

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

|                            |              |
|----------------------------|--------------|
| <b>Application Number:</b> | Mod2022/0442 |
|----------------------------|--------------|

|   |  |
|---|--|
| <b>Responsible Officer:</b>               | Grace Facer  |
| <b>Land to be developed (Address):</b>    | Lot 100 DP 1270372, 267 - 269 Condamine Street MANLY VALE NSW 2093   |
| <b>Proposed Development:</b>              | Modification of Development Consent DA2019/0114 granted for Demolition of the existing building and construction of a shop top housing development, comprising 27 dwellings, 4 retail tenancies and carparking |
| <b>Zoning:</b>                            | Warringah LEP2011 - Land zoned B2 Local Centre   |
| <b>Development Permissible:</b>           | Yes  |
| <b>Existing Use Rights:</b>               | No   |
| <b>Consent Authority:</b>                 | Northern Beaches Council   |
| <b>Land and Environment Court Action:</b> | No   |
| <b>Owner:</b>                             | Manly Vale Developments No 3 Pty Ltd   |
| <b>Applicant:</b>                         | Manly Vale Developments No 3 Pty Ltd   |

|                                  |                                  |
|----------------------------------|----------------------------------|
| <b>Application Lodged:</b>       | 18/08/2022                       |
| <b>Integrated Development:</b>   | No                               |
| <b>Designated Development:</b>   | No                               |
| <b>State Reporting Category:</b> | Refer to Development Application |
| <b>Notified:</b>                 | 02/09/2022 to 16/09/2022         |
| <b>Advertised:</b>               | Not Advertised                   |
| <b>Submissions Received:</b>     | 0                                |
| <b>Clause 4.6 Variation:</b>     | 4.3 Height of buildings: 35%     |
| <b>Recommendation:</b>           | Approval                         |

### PROPOSED DEVELOPMENT IN DETAIL

The proposed modifications comprise of the following works:

#### Site Plan

- Skylight to lobby deleted.
- Roof access hatch deleted.
- Skylight to ensuite of apartment 27 deleted.
- Roof access ladder with lockable cover added.

#### Basement B2 Plan

- 1,670 mm clearance added in front of storage units for apartments 18, 20 & 21 to allow for accessible clearance to storage unit doors. Storage volume reduced for the above storage cages.
- 1,670 mm clearance added in front of storage units for apartments 8, 13, 23 & 24 to allow for accessible clearance to storage unit doors. Storage volume reduced for the above storage cages.
- Block wall added in front of drainage channel in stair 3.
- Downpipes deleted from fire stairs 3 & 4.

### **Basement B1 Plan**

- 1,670 mm clearance added in front of storage units for apartments 15 & 16 to allow for accessible clearance to storage unit doors. Storage volume reduced for the above storage cages.
- Downpipes deleted from fire stairs 3 & 4.

### **Ground Floor Plan**

- Threshold increased in front of GF.D.03. Ramps adjusted accordingly.
- Threshold increased in front of door GF.D.17.
- Threshold increased in front of door GF.D.31. Ramps and wall layout adjusted accordingly.
- Fire sprinkler pipe (fs) added to stair 3.
- Fire door added to bottom of stair 1.
- Retail doors swing outward. Bicycle spaces relocated to allow for accessible clearances to doorways.
- Minor amendment to floor levels and adjusted location of egress doors within the glazed facade.
- Kitchen exhaust make-up air grilles added to soffit of retail awnings.

### **Level 1 Plan**

- Fire doors added to stairs 1 & 2. Lobby layouts revised to allow for accessible clearances to doorways. Services relocated accordingly.
- Layouts of apartment 5 & 6 revised to allow for lobby modifications as above. Internal areas of these apartments reduced.
- Fire hydrants relocated within fire stairs.
- Electrical / NBN cupboards relocated to allow for minimum 900 mm width.
- 1,050 mm minimum clearance between internal walls added to silver level apartments 03 & 04 to allow for 1,000 mm clear between skirtings.
- Egress from HWU platform to stair 1 lobby added. Ladder deleted. Unit 01 layout modified to allow for egress from platform, internal area reduced.
- Mechanical risers on grids 4-C & 6-C changed to AFS wall system in lieu of Hebel.
- Stair added adjacent to grid H.
- Mechanical riser and louvre added at grid 03-H for pump-room supply air.
- Egress stair from courtyard to stair 1 added. Fire door added in lieu of glazed door.

