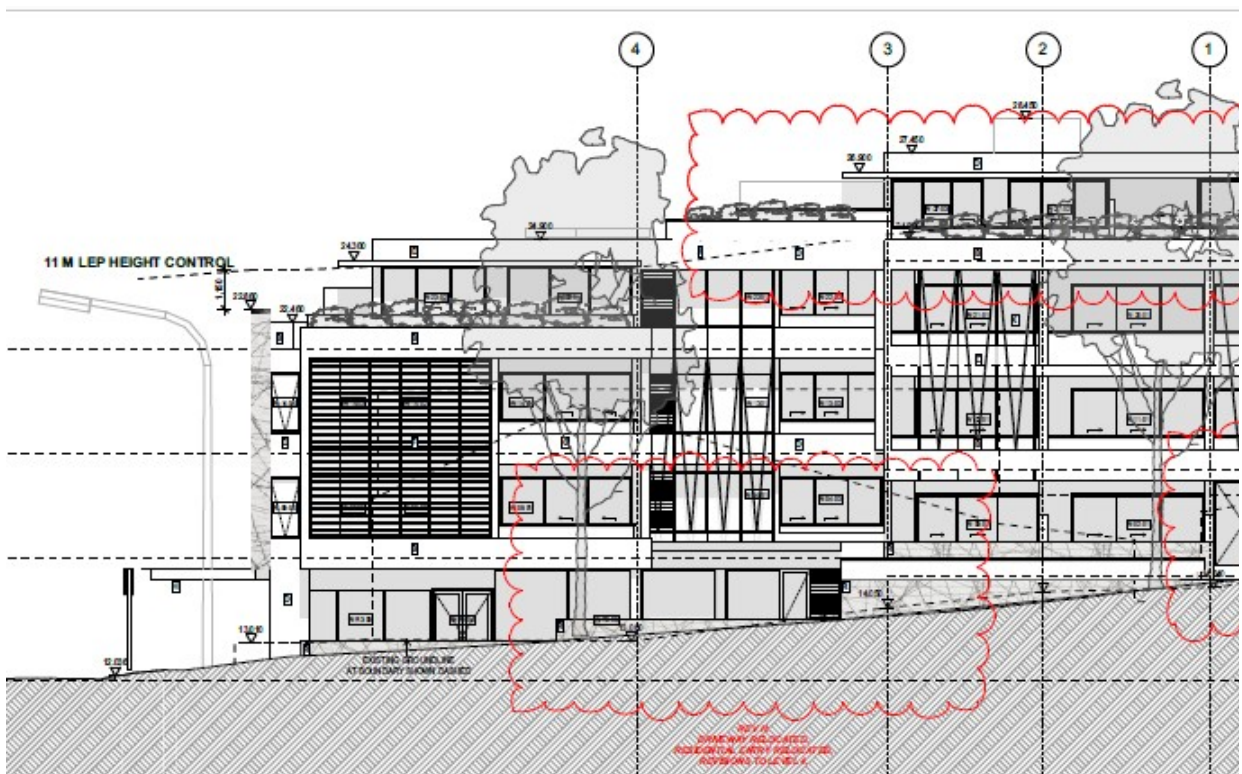
Comment: In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 11, the purpose of the EP&A Act, including the objects prescribed by clause 1.3 of that Act.

The applicant's submission provides that the areas of non-compliance are a result of:

- *The 11m height limit has been effectively abandoned along this particular section of Condamine*
- *Strict compliance would require the deletion of the entire upper floor of the development and replaced by recently approved and constructed shop top housing development adjacent to the site.*
- *The building is of exceptional design quality with the variation facilitating a height and floor space of the land consistent with objectives 1.3(c) and (g) of the Act.*

These propositions are not supported, as follows:

- The 11m height limit has been varied along Condamine Street frontage to provide facilitate a cohesive height plane abandoned along Kenneth Road. Only one development (the corner site at 267-269 Condamine Street) was considered on a merit basis, noting that the site was a corner allotment, and subject to development on Kenneth Road and generally consistent with the height of any future (compliant) development at the subject site.



- The proposed development extends above the height of the existing four storey development up Condamine Street. The proposal does not provide a cohesive height plane, which would be achieved by the existing development.
- The proposed development is not of exceptional design quality, in so far as it fails to meet a number of the objectives of the Act.

impacts upon adjoining properties.

