

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2017/0708
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Responsible Officer:	Lashta Haidari
Land to be developed (Address):	Lot 8 DP 604034, 255 Condamine Street MANLY VALE NSW 2093
Proposed Development:	Demolition Works and Construction of Boarding House made pursuant to the SEPP Affordable Rental Housing 2009
Zoning:	Warringah LEP2011 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Development Assessment Panel – Central
Land and Environment Court Action:	No
Owner:	255 Condamine Street Pty Ltd
Applicant:	Michael William Williamson

Application lodged:	19/07/2017
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	25/08/2017 to 11/09/2017
Advertised:	29/07/2017
Submissions Received:	13
Recommendation:	Refusal

Estimated Cost of Works:	\$ 4,305,261.02
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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 - 6.3 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 - B10 Merit assessment of rear boundary setbacks

Warringah Development Control Plan - C6 Building over or adjacent to Constructed Council Drainage Easements

Warringah Development Control Plan - D6 Access to Sunlight

Warringah Development Control Plan - D9 Building Bulk

Warringah Development Control Plan - F1 Local and Neighbourhood Centres

SITE DESCRIPTION

Property Description:	Lot 8 DP 604034 , 255 Condamine Street MANLY VALE NSW 2093
Detailed Site Description:	<p>The site is known as Lot 8, DP 604034, 255 Condamine Street, Manly Vale. The site is located on the western side of Condamine Street, between Kenneth Road and Pitt Street.</p> <p>The site is generally rectangular in shape and has the following dimensions</p> <ul style="list-style-type: none"> • Northern boundary - 57.75 metres • Southern boundary - 56.13 metres • Eastern boundary - 15.19 metres • Western boundary - 15.24 metres • Site area - 863m² <p>A watercourse enters the site from the approximate centre of the rear boundary and extends across the site to the northeast side of the northern boundary. Over one-third of the site is occupied by Burnt Bridge Creek. There is a 3.4m drop from the top of the creek bank to the watercourse.</p> <p>The site is currently occupied by a constructed concrete block basement on the eastern side of the site which is in a</p>

poor condition. The remainder of the site is heavily vegetated and overgrown with weeds.

A concrete retaining wall, located approximately 200mm-600mm east of the eastern boundary, has been constructed along the length of the site frontage in the Council road reserve to support the Burnt Bridge Creek by-pass for Condamine Street. The land on the western side of the retaining wall is approximately 1.7m lower than that on the eastern side of the wall. As such, the partially constructed lower ground floor is below street level.

There is a 3-storey building located over the rear part of No.257-259 Condamine Street to the north of the site, this site has recent approval for Shop top housing development.

A two-storey warehouse and showroom at No.253 Condamine Street is located to the south of the site. Residential development adjoins the site to the west.

Map:



SITE HISTORY

Previous Development Application

The subject site has been the subject of the following Applications:

Development Application No. 2000/5263 - for alterations and additions to the existing building and use of the building as a factory unit, was approved on 29 March 2001.

The application involved elevating the existing building to create a two-storey building and moving the

building 1 metre to the north. The first floor consisted of a storage area, workshop, reception, showroom and office area and the ground floor area was to be used for storage and secure parking for two vehicles. Three (3) parking spaces plus one (1) stacked car parking space were proposed to the rear of the building.

Development Application No. 2005/0356 - was approved on 25 October 2005 for the change of the use of the building approved under DA2000/5263, from a factory unit to a bulky goods shop for the retailing of mattresses and bedding. The application did not seek approval for any external changes to the building. Only minor internal modifications were proposed.

Modification Application No. 2000/5263/1 - sought to modify the consent for DA2000/5263 to allow the demolition of the existing building which was proposed to be elevated. This application was withdrawn prior to determination.

Development Application No. 2007/0474 - was approved on 24 June 2008 for the demolition of the existing timber building on the site and the construction of a first-floor addition to the existing (partially completed) basement. The proposal included the ground floor to be used as a storeroom and the first floor is to be used as a bulky goods showroom for a mattress manufacturer (All sales orders being delivered from the main warehouse in Rockdale). A carpark for 7 vehicles (including two tandem spaces for staff and one parking space for people with a disability) was provided to the rear of the building.