### **Level 2 Plan**

- Fire doors added to stairs 1 & 2. Lobby layouts revised to allow for accessible clearances to doorways. Services relocated accordingly.

- Layouts of apartment 14 & 15 revised to allow for lobby modifications as above. Internal areas of these apartments reduced.
- Fire hydrants relocated within fire stairs.
- Electrical / NBN cupboards relocated to allow for minimum 900 mm width.
- 1,050 mm minimum clearance between internal walls added to silver level apartments 12 & 13 to allow for 1,000 mm clear between skirtings.
- Hebel façade walls with FRL -/90/90 added to apartment 09 adjacent to courtyard.
- Mechanical risers on grids 4-C & 6-C changed to AFS wall system in lieu of Hebel.

### Level 3 Plan

- Fire doors added to stairs 1 & 2. Lobby layouts revised to allow for accessible clearances to doorways. Services relocated accordingly.
- Layout of apartment 23 revised to allow for lobby modifications as above. Internal area of apartment reduced.
- Fire hydrants relocated within fire stairs.
- Electrical / NBN cupboards relocated to allow for minimum 900 mm width.
- 1,050 mm minimum clearance between internal walls added to silver level apartments 21 & 22 to allow for 1,000 mm clear between skirtings.
- Hebel walls façade walls with FRL -/90/90 added to apartment 18 adjacent to courtyard.
- Mechanical risers on grids 4-C & 6-C changed to AFS wall system in lieu of Hebel.

### Level 4 Plan

- Fire doors added to stairs 1 & 2. Lobby layouts revised to allow for accessible clearances to doorways. Services relocated accordingly.
- Layout of apartment 27 revised to allow for lobby modifications as above.
- Fire hydrant relocated within fire stairs.
- Electrical / NBN cupboard relocated to allow for minimum 900 mm width.
- Mechanical risers on grids 4-C changed to AFS wall system in lieu of Hebel.
- Access hatch to roof deleted. Ladder with lockable cover added to communal open space for roof access.
- Mechanical ducts added to plan at grid 6-C.
- AC plant relocated 800 mm south. Access gate relocated.
- Lockable access gate added to top of stair 2.
- AC refrigerant pipework shown on plan.
- Skylight 02 relocated to be 3.0 m clear of egress path and communal open space.
- West façade of apartment 26 relocated east to be 3.0 m clear of west boundary.

## 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 - 4.3 Height of buildings

Warringah Local Environmental Plan 2011 - 5.21 Flood planning

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

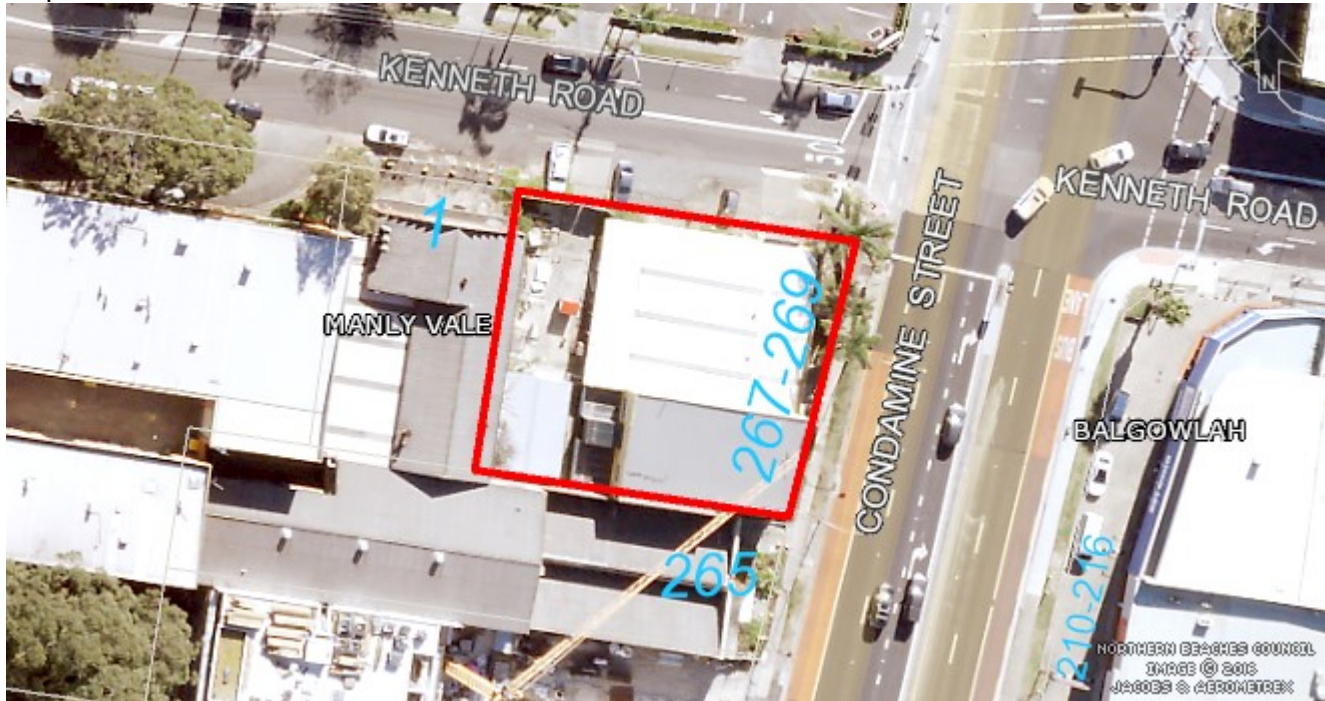
Warringah Development Control Plan - F1 Local and Neighbourhood Centres