With this in mind, it is considered that the applicant's written request to vary the maximum building planning grounds to justify contravention of the 11m maximum building height development standard

Therefore, the consent authority cannot be satisfied that the applicant's written request has satisfactorily addressed the matters 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 that proposed development (as a whole) will be in the public interest because it is consistent with the objectives of the particular development standard and the objectives for development within the zone in which the development is to be carried out.

As discussed in further detail separately above, the proposal is not considered to be consistent with the relevant objectives of the B2 Local Centre zone.

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

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

Comment: The height of the proposed development fronting Kenneth Road is not compatible with the height of surrounding development. The proposal sits higher than the existing development up slope, and works against the fall of the streetscape.

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

Comment: The applicant has not satisfactorily demonstrated that the visual impact of the proposed development has been appropriately minimised, with particular concern with regard to the Kenneth Road frontage and the forward (non-compliant) projection of Levels 1 and 2 designed to screen the non-compliant level above. Furthermore, the visual impact of the south-eastern corner of the Condamine Street facade is not appropriately resolved, with inadequate consideration of the siting of the adjoining development to the south.

The proposal also fails to adequately consider potential solar access impacts of the development, with additional overshadowing of adjoining development directly attributed to areas of the proposal that extend well above the height plane.

Visual privacy is also compromised by the non-compliant height of the upper floor fronting Kenneth Road, with resultant overlooking of an area of private open space of the adjoining development to the east.

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

Comment: Not Applicable.

- (d) *to manage the visual impact of development when viewed from public places such as parks and*

*reserves, roads and community facilities.*

Comment: The proposal presents as an over-development of the site, with inadequate consideration of the siting and scale of adjoining development. The proposal places too much reliance upon the built form approved on the adjacent corner site, with a lack of regard for the lesser order street context of Kenneth Road. The development of the Kenneth Road frontage should result in a built form that sets back from the road as you move up the hill into the R2 Low Density zone. Rather, the proposal sits proud on the site and projects further towards the roadway, resulting in excessive bulk and scale as seen from the public domain.

Therefore, the consent authority cannot be satisfied that the proposal is in the public's interest.

#### Has concurrence been obtained?

Pursuant to clause 4.6(4)(b) 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 Planning Circular PS 18-003 (dated 21 February 2018) issued by the NSW Department of Planning and Environment, the Secretary's concurrence may be assumed in this instance as the application is to be determined by the Northern Beaches Local Planning Panel.

#### Conclusion

Overall, the consent authority cannot be satisfied of the matters prescribed by clause 4.6 of WLEP 2011, and the proposal cannot be supported.

## **6.2 Earthworks**

Clause 6.2 of WLEP 2011 requires Council to consider, amongst other matters, the quality of soil to be removed from the site and the effect of the proposed development on the proposed use of the land, to ensure that earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. The application proposes significant disturbance of the site, and the Preliminary Environmental Site Investigation provided to support the application indicates that contamination is likely.

Without confirmation of such contamination and any necessary remediation plan, Council cannot be satisfied that the proposal is consistent with the intent/objectives of this control.

## **Warringah Development Control Plan**

### Built Form Controls

<b>Built Form Control</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation*</b>	<b>Complies</b>
B2 Number of storeys	3	4	1 (33%)	No
B6 Side Boundary Setbacks	West - Merit	Nil	-	No
	South - Merit	Nil	-	No
	North - Merit	Nil	-	No
	East - Merit	Nil	-	No
B8 Front Boundary Setbacks	Ground - maintain	Condamine - 1.1m Kenneth - 2.9m	-	Yes No
	Level 1 - maintain	Condamine - Nil Kenneth - 1.7m - 4.1m	-	Yes No

	Level 2 - 5m	Condamine - Nil Kenneth - 1.7m - 4.1m	-	No No
	Level 3 - 5m	Condamine - Nil - 3.1m Kenneth - 5.9m - 8.5m	-	No No
B10 Rear Boundary Setbacks	West - Merit	7.2m - 7.5m	-	No

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

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B2 Number of Storeys	No	No
B6 Merit Assessment of Side Boundary Setbacks	No	No
B7 Front Boundary Setbacks	No	No
B10 Merit assessment of rear boundary setbacks	No	No
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	No	Yes
D2 Private Open Space	N/A	N/A
D3 Noise	Yes	Yes
D6 Access to Sunlight	No	No
D7 Views	Yes	Yes
D8 Privacy	No	No
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	No	No
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes
F1 Local and Neighbourhood Centres	No	No

#### Detailed Assessment

## B2 Number of Storeys

The application seeks consent for a four storey development, inconsistent with the three storey height limit prescribed by this control. The applicant justifies this non-compliance by advising that a DCP control cannot derogate from the provisions of the LEP (11m height limit), however the entirety of the proposal also exceeds the 11m height limit prescribed.