Modification Application No. 2008/0230 - sought to modify the consent for DA2007/0474 that was approved on 28 April 2009. The modification consisted of an increase in gross floor area on the lower ground floor area by 8.1m²; a new rear deck 49m² in area which was for the purposes of covering 2 car spaces and providing open space for employees of the bulky goods shop; and amended driveway gradients to access the rear car parking area.

Pre-Lodgement Meeting

The proposed development has been the subject of pre-lodgement meeting with Council on 23 February 2017.

The Subject Application

The subject Development Application was lodged with Council on 19 July 2017.

The Development Application was subsequently advertised/notified for a period of not less than 30 calendar days terminating on 11 November 2017.

Following the completion of the advertising/notification period and following a preliminary assessment of the application, a letter was sent to the applicant on 13 November which identified a number of concerns with the proposal. The applicant was offered an opportunity to withdraw the application and re-lodge when the issues raised by Council had been resolved.

The applicant indicated to Council that they wish Council to proceed with the assessment of the application.

PROPOSED DEVELOPMENT IN DETAIL

The development application is for demolition works and the construction of a five-storey boarding house made pursuant to the provisions of the State Environmental Planning Policy (Affordable Rental Housing) 2009 ("SEPP ARH").

The development is to be level from Condamine Street and elevated over the existing creek bed beneath.

The ground level of the building is to accommodate 11 car parking spaces, 12 motorcycle spaces and 16 bicycle rack spaces. A garbage room and the foyer into the boarding house are at this level fronting Condamine Street.

The four levels above accommodate 63 boarding rooms including 4 accessible rooms and 1 appointed boarding house manager's room on Level 4.

Level 3 contains a 28m² communal room, laundry and outdoor terrace facing Condamine Street.

The boarding house comprises of a mix of single and double rooms.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See the discussion on "Environmental Planning Instruments" in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None Applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None Applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Clause 92 of the EPA Regulations 2000 requires the consent authority to consider <i>AS 2601 - 1991: The Demolition of Structures</i> . This matter may be addressed via a condition of consent should this application be approved. Clause 98 of the EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. A condition of consent could be included in the consent if the application was worthy of approval that all work to be consistent with the provisions of the Building Code of Australia
Section 79C (1) (b) – the likely	(i) The environmental impacts of the proposed development on

Section 79C 'Matters for Consideration'	Comments
impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>the natural and built environment are addressed under the Warringah Development Control Plan section in this report. A number of inconsistencies with the relevant controls have been identified which indicate the impact of the development on the built environment is not acceptable</p> <p>(ii) The development will provide affordable housing in the locality, therefore, the development ensures that the housing stock caters for a broad cross-section of the community. In terms of the provision of housing, the proposed development will not have a detrimental social impact on the locality.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the residential nature of the proposed land use.</p>
Section 79C (1) (c) – the suitability of the site for the development	The environmental constraints and size of the subject site is a challenge in itself for any proposal. The proposal in its current form does not take into account relevant parts of the local context, severely impacts on the amenity of the adjoining neighbours and is incompatible with the character of the surroundings. Accordingly, the proposal is not suitable for the subject site.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See the discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	<p>The provision of affordable housing in the locality is generally in the broader public interest.</p> <p>However, the various controls contained within applicable SEPP's, WLEP 2011, and WDCP 2011 provide the community with a level of certainty as to the scale and intensity of future development and the form and character of development that is in keeping with the zone objectives.</p> <p>This assessment has found the development to be inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site and is therefore not considered, in its current form, to be in the localised public interest.</p>

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 13 submission/s from:

Name:	Address:
John Koorey	36 Bower Street MANLY NSW 2095
Mr Hansen Ji	8 Pitt Street MANLY VALE NSW 2093
Mr Matthew Koorey	12 Pitt Street MANLY VALE NSW 2093
Mrs Belinda Koorey	12 Pitt Street MANLY VALE NSW 2093
Phillip Fagan Mrs Lynette Fagan	6 Pitt Street MANLY VALE NSW 2093
Simon Laurance Waddington Mrs Katrina Waddington	10 Pitt Street MANLY VALE NSW 2093
Blair Courtney-O'Connor	151 Darley Road MANLY NSW 2095
Kathryn Mary Burton	1 Pitt St MANLY VALE NSW 2093
Bronwyn Ann Simpson	7 Pitt Street MANLY VALE NSW 2093
Mrs Amanda Rae McGowan Mr Sean McGowan	3 Pitt Street MANLY VALE NSW 2093
Mr Daniel Charles Scriven	5 Pitt Street MANLY VALE NSW 2093
Elamira-Zahira Elayouby	
Sarah Pardey	

As a result of the public exhibition process, Council is in receipt of thirteen (13) individual submissions, which includes:

- Three (3) letters in support of the proposal; and
- Ten (10) letters objecting to the proposal.