## SITE DESCRIPTION

|                                   |  |
|-----------------------------------|--|
| <b>Property Description:</b>      | Lot 100 DP 1270372 , 267 - 269 Condamine Street MANLY VALE NSW 2093  |
| <b>Detailed Site Description:</b> | <p>The site has a 28.397metre (m) wide frontage to Condamine Street, a 34.45m wide frontage to Kenneth Road, and a total area of 1075.3m<sup>2</sup>. Prior to approval of DA2019/0114 the site comprised a one and two storey commercial premises and a number of outbuildings, with vehicular access and perpendicular parking along the Kenneth Road frontage. The site has a cross fall of approximately 4m from the western side boundary down towards the Condamine Street frontage, with a slope of approximately 12%.</p> <p>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.</p> <p>In front of the site 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 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.</p> |

Site works have commenced for the construction of a flat building as per the consent of DA2019/0114.

Map:



## SITE HISTORY

A pre-lodgement meeting (PLM) was held on 14 August 2018 between Council staff and the applicant to discuss a four storey shop-top housing development at the subject site. The PLM minutes confirmed that Council would be supportive of the "substantial height and storey non-compliance", subject to refinements, including the reduction and centralisation of the area of the top floor.

**Development Application No.DA2018/1579** lodged with Council on 25 September 2018, was withdrawn by the applicant on 23 November 2018.

**Development Application No.DA2019/0114** for a mixed use shop top housing development was approved by Council on 3 July 2019. This proposal was more reflective of the PLM advice. The modification seeks changes to development consent DA2019/0114.

**Modification Application No.MOD2022/0073** to modify DA2019/0114 with changes related to BCA compliance and design solutions to conditions or recent legislative changes for building standards / regulations. The application was approved on 11 May 2022.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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 and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the



- development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2019/0114, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

| Section 4.55(1A) - Other Modifications  | Comments  |
|---|---|
| A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:                             |   |
| (a) it is satisfied that the proposed modification is of minimal environmental impact, and  | <p><b>Yes</b></p> <p>The modification, as proposed in this application, is concurred to be of minimal environmental impact for the following reasons provided in consideration by the applicant:</p> <ul style="list-style-type: none"> <li>The proposed modifications to the approved design will not result in any changes to the general scope of the building in terms of footprint, envelope, facades/elevations, height or contents.</li> <li>The proposed modifications are minor in nature and are only due to update legislations of the BCA and new Design and Building Practitioners Act 2020 and are therefore are considered to be of minimal environmental impact.</li> </ul> |
| (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and | <p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/0114 for the following reasons:</p> <ul style="list-style-type: none"> <li>No changes are proposed to the building footprint of the proposed development.</li> <li>No changes are proposed to the previously approved operation of the development.</li> <li>The proposed modifications do not change the building composition, gross area, car parking numbers, external facades or any other part of the development.</li> <li>No change to Transport for NSW (TfNSW) conditions is required.</li> </ul>   |

| Section 4.55(1A) - Other Modifications   | Comments  |
|--|---|
| <p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p> | <p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.</p> |
| <p>(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.</p>  | <p>No submissions were received in relation to this application.</p>  |

#### Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

| Section 4.15 'Matters for Consideration'   | Comments   |
|--|--|
| <p>Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument</p> | <p>See discussion on “Environmental Planning Instruments” in this report.</p> <p>Note: The modification does not seek a further variation to a development standard (height of buildings) the application is appropriate to be considered under Section 4.55(1A) and is quantified as a minor modification / minor change. The NSW Planning Directions to local Councils (Variation to Development Standards) has been reviewed with respect to permitting variations above 10% for development applications and the use of Planning Panels for that purpose. Consideration of the modification being 'minor' has been made in contexts as summarised by <i>Pepper J in Agricultural Equity Investments Pty Ltd v Westlime Pty Ltd (No 3) [2015] NSWLEC 75</i>.</p> <p>The application of "Clause 4.6" has previously been made with the original DA assessment with the new changes being limited as discussed above and are subject to the separate facultative power of Section 4.56 of the Act. The modification has not raised any public objections and discussions / review of the modification report between Managerial levels of Council have resolved that referral to a Local Planning Panel or Councils DDP is not triggered as per the Directions or</p> |

| Section 4.15 'Matters for Consideration'  | Comments  |
|---|---|
|   | Council's delegation referral criteria / triggers.  |
| 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 residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.  |
| 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 have been addressed via a condition in the original 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 was submitted with the original application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</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 has been addressed via a condition in the original 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 has been addressed via a condition in the original consent and changes to the regulations are included with the modification conditions.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original 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 has been addressed via a condition in the original 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 has been addressed via a condition in the original consent.</p> |
|   |   |



| Section 4.15 'Matters for Consideration'   | Comments   |
|--|--|
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>(i) <b>Environmental Impact</b><br/>The environmental impacts of the proposed modification of development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. The proposed modifications are consistent with the reasons for granting of approval and the original consent documents and application details have been reviewed including submission issues from the original DA.</p> <p>(ii) <b>Social Impact</b><br/>The proposed modification of development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b><br/>The proposed modification of development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p> |
| Section 4.15 (1) (c) – the suitability of the site for the development   | The site is considered suitable for the proposed modification of the development.  |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs   | See discussion on “Notification & Submissions Received” in this report.  |
| Section 4.15 (1) (e) – the public interest   | No matters have arisen in this assessment that would justify the refusal of the application in the public interest.  |

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 02/09/2022 to 16/09/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

## REFERRALS

| Internal Referral Body                             | Comments  |
|--|---|
| Building Assessment - Fire and Disability upgrades | 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 |

| Internal Referral Body | Comments   |
|------------------------|--|
|                        | inclusion of the attached conditions of approval and consideration of the notes below.<br><br>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. |
| Traffic Engineer       | The proposed changes are minor in nature and do not have implications in terms of traffic or parking. There are no traffic engineering concerns  |

| External Referral Body                                    | Comments   |
|---|--|
| Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48 | The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent. |

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

All, Environmental Planning Instruments (SEPPs 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 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 65 - Design Quality of Residential Apartment Development

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

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

(a) the development consists of any of the following:

- (i) the erection of a new building,
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
- (iii) the conversion of an existing building, and

(b) the building concerned is at least 3 or more storeys (not including levels below ground level

(existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and  
(c) the building concerned contains at least 4 or more dwellings.

As previously outlined, the proposed development is for the erection of apartment style housing containing 27 dwellings, 4 retail tenancies and car parking accommodated within 4 storeys. The design principles of SEPP 65 have been considered and the original assessment report for DA2019/0114 reviewed in consideration of the modification work, including reasons for granting of consent, submissions, referral responses and DA documents. The proposed modifications are minor in nature as they do not change the streetscape aesthetic elements, building footprint, envelope, retail and residential composition, gross area, car parking numbers or external colours and materials. The changes involve internal and minor external works generally contained within the footprint and envelope. The changes are largely due to accommodating some consent conditions, updated legislation / requirements of the *Building Code of Australia / National Construction Code* and the recent introduction of the *Design and Building Practitioners Act 2020*

As per the definition of a residential flat building and the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are not applicable to the assessment of this application.

Accordingly, no further assessment is required with regard to the provisions of SEPP 65.