Whilst it is acknowledged that Council has approved four storey development along Condamine Street, the application cannot rely upon precedence alone, and must demonstrate consistency with the objectives of the number of storeys control. Furthermore, whilst 4 storey elements may be supported at certain parts of the site (such as the Condamine Street facade), 4 storeys may not be appropriate across the site as a whole.

Inconsistency with the 4 storey height limit is not supported in this instance, as the proposal is inconsistent with the following objectives of the control:

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

Comment: The fourth storey of the Kenneth Street building will be visible from the public domain. As proposed, this element of the development does not dominate the streetscape, however that is only because the levels below protrude forward of the setbacks prescribed (and the prevailing building line) to screen the upper floor from view. The fourth storey of the building in the south-west of the site is elevated above ground and sits well above the roof plane of other four storey elements on the site and adjoining buildings. This component of the development will be visually dominant as seen from west facing dwellings in the central courtyard of the proposed development and at 263 Condamine Street.

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

Comment: As above, the visual impact of the development when viewed from the public domain and adjoining properties has not been minimised.

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

Comment: The application has not demonstrated that the portion of the development that exceeds both the height of buildings development standard and the subject number of storeys control does not impact upon the amenity of adjoining properties.

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

Comment: As above, the proposed four storey development exceeds both the 11m height limit of WLEP 2011 and the 3 storey height limit of this control.

## B6 Merit Assessment of Side Boundary Setbacks

Clause B6 prescribes that side boundary setbacks will be determined on a merit basis with regard to streetscape, amenity of surrounding properties and setbacks of neighbouring development. Noting that the proposal is also subject to the provisions of SEPP 65, and in turn the ADG, the reasonableness of

the setbacks are also considered with respect to the spatial separation requirements of Objective 3F-1 of the ADG.

The areas of concern are considered individually, as follows:

- **Upper level northern side setback to 267-269 Condamine Street (adjacent to Unit C.17)**  
The development at 267-269 Condamine Street features a blank wall along the common boundary at the ground, first and second floor. However, at the upper floor, the central courtyard is open to the common side boundary. The application proposes a nil setback to this area, inconsistent with the provisions of the ADG which prescribe that nil setbacks are only acceptable between blank walls. In consideration of the open nature of the upper level of the courtyard approved at 267-269 Condamine Street, it is considered that the proposal should be setback 6m from the side boundary adjacent to the courtyard, to more appropriately respond to the context of the site and to create an upper level link between the courtyards along Condamine Street. This would essentially result in the deletion of Unit C.17, however it would facilitate the northern orientation of Unit C.16 which, despite its top floor location, does not achieve compliant levels of solar access.  
Note: The nil setback proposed in relation to Unit C.15 is acceptable as it adjoins a blank wall of the development to the north.
- **Upper level southern side setback to 263 Condamine Street (adjacent to Unit C.15)**  
The southern external wall of Unit C.15 is setback 1.9m from the southern side boundary, inconsistent with the 6m spatial separation requirement of Objective 3F-1 of the ADG. With a setback of only 3.6m from the front boundary, this portion of the development is also inconsistent with the 5m minimum front setback prescribed by clause B7 of WDCP 2011. The application has not satisfactorily demonstrated that the non-compliance will not adversely impact upon solar access of the adjacent development at 263 Condamine Street. Further, the application has not demonstrated that the reduced setback does not unreasonably impact upon the amenity of the units to the west on the subject site, noting that the amenity of Unit C.10 (and those below) would be improved by increasing the setback of C.15 and in turn, the eastern opening to the internal courtyard at the upper most level.
- **Upper level eastern side setback to 267-269 Condamine Street (adjacent to Unit K.09)**  
The application proposes a 3m setback between the eastern edge of Unit K.09 and the eastern side boundary, inconsistent with the 6m minimum requirement of Objective 3F-1 of the ADG. The reduced setback results in unacceptable overlooking of the upper level terrace of the development approved to the east at 267-269 Condamine Street. A minimum setback of 4.5m is considered to be warranted, to achieve 9m spatial separation between the adjoining dwellings.
- **Western side setback to 3-9 Kenneth Road**  
The application proposes nil setbacks along the western side boundary adjacent to 3-9 Kenneth Road. The nil setback is considered acceptable where it adjoins the blank wall of the adjoining building, however concern is raised where the proposed development protrudes above and forward of the adjacent development. This is discussed further with respect to building height and front setbacks.