Assessment of Residents Issues

- **Flooding and Creek Impact**

Concerns have been raised that the development will have an adverse impact on the creek. Concerns have also been raised that the proposed development is likely to adversely affect flood behaviour resulting in the potential affectation of surrounding properties.

Comment: This issue is addressed in the referral section of this report. In summary, there is insufficient information submitted with the application to determine the impact of the development on the creek and the associated flooding impact.

This issue has been included as a reason for refusal.

- **Bulk and Scale**

Concerns have been raised that bulk and scale of the proposed development is excessive and will be extremely imposing when looking along the creek corridor.

Comment: This issue has been discussed in detail throughout this report. In summary, the assessment has found that the design of the proposed development is not consistent with the character of the area and the development in its current form is excessive in terms of height, bulk and scale. The concerns raised in this regards are concurred with and are included as reasons for refusal.

- **Lack of Carparking**

Concerns have been raised that the proposed development does not provide sufficient amount of parking spaces for the development of this size and scale.

Comment: The car parking requirement for the development is regulated by Clause 29(e)(i) of the SEPP which requires the provision of 0.2 parking spaces per boarding room. The proposed development does not comply with the car parking requirement as stipulated within the SEPP and this issue has been as a reason for refusal.

- **Amenity Impact**

Concerns have been raised that the proposed development does not provide sufficient rear setback and therefore the development will result in adverse amenity impact in terms of visual bulk.

Comment: This issue is addressed in detail throughout this assessment report. In summary, the development whilst providing 6m -8m rear setback is considered to result in an unsatisfactory visual impact and this is included as a reason for refusal.

- **Traffic Impact**

A number of submissions raised concerns regarding the additional traffic generated by the proposed development given the surrounding roads are already busy. Concern was also raised that the additional traffic generated will jeopardise pedestrian safety.

Comment: Council's Traffic Engineer has reviewed the proposed development and raised no objections to the proposed development on traffic grounds.

Based on Council's Traffic Engineer's assessment, this issue does not warrant the refusal of the application.

Public Interest

A concern is raised that the proposed development is not in the public interest as the building will adversely impact on the locality.

Comment: The public interest has been considered under 'Section 79C (1) (e) – The public interest' in the 'Section 79C Matters for Consideration' table in this report. In summary, the proposed development has not been found to be in the public interest due to the inconsistencies of the proposal with the requirements of the relevant planning controls. The issue as it relates to planning matters has been included as a reason for refusal.

Submissions in Support

- *We have been impressed with developers commitment to providing high-quality boarding house style accommodation in an area that desperately needs something of this ilk.*
- *We believe this would satisfy a number of needs that are outstanding on the Northern Beaches, primarily the need for high-quality affordable accommodation.*
- *The design of the building is modern. It is a very secure and safe building due to the cameras all around and the swipe key, as well as our own key, being able to access the carpark and the communal laundry.*
- *The quality and amenity of the building and its design is tidy and pleasing to the eye, and there is a consistency to the upkeep of both the interior and exterior of the property, is very well maintained.*

Comment: The redevelopment of the site to provide affordable housing (i.e Boarding house) on the site is generally supported by Council. However, the design of the development does not go far enough in reducing the bulk and scale of the development that can be considered to be consistent with the local character of the area. The development breaches a number of planning controls that apply to the site and therefore the development cannot be supported in its current form.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	No objection subject to conditions.
Environmental Health (Industrial)	No objection subject to conditions.
Landscape Officer	<p>Council's Landscape Officer has reviewed the proposal and advised that the proposal cannot be supported due to the following reasons.</p> <p><i>It is noted that the plans indicate a 6- 8m rear setback proposed for landscaping and that there will be a need for re-vegetation of riparian areas where rock lining is not proposed.</i></p> <p><i>However, no detail reading landscaping or environmental restoration works has been provided, consequently, no comment can be provided.</i></p> <p><i>It is recommended that such detail be provided to enable assessment and appropriate conditions to be included.</i></p> <p><i>At this stage, the proposal is not supported with regard to landscape issues due to insufficient information being provided to enable assessment.</i></p>