## **SEPP (Transport and Infrastructure) 2021**

### Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

### Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

## **SEPP (Resilience and Hazards) 2021**

### **Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no

risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

## Warringah Local Environmental Plan 2011

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

### Principal Development Standards

| Standard             | Requirement | Approved | Proposed* | Variation             | Complies    |
|----------------------|-------------|----------|-----------|-----------------------|-------------|
| Height of Buildings: | 11m         | 14.89m   | Unaltered | 35% (3.89m) Unaltered | As approved |

### Compliance Assessment

| Clause                               | Compliance with Requirements              |
|--------------------------------------|---|
| 4.3 Height of buildings              | No<br>(see detail under Clause 4.6 below) |
| 5.3 Development near zone boundaries | Yes                                       |
| 5.8 Conversion of fire alarms        | Yes                                       |
| 5.21 Flood planning                  | Yes                                       |
| 6.2 Earthworks                       | Yes                                       |
| 6.4 Development on sloping land      | Yes                                       |

### Detailed Assessment

#### 4.3 Height of buildings

No change is proposed and the building height was considered in detail under the original DA assessment and subsequent modification.

#### 5.21 Flood planning

Under this clause, development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development:

- (a) is compatible with the flood function and behaviour on the land, and
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.

Comment:

The original Development Application was referred to NECC (Stormwater and Floodplain Engineering - Flood Risk) who found the proposal on the subject site to be supportable.

In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters:

- (a) *the impact of the development on projected changes to flood behaviour as a result of climate change,*
- (b) *the intended design and scale of buildings resulting from the development,*
- (c) *whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- (d) *the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

Comment:

The proposed modifications are relatively minor and do not impact on the building footprint or flood risk.

## Warringah Development Control Plan

### Built Form Controls

| Standard                   | Requirement       | Approved                             | Proposed  | Complies    |
|----------------------------|-------------------|--------------------------------------|-----------|-------------|
| B2 Number of storeys       | 3 storeys         | 4 storeys                            | Unaltered | As approved |
| B5 Side Boundary Setbacks  | West = Merit      | Levels G - 3 = Nil<br>Level 4 = 3m   | Unaltered | Yes         |
|                            | South = Merit     | Levels G -3 = Nil<br>Level 4 = 4.25m | Unaltered | Yes         |
| B7 Front Boundary Setbacks | Levels G -1 = Nil | Level G - 1 = Nil                    | Unaltered | Yes         |
|                            | Level 2 = 5m      | Level 2 = Nil - 4.5m                 | Unaltered | As approved |
|                            | Level 3 = 5m      | Level 3 = 2.5m - 4.5m                | Unaltered | As approved |
|                            | Level 4 = 5m      | Level 4 = 10.6m - 18.4m              | Unaltered | Yes         |

### Compliance Assessment

| Clause   | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| A.5 Objectives   | Yes                          | Yes                         |
| B2 Number of Storeys   | No                           | Yes                         |
| B6 Merit Assessment of Side Boundary Setbacks                | Yes                          | Yes                         |
| B7 Front Boundary Setbacks                                   | No                           | Yes                         |
| C2 Traffic, Access and Safety                                | Yes                          | Yes                         |
| C3 Parking Facilities  | Yes                          | Yes                         |
| C4 Stormwater  | Yes                          | Yes                         |
| C6 Building over or adjacent to Constructed Council Drainage | Yes                          | Yes                         |



| Clause   | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| Easements                                      |                              |                             |
| C7 Excavation and Landfill                     | Yes                          | Yes                         |
| C8 Demolition and Construction                 | Yes                          | Yes                         |
| C9 Waste Management                            | Yes                          | Yes                         |
| D2 Private Open Space                          | Yes                          | Yes                         |
| D3 Noise                                       | Yes                          | Yes                         |
| D6 Access to Sunlight                          | Yes                          | Yes                         |
| D7 Views                                       | Yes                          | Yes                         |
| D8 Privacy                                     | Yes                          | Yes                         |
| D9 Building Bulk                               | Yes                          | Yes                         |
| D10 Building Colours and Materials             | Yes                          | Yes                         |
| D11 Roofs                                      | Yes                          | Yes                         |
| D12 Glare and Reflection                       | Yes                          | Yes                         |
| D14 Site Facilities                            | Yes                          | Yes                         |
| D20 Safety and Security                        | Yes                          | Yes                         |
| D21 Provision and Location of Utility Services | Yes                          | Yes                         |
| D22 Conservation of Energy and Water           | Yes                          | Yes                         |
| E10 Landslip Risk                              | Yes                          | Yes                         |
| E11 Flood Prone Land                           | Yes                          | Yes                         |
| F1 Local and Neighbourhood Centres             | Yes                          | Yes                         |

### Detailed Assessment

#### **B2 Number of Storeys**

Detailed merit assessment of the variation to the storey limit was made as part of the original development application consideration. The modification works do not create any fundamental or substantive change and therefore the reasons supporting the original variation granted is concurred with for the modification and remains consistent with the objectives and requirements of this DCP clause. The provisions of SEPP 65 take precedent over the DCP where an equivalent control applies.