The development cannot be said to be consistent with the objectives of the side setback control that seek to ensure that development does not become visually dominant, to ensure that the scale and bulk of buildings is minimised, and to provide adequate separation between buildings to ensure a reasonable level of amenity and solar access is maintained. As such, the setbacks of the proposal are not considered acceptable on merit.

## **B7 Front Boundary Setbacks**

Clause B7 of WDCP 2011 prescribes that development at the ground and first floor shall be setback to maintain a minimum setback to the road frontage, with development at the second floor and above to be setback 5m from the street, with the aim to create a sense of openness, maintain visual continuity and pattern of buildings and to protect and enhance the visual quality of the streetscape.

The proposal is non-compliant with the minimum setbacks prescribed and in some instances, the setback is also inconsistent with the objectives of the control. The application appears to rely upon lesser setbacks approved on the adjoining site at 267-269 Condamine Street, however the circumstances of that approval differ and the corner nature of that site played a key role in Council's ultimate support of the lesser front setbacks proposed on that site. Further, the application seems to disregard the setbacks of the other adjoining sites, which should carry as much weight as the development at 267-269 Condamine Street, in so far as they contribute to the prevailing/established building line.

The areas of non-compliance are addressed, as follows:

- **Ground Floor to Kenneth Road**

The retail space on the ground floor of the Kenneth Road frontage is setback 2.9m from the front boundary, inconsistent with the setback of the pre-existing building (3.6m - 6.7m) and the setback of the development to the west (6.7m). The setback of the retail space is supported on merit, as it facilitates additional internal retail space, which is essential to the development of the site. The enclosing wall of the garage is also sited forward of the existing setback, inconsistent with the immediately adjacent development. If the development was to be approved, a condition could be imposed to 'lighten' the enclosing blade wall to maximise visibility and create a greater sense of openness when viewed from the street.

- **Level 1 and 2 to Kenneth Road**

The floor plan of Levels 1 and 2 are replicated, with balconies setback at a minimum distance of 1.7m from the front property boundary and external walls setback at a minimum distance of 4.1m from the front boundary. Level 1 is inconsistent with the requirement to maintain the existing building line and Level 2 is inconsistent with the 5m minimum setback prescribed. Whilst the replicated nature of the setbacks on Level 1 and 2 is supported, greater setbacks are required in response to the lower density nature of the street (noting that R2 zoned sites are immediately opposite the site), and to ensure that the development steps back in response to the setback of the development to the west.

It also appears that Levels 1 and 2 have been designed to be more prominent in order to reduce visibility of the non-compliant upper floor. The introduction of bulk forward of the established/prescribed building line to screen the non-compliant height of the proposal is antipathetic to the objectives of both the front building line control and maximum building height development standard, and is not supported.

- **Level 2 to Condamine Street**

With nil setbacks proposed, Level 2 of the Condamine Street frontage is inconsistent with the 5m minimum setback prescribed by this control. Nonetheless, the Level 2 setback is consistent with the prevailing building line for Level 2 development fronting Condamine Street, and the nil setback allows for maximum sunlight to living rooms fronting the street.

- **Level 3 to Condamine Street**

The entirety of the Level 3 frontage to Condamine Street is forward of the 5m minimum setback prescribed by this control, with a minimum setback of 3.1m. The non-compliant nature of the



reduced setback at the southern side of the upper floor will be highly visible given the increased setback of the development to the south, and is likely to attribute to overshadowing of areas of private open space at 263 Condamine Street. As such, the proposed variation to the upper floor front setback is not supported.

Overall, the proposal as a whole cannot be said to be consistent with the objectives of the front building line control, and the proposal is recommended for refusal in this regard.