Internal Referral Body	Comments
	<i>If further information is provided, additional assessment and comment can be made.</i>
NECC (Development Engineering)	<p>Council's Development Engineer has reviewed the proposal and advised that the proposal cannot be supported due to the following reasons</p> <p><i>The subject site is flood affected. The proposal is to build over an existing open channel which is usually not supported by Council. The subject site is flood affected and the submitted flood report requires comments from Council's floodplain Engineer. Accordingly, Development Engineers comments are reserved subject to approval from Council's floodplain Engineer.</i></p>
NECC (Environment Resilience & Climate Change - Riparian Lands / Creeks)	<p>The site is located on the southern bank of Burnt Bridge Creek. The proposal involves significant modification to the creek bank (cut and fill), extensive encroachment over the creek and riparian land, with a number of pylons sited within and adjacent to the main channel.</p> <p>The application is an Integrated Development as the proposal is sited within 40m of a mapped watercourse. At the time of finalising this referral, General Terms of Approval have not been provided by the NSW DPI Water and is unlikely to be forthcoming in its current form for reasons outlined in the Waterway Impact Statement prepared by Martens and Associates dated July 2017 which states:</p> <p><i>"A discussion was held with the NSW Department of Primary Industries (DPI) - Water to determine permissible works with 40 m of Burnt Bridge Creek. NSW DPI Water preliminary comments indicated they would not support the current proposed development, as there is too much encroachment over the watercourse at the northwestern corner of the site. Further discussions indicated that NSW DPI Water would be more likely to support a revised development which does not include, or significantly alters the proposed works in the northwestern portion of the lot."</i></p> <p>Council's Senior Environment Officer - Catchments is unable to support the application on the basis that the proposed development does not satisfy the requirements of the Protection of Waterways and Riparian Lands Policy and cl.E8 - Waterways and Riparian Lands of Warringah Development Control Plan (WDCP). Specifically:</p> <p>The proposal is inconsistent with Section 3.1 and 3.2 of the Protection of Waterway and Riparian Lands Policy:</p> <ul style="list-style-type: none"> • Natural ecological processes of waterways and riparian land shall be maintained and enhanced to the greatest extent possible by: <ul style="list-style-type: none"> o supporting natural flow regimes; o minimising bank erosion and promoting naturalistic bank protection works when stabilisation is necessary o preventing alteration of watercourses (includes piping, channelling, relocation or removal); o improving plant communities through natural area restoration;

Internal Referral Body	Comments
	<p>o maintaining natural floodplains where appropriate.</p> <ul style="list-style-type: none"> • Appropriate riparian setback distances shall be incorporated into new development to avoid damage to public and private property • Risks to life and property shall be minimised by observing floodplain development controls. <p>The proposal is inconsistent with the objectives of cl.E8 of WDCP which relevantly states:</p> <ul style="list-style-type: none"> • Protect, maintain and enhance the ecology and biodiversity of waterways and riparian land. • Encourage development to be located outside waterways and riparian land. • Avoid impacts that will result in an adverse change in watercourse or riparian land condition. • Minimise risk to life and property from stream bank erosion and flooding by incorporating appropriate controls and mitigation measures. • Maintain and improve access, amenity and scenic quality of waterways and riparian lands.
NECC (Stormwater & Floodplain Engineering – Flood risk)	<p>Council's Flood Engineer has reviewed the proposal and advised that the proposal cannot be supported due to the following reasons</p> <p><i>The applicant is required to demonstrate that the proposed development will not increase flood impacts, on the property as well as upstream or downstream of it, in events up to the Probable Maximum Flood event. The Flood Impact Assessment dated July 2017 prepared by BMT WBM Pty Ltd outlines that there are both increases in velocity and water level in a number of magnitude flood events on the property as well as upstream and downstream of it. This includes flood level increases in excess of 0.1m in Council's road reserve and more significantly in-channel, unacceptably increasing the hazard to vehicles and pedestrians. The impacts of the development on peak flood velocities are significant with in-channel velocities increased by in excess of 0.4m/s and increases to peak velocities in the vicinity of the north and south properties. Further, the applicant has not provided flood level or velocity difference mapping associated with the impact of the development for the Probable Maximum Flood event.</i></p> <p><i>The underside of the car park and ground floor foyer slabs are below the 1% AEP flood level, although it is acknowledged that flow conveyance is the dominant factor, this has the potential to reduce the available channel area, leading to detrimental impacts on the flow regime. There are a number of proposed structural supports located within the existing creek corridor. Considering that the subject site is almost immediately downstream of the Burnt Bridge Creek Deviation there is the potential for cars to be washed downstream through the subject site. The impact of structure blockage should be investigated, particularly with regard to the blockage recommendations in Australian</i></p>