#### **B6 Merit Assessment of Side Boundary Setbacks**

Detailed merit assessment of the side boundary setback was made as part of the original development application consideration. The modification works do not create any fundamental or substantive change and therefore the reasons supporting the original application and context of the modification remain consistent with the objectives and requirements of this DCP clause. The provisions of SEPP 65 take precedent over the DCP where an equivalent control applies.

#### **B7 Front Boundary Setbacks**

Detailed merit assessment of the variation to the front boundary setback was made as part of the original development application consideration. The modification works do not create any fundamental or substantive change and therefore the reasons supporting the original variation granted is concurred

with for the modification and remains consistent with the objectives and requirements of this DCP clause. The provisions of SEPP 65 take precedent over the DCP where an equivalent control applies.

### **F1 Local and Neighbourhood Centres**

The modification works are generally minor changes to functional elements of the building including BCA matters, door positioning, minor cosmetic changes. The modification retains consistency with the objectives of the local neighbourhood centre and requirements of this clause for the DCP.

### **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 2022**

Section 7.12 contributions were levied on the Development Application.

### **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 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

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

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

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

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2022/0442 for Modification of Development Consent DA2019/0114 granted for Demolition of the existing building and construction of a shop top housing development, comprising 27 dwellings, 4 retail tenancies and carparking on land at Lot 100 DP 1270372,267 - 269 Condamine Street, MANLY VALE, subject to the conditions printed below:

### A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation, to read as follows:

"1A. Modification of Consent - Approved plans and supporting Documentation

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

a) Modification Approved Plans

| Architectural Plans - Endorsed with Council's stamp     |                  |                            |
|---|------------------|----------------------------|
| Drawing No.   | Dated            | Prepared By                |
| Site Plan - Revision K Drawing No.DA-01                 | 3 August 2022    | Gartner Trovato Architects |
| Basement B2 Plan - Revision K Drawing No.DA-02          | 3 August 2022    | Gartner Trovato Architects |
| Basement B1 Plan - Revision K Drawing No.DA-03          | 3 August 2022    | Gartner Trovato Architects |
| Ground Floor Plan - Revision L Drawing No.DA-04         | 6 September 2022 | Gartner Trovato Architects |
| Level 1 Plan - Revision L Drawing No.DA-05              | 6 September 2022 | Gartner Trovato Architects |
| Level 2 Plan - Revision K Drawing No.DA-06              | 3 August 2022    | Gartner Trovato Architects |
| Level 3 Plan - Revision L Drawing No.DA-07              | 3 August 2022    | Gartner Trovato Architects |
| Level 4 Plan - Revision K Drawing No.DA-08              | 3 August 2022    | Gartner Trovato Architects |
| North and East Elevations - Revision L Drawing No.DA-09 | 3 August 2022    | Gartner Trovato Architects |
| South and West Elevations - Revision K Drawing No.DA-10 | 3 August 2022    | Gartner Trovato Architects |
| Section A and C - Revision L Drawing No.DA-12           | 3 August 2022    | Gartner Trovato Architects |
| Sections 1 and 2 - Revision K Drawing No.DA-13          | 3 August 2022    | Gartner Trovato Architects |
| Sections 3 and 6 - Revision L Drawing No.DA-14          | 3 August 2022    | Gartner Trovato Architects |

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

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

**B. Add Condition 2B Compliance with Other Department, Authority or Service Requirements (Ausgrid), to read as follows:**

"2B. Compliance with Other Department, Authority or Service Requirements (Ausgrid)

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

| Other Department, Authority or Service | EDMS Reference            | Dated             |
|--|---------------------------|-------------------|
| Ausgrid                                | Ausgrid Referral Response | 14 September 2022 |

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

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

In signing this report, I declare that I do not have a Conflict of Interest.

**Signed**



**Grace Facer, Planner**

The application is determined on 28/09/2022, under the delegated authority of:



**Rodney Piggott, Manager Development Assessments**