### **B10 Merit assessment of rear boundary setbacks**

Clause B10 of WDCP 2011 prescribes that the rear boundary setback is to be determined on merit with regard to streetscape, amenity of surrounding properties, setbacks of neighbouring development and the objectives of the control. The external wall of the western facade of the proposed development is setback 7.5m from the rear western boundary, with upper level balconies extending slightly forward of this alignment, with a setback of 7.2m from the rear boundary.

Whilst the constraints arising from the height and proximity of the existing development at 3-6 Kenneth Road are acknowledged, the setback and treatment of the setback proposed is not considered to provide for an acceptable level of amenity for the west facing, single aspect apartments proposed.

Units C.07, C.14 and C.20 receive little to no sunlight throughout the majority of the year. Unlike Units C.06, C.13 and C.19, which are cross through units that also benefit from an absence of development to the south-west, Units C.07, C.14 and C.20 are single aspect units that will be completely overwhelmed by the enclosing four storey brick walls to both the north and west. The sense of enclosure is amplified by the proposal itself, which extends above the height limit in the area in question.

Whilst adequate plantings appear to be provided at Ground Level, the two Kentia Palms proposed will do little to soften the visual impact of the four storey enclosing red brick wall from within Units C.14 and C.20, or mitigate any visual or acoustic impacts associated with the opening in the existing wall on the southern boundary, located directly opposite the proposed terraces.

The proposed rear setback does not provide appropriate amenity for the proposed single aspect west facing units, and in particular, a sense of openness in the rear yard is not achieved. As such, the proposed rear setback is not acceptable on merit, as the objectives of the control are not achieved.

### **C2 Traffic, Access and Safety**

As discussed in detail by Council's Development and Traffic Engineers, the application has not demonstrated that the proposed driveway location is safe or consistent with Council's Vehicle Crossing Policy. As such, the proposed development is inconsistent with the requirements and objectives of this control.

### **C9 Waste Management**

As outlined by Council's Waste Officer, the proposed development does not strictly comply with Council's Waste Management Guidelines. However, should the application be approved, conditions of consent could be imposed to ensure consistency in this regard.

### **D2 Private Open Space**

Clause D2 of WDCP 2011 requires a total area of 10m<sup>2</sup> with minimum dimensions of 2.5m for

each dwelling within a shoptop housing development. However, these requirements are inconsistent with the minimum requirements of the Apartment Design Guide, and in accordance with clause 6A of SEPP 65, development controls that conflict with the provisions of the Apartment Design Guide 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 Apartment Design Guide, and in accordance with clause 6A of SEPP 65, development controls that conflict with the provisions of the Apartment Design Guide 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 application was supported by shadow diagrams that indicate that the proposal will result in overshadowing of areas of private open space at 263 Condamine Street (both the units presenting to the internal courtyard and the upper floor unit facing Condamine Street) and 6 Pitt Street. However, insufficient information has been provided to confirm whether the proposal will meet the minimum requirements of this control.

Given the likely impacts are associated with multiple areas of built form non-compliance and noting the absence of necessary information, Council cannot support the proposed development with regard to potential unreasonable overshadowing of adjoining properties.

## **D8 Privacy**

The proposed development is generally consistent with the requirements of this control, with the exception of the upper floor terraces associated with Units K.09 and K.10. The application is inconsistent with respect to the treatment between the units, as the plan indicates that the screen between the adjacent areas of private open space is less than 1.4m in height, however a taller screen (of unknown detail) is shown in some elevations but not all.

Whilst a condition would ordinarily be able to be imposed, the imposition of a condition is not supported in circumstances where this part of the development protrudes well above the height limit and the visual impact of the required screens has not been shown to be acceptable.

## **D9 Building Bulk**

As discussed in detail with respect to specific areas of built form non-compliance, the bulk and scale of the proposal is not considered to be appropriately minimised in order to ensure an acceptable outcome. In particular, the proposal is inconsistent with the following requirements of this control:

- *Side and rear setbacks are to be progressively increased as wall height increases.*
- *Building height and scale needs to relate to topography and site conditions.*

## **D18 Accessibility and Adaptability**

Clause D18 of WDCP 2011 requires 10% (rounded up to the next whole number) of dwellings to be capable of being adapted in accordance with the Class C provisions of AS4299. The cover page of the architectural drawings indicates that two units (C.15 and K.06) or 6% of the units proposed have been designed to meet these requirements. The inclusion of two adaptable units is non-compliant with the 10% requirement (4 units) of this control.