Internal Referral Body	Comments
	<p><i>Rainfall and Runoff 2016 with a recommendation provided based on sensitivity analysis. Structural certification that the proposed development can withstand the hydraulic forces of a Probable Maximum Flood event is required prior to consent to demonstrate that the development is compatible with the flood hazard.</i></p> <p><i>Considering the unacceptable impacts of the proposed development on flooding for both adjacent properties and Council's road reserve, the development is not considered to comply with the Warringah Local Environmental Plan, 2011 or Development Control Plan, 2011 and is recommended for refusal.</i></p>
Traffic Engineer	<p>The proposal is for a boarding house comprising of 63 units, 12 carparking spaces, 12 motorbike spaces, 16 bicycle spaces and a servicing area for a small rigid truck.</p> <p>The required parking under the SEPP for 62 boarding room units is 0.2 spaces per unit. When applied the parking requirement is 12.4 spaces and with 1 full time employee, results in 13.4 spaces. The application proposes 12 spaces, a shortfall of 1.4 spaces, and subsequent overflow parking would be expected to be parked in local streets in the surrounding area. Whilst the shortfall is small, this represents a parking shortfall for 7 units. It is noted that additional parking spaces provided for motorbikes and bicycles however the shortfall in parking should be considered by the development assessment officer during assessment.</p> <p>The traffic generation from the development is not expected to have a significant impact to the road network.</p> <p>The ramp and ceiling clearance leading from the loading area to the parking spaces should be amended to allow a 3.5m height small rigid vehicle (SRV) to reverse approximately 2.2m up the ramp without affecting head clearance at the ramp.</p> <p>Double doors to the garbage room should be either sliding or opening inwards to minimise conflict with incoming van or truck loading access.</p> <p>Apart from the parking shortfall, there are no objections raised to this development on traffic grounds.</p>
Waste Officer	<p>Council's Waste Officer has reviewed the proposal and advised that the proposal cannot be supported due to the following reasons:</p> <p><i>Waste Bin Room design and location:</i></p> <ul style="list-style-type: none"> <i>The Waste bin room does not accommodate for 11 x 660L bins. Council does not provide 1100L bins. The dimension of a 660L is 1250mm (H) x 850mm (D) x 1370 mm (W). The minimum footprint required for 11 x 660L is 2700mm (D) x 8220mm (W)</i> <i>There must be no other essential services, piping (exception of a</i>

Internal Referral Body	Comments
	<p><i>tap) and obstructions in the bin room</i></p> <ul style="list-style-type: none"> <i>The bin room must be fitting with a tap and drain to the sewer</i> <i>There must be a wall/barrier between the planter box and hydrant booster along the property boundary</i> <i>The driveway at the kerb (where the road meets) must be widened to cover the entire swept path. (This can be detailed further by the Traffic department)</i>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
NSW State Transit (Bus stops)	The proposal was referred to NSW State Transit. No response has been received within the 21-day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
Integrated Development – NSW Office of Water - Department of Primary Industries (Permit for Temporary Construction Dewatering)	<p>The application was referred to the NSW Office of Water (NoW) as Integrated Development in accordance with Sections 89, 90 & 91 of the Water Management Act, 2000.</p> <p>The NoW provided their response on 30 August 2017. The response raised no objection to the proposal subject to conditions which are contained within the NoW's General Terms of Approval (GTAs). The GTAs should be included in the consent as conditions if the application is worthy of approval.</p>
Integrated Development – NSW Office of Water - Department of Primary Industries (Controlled Activity Approval for works within 40m of watercourse)	<p>The site is located on the southern bank of Burnt Bridge Creek (watercourse). The application was referred Department of Primary Industries (Water) as Integrated Development as the proposal is sited within 40m of a mapped watercourse. In their response on 8 November 2017, the Department advised that they are not positioned to properly assess the application and requires the following information to be provided for further assessment:</p> <ul style="list-style-type: none"> <i>Good quality photographs of the watercourse (on site) showing bank/s and views upstream and downstream.</i> <i>A cross-sectional survey plan showing the slopes of both banks of the watercourse. Top of the highest bank must be clearly identified and a scale bar should be included.</i> <i>A plan or diagram showing the location of the watercourse relative to the proposed work and activity (ensure a scale bar included).</i> <i>A concept plan or diagram showing details of all proposed works associated with the controlled activity within the bed and bank of the watercourse.</i> <i>A plan or diagram showing the proposed riparian corridor in accordance with the Crown Lands and Water Division guidelines.</i> <i>A plan and diagram showing details of the proposed</i>

External Referral Body	Comments
	<p><i>excavation, including location, volume and disposal provisions.</i></p> <ul style="list-style-type: none"> <i>A documented justification for such excavation as it is noted that the plans changed with regard to the channel width. In a letter from Martens & Associates to DPI Water dated 16 June 2017 on the matter of watercourse assessment, it was specified that "No change are expected to channel width". However, the current proposal includes widening of the channel for flood alleviation purposes.</i> <i>An update watercourse assessment letter reflecting the development plan changes.</i> <i>A landscape plan should be provided for the waterfront area. Weeds removal with reasonable maintenance should be considered as well as revegetation with native plants.</i> <i>Details of any consultation or advice from other government agencies including other sections of the Department of Industry pertaining to any controlled activity within the banks or bed of a watercourse or foreshore.</i> <p>The application does not provide sufficient information to enable Department of Primary Industries (Water) of to properly assess the application and so this is included as a reason for refusal.</p>
Concurrence - NSW Roads and Maritime Services - (SEPP Infra. Traffic generating dev)	<p>The application was referred to the NSW Roads & Maritime Service (RMS) in accordance with Section 138 of the Roads Act, 1993. The RMS provided their response on 4 October 2017, which advised that they are not position to properly assess the application and requires the following to be provided for further assessment:</p> <ol style="list-style-type: none"> <i>Details of the proposed vehicle access points and the parking provisions for the proposed development, including compliance with the requirements of the relevant Australian Standards (ie: turn paths, sight distance requirements, aisle widths, etc).</i> <i>Swept path plans for the largest vehicle to enter and exit the site in a forward movement, demonstrating that vehicles can enter and exit the site simultaneously.</i> <p>The application does not provide sufficient information to enable RMS to properly assess the application and so this is included as a reason for refusal.</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 the land is contaminated.

In response to the above requirements of the SEPP, the applicant has submitted a Preliminary and Detailed Site Investigation Reports as prepared by Martens Consulting Engineers. In its detailed site investigation conclusion, the investigation states:

With the exception of asbestos, all laboratory tested samples had analyte concentrations below SAC. The asbestos SAC was exceeded due to material sample ACM01 containing Chrysotile and Amosite asbestos. Due to asbestos SAC being exceeded, the remedial advice is required for guidance of fill removal and certification. Following successful remedial implementation, we consider the site is suitable for the proposed residential development.

In this regard, Council is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation can be included conditions, if the application was recommended for approval.

SEPP (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

Division 3: Boarding Houses

Clause 25: Definition

For the purposes of this Division, the Standard Instrument defines a 'boarding house' as a building that:

*"(a) is wholly or partly let in lodgings, and
(b) provides lodgers with a principal place of residence for 3 months or more, and
(c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and
(d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,*

but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment".

In this Division 'communal living room' means "a room within a boarding house or on site that is available to all lodgers for recreational purposes, such as a lounge room, dining room, recreation room or games room".

Clause 26: Land to which this Division applies

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones:	
(a) Zone R1 General Residential, or (b) Zone R2 Low-Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High-Density Residential, or (e) Zone B1 Neighbourhood Centre, or (f) Zone B2 Local Centre, or (g) Zone B4 Mixed Use.	Consistent The site is located within the B2 Local Centre and, as such, the proposed use is permissible with consent under WLEP 2011.

Clause 27: Development to which this Division applies

(1) This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.

Requirement	Comment
(2) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low-Density Residential or within a land use zone that is equivalent to that zone in the Sydney region unless the land is within an accessible area. Note: Accessible area means land that is within: (c) 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.	Consistent The site is located within the B2 Local Centre zone and is situated not more than 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.
(3) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use or within a land use zone that is equivalent to any of those zones.	Not applicable. The site is located within the Sydney region.