At lodgement, the application was supported by an Access Report confirming that four units (C.15, K.04, K.09 and K.13) are capable of achieving compliance with the provisions of AS4299. However, this statement was made in relation to superseded plans, and is inconsistent with the current application. The confirmation is also unfounded, as the proposal was not supported by plans demonstrating the level of adaptation required.

The applicant has not provided any justification for the non-compliance proposed or the lack of necessary supporting documentation. There is no reason as to why the proposal cannot achieve consistency in this regard, and as such, non-compliance with this control is found to warrant the refusal of this application.

## **F1 Local and Neighbourhood Centres**

The proposal is consistent with the requirements of clause F1 of WDCP 2011 that specifically relate to Manly Vale, in so far as the proposal enhances the amenity of Condamine Street, with vehicular access provided from Kenneth Road.

However, the proposed development is inconsistent with the provisions of this control that require:

- *Buildings greater than 2 storeys are to be designed so that the massing is substantially reduced on the top floors and stepped back from the street front to reduce bulk and ensure that new development does not dominate existing buildings and public spaces.*
- *Applicants are to demonstrate how the following significant considerations meet the objectives of this control:*
  - *Scale and proportion of the façade;*
  - *Pattern of openings;*
  - *Ratio of solid walls to voids and windows;*
  - *Parapet and/or building heights and alignments;*
  - *Height of individual floors in relation to adjoining buildings;*
  - *Materials, textures and colours; and*
  - *Architectural style and façade detailing including window and balcony details*

## **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 2019**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$120,577 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$12,057,675.

### **CONCLUSION**

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

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

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

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

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

Council is not satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of buildings has 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 proposal presents as an over development of the site. Whilst the constraints of the site are acknowledged, they do not justify the intensity of the development proposed, particularly in circumstances where the development falls well short of minimum industry standards and impacts upon the amenity of adjoining properties.

It is considered that the proposed development does not satisfy the appropriate controls and that all

processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2020/1425 for the Demolition works and construction of a shop top housing development on land at Lot C DP 39108,1 Kenneth Road, MANLY, Lot 3 DP 975160,265 Condamine Street, MANLY VALE, for the reasons outlined as follows:

1. The application has not demonstrated that the site is suitable for the proposed development with regard to potential land contamination, and the consent authority cannot be satisfied of the matters prescribed by clauses 7(1)(b) and 7(1)(c) of *State Environmental Planning Policy No. 55 - Remediation of Land*.
2. In accordance with clause 30 of *State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development* (SEPP 65), development consent cannot be granted, as the development has not had adequate regard to the design principles of SEPP 65 or the objectives of the *Apartment Design Guide*.
3. The proposed development is inconsistent with the maximum building height and objectives of clause 4.3 (Height of buildings) of *Warringah Local Environmental Plan 2011* (WLEP 2011).
4. The proposed development does not satisfy the provisions of clause 4.6 (Exceptions to development standards) of WLEP 2011.
5. The proposed development is inconsistent with the minimum requirements and objectives of the front, rear and side setback controls, as prescribed by clauses B6 (Merit Assessment of Side Boundary Setbacks), B7 (Front Boundary Setbacks) and B10 (Merit Assessment of Rear Boundary Setbacks) of *Warringah Development Control Plan 2011* (WDCP 2011). The bulk and scale of the built form is excessive, with unreasonable impacts upon adjoining properties and the streetscape.
6. The proposed driveway design and location is inconsistent with the requirements and objectives of clause C2 (Traffic, Access and Safety) of WDCP 2011.
7. The application proposes unreasonable impacts upon adjoining properties with regard to solar access, and compliance with the minimum requirements of clause D6 (Access to Sunlight) of WDCP 2011 has not been demonstrated.
8. The proposed development will result in unreasonable impacts upon an adjoining property with regard to visual privacy, inconsistent with the requirements and objectives of clause D8 (Privacy) of WDCP 2011.
9. The proposed development fails to provide a sufficient amount of adaptable housing units, inconsistent with the requirements and objectives of clause D18 (Accessibility and Adaptability) of WDCP 2011.