Clause 28: Development may be carried out with consent

Requirement	Comment
Development to which this Division applies may	The development constitutes the construction of a

be carried out with consent.	boarding house, as defined by the Standard Instrument. Therefore, the development may be considered under this Division of the SEPP as a development which may be carried out with consent.
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Clause 29: Standards that cannot be used to refuse consent

Standard	Requirement	Proposed	Compliant/Comment
(1) Density and scale A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:	(a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or	Floor space ratios are not applied in WLEP 2011 or WDCP 2011.	Not Applicable
	(b) if the development is on land within a zone in which no residential accommodation is permitted - the existing maximum floor space ratio for any form of development permitted on the land, or	Floor space ratios are not applied in WLEP 2011 or WDCP 2011.	Not Applicable
	(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register - the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus: (i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or (ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.	The development is not upon the land in which residential flat buildings are permitted, and floor space ratios are not applied in either WLEP 2011 or WDCP 2011.	Not Applicable

(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:

(a) building height	if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land,	<p>The WLEP 2011 permits a maximum building height of 11.0m as per Clause 4.3.</p> <p>The development has a maximum building height of 19.275m when measured from the natural creek bed to the roof ridge.</p>	Not compliant (Refer to discussion under Clause 4.6 of this report)
(b) landscaped area	if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,	Because of the boundary-to-boundary setback provisions and the ground floor parking arrangements, the development does not include any ground-based landscaping. The proposal includes landscape planter box on Level 3, which is consistent with other developments along Condamine Street.	Consistent
(c) solar access	where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9 am and 3 pm in mid-winter,	<p>The development provides a communal living room on Level 3 with an area of 28.91m² and a balcony of 52.54m².</p> <p>The communal living room has glazing on the eastern and northern facades and receives at least 3 hours of direct sunlight between 9 am and 3 pm in mid-winter.</p>	Consistent
(d) private open space	<p>if at least the following private open space areas are provided (other than the front setback area):</p> <p>(i) one area of at least</p>	The communal living room (as described in Clause 29 (2)(c) above is the only communal private open space with an area of at least 20m ² with a minimum	Consistent

	<p>20m² with a minimum dimension of 3.0m is provided for the use of the lodgers,</p> <p>(ii) if accommodation is provided on site for a boarding house manager—one area of at least 8.0m² with a minimum dimension of 2.5m is provided adjacent to that accommodation,</p>	<p>dimension of 3.0m.</p> <p>The third level of the development is required to have a front setback of 5.0m, and therefore the communal living room on Level 3 achieves this requirement.</p> <p>Further, the boarding house manager room on Level 4 has a private north-east facing balcony with an area of 8m² with a minimum dimension of 2.5m.</p>	
(e) parking	<p>if:</p> <p>(i) in the case of development in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and</p> <p>(ii) in the case of development not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and</p> <p>(iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,</p>	<p>For the purpose of this assessment, 'accessible area' is defined as per the SEPP ARH:</p> <p><i>Accessible area means land that is within:</i></p> <p><i>.... (c) 400 metres walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.</i></p> <p>The site is located approximately 160m from a regularly serviced bus stop on Condamine Street.</p> <p>Therefore, the</p>	Inconsistent

		<p>development is assessed as requiring at least 0.2 parking spaces per boarding room.</p> <p>Therefore, 63 boarding rooms require a car parking provision of 12.6 spaces (rounded up to 13).</p> <p>The development provides 11 car parking spaces and is thereby deficient by 2 spaces.</p> <p>Given the location of the development along Condamine street, there is no opportunity for street parking, a full compliance with car parking requirement under the SEPP should be essential. Accordingly, the non-compliance with the car parking is not supported and included as a reason for refusal.</p>	
(f) accommodation size	<p>if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:</p> <p>(i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or</p> <p>(ii) 16 square metres in any other case.</p>	<p>The development proposes both single lodged and double lodged boarding rooms.</p> <p>The single lodged rooms have a GFA of 12.05m² excluding private kitchen and bathroom facilities.</p> <p>The double lodged rooms have a GFA of 17.84m² excluding private kitchen and bathroom facilities.</p> <p><u>*** NOTE: accessible rooms have minimal functional space once a double bed is in place.</u></p>	Consistent

	(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.	Each boarding room proposed has private kitchen and bathroom facilities.	Consistent
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Clause 30: Standards for boarding houses

Standard requirement	Proposed	Compliant/Comment
(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:		
(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,	One communal living room is provided on Level 3.	Consistent
(b) no boarding room will have a gross floor area (excluding any area used for the purposes of the private kitchen or bathroom facilities) of more than 25m ² ,	No boarding room will have a GFA excluding private kitchen and bathroom facilities greater than 25m ² .	Consistent
(c) no boarding room will be occupied by more than 2 adult lodgers,	A condition could be recommended if the application was recommended for approval ensuring that no boarding room will be occupied by more than 2 adult lodgers.	Consistent
(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,	Each boarding room has private kitchen and bathroom facilities. The communal living room also has a communal kitchenette and bathroom.	Consistent
(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,	The boarding house will have the capacity to accommodate a maximum of 116 lodgers. A designated room is provided for the boarding house manager.	Consistent.
(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,	The development is upon land in the B2 Local Centre zone which, inter alia uses, permits commercial premises (as per the WLEP 2011). Thus, no part of the ground level will be used for residential purposes.	Consistent

(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.	<p>The development provides 12 motorcycle parking spaces and 16 bicycle rack spaces.</p> <p>At the rate of 63 boarding rooms, the development is required to provide 13 rounded up motorcycle and bicycle spaces.</p> <p>The development is deficient by 1 motorcycle space.</p>	Inconsistent
(2) Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.	This application is for a new boarding house.	Not Applicable.

Clause 30: Character of the local area

The matter of assessing the character compatibility of development has been examined by the Land and Environment Court in *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 and *Project Venture Developments v Pittwater Council (2005)* NSWLEC 191 where Senior Commissioner Roseth set out Planning Principles to better evaluate how a development should respond to the character of its environment. The following provides an assessment against the Planning Principles established in those two cases.

In the case of *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 Senior Commissioner Roseth developed the following Planning Principles:

- *The first principle is that buildings in a development do not have to be single-storey to be compatible with the streetscape even where most existing buildings are single storey. The principle does not apply to conservation areas where single storey dwellings are likely to be the major reason for conservation.*

Comment:

The development consists of 5 storeys development that reaches a maximum height of 19.75m. The predominant character of the local area is one of medium density built form and scale. Buildings are generally three storeys in height. There are a number of new development along Condamine Street (including the recently approved and under construction development) that do have a fourth storey, however, these development with the 4th storeys are located towards the front of the building, which are less visible from the adjoining low-density development to the west.

In this regard, it is considered that the scale of the development is incompatible with the streetscape and inconsistent with the first principle.

- *The second principle is that where the size of a development is much greater than the other buildings in the street, it should be visually broken up so that it does not appear as one building. Sections of a building, or separate buildings should be separated by generous breaks and landscaping.*

Comment:

As discussed throughout this report, the development is considered to be much greater in size and scale in comparison with other buildings in the surrounding area and does not provide sufficient physical breaks or landscaping that would reduce the visual impact of the proposed development.

In this regard, the development is considered to be incompatible with the scale of surrounding development and inconsistent with the second principle.

- *The third principle is that where a site has existing characteristics that assist in reducing the visual dominance of development, these characteristics should be preserved. Topography that makes development appear smaller should not be modified. It is preferable to preserve existing vegetation around a site's edges to destroying it and planting new vegetation.*

Comment:

The site is generally flat and without any notable topographical features which would otherwise reduce the visual bulk and scale of the development.

The vegetation around the site is relatively sparse with the majority of landscaped areas being concentrated towards the rear of the site, which are proposed to be removed.

In this regard, it is considered that effective methods have not been employed in the design of the development to reduce its visual dominance and is inconsistent with the third principle.

- *The fourth principle is that a development should aim to reflect the materials and building forms of other buildings in the street. This is not to say that new materials and forms can never be introduced only that their introduction should be done with care and sensitivity.*

Comment:

The development, as proposed is consistent with the fourth principal in that the materials and schedule proposed for the development is consistent with surrounding development.

In this regard, the development is considered to be consistent with the fourth principle.

The above Principals were further developed in *Project Venture Developments v Pittwater Council (2005)* NSWLEC 191 to include the following:

1. Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.

Comment:

The physical impacts of the development on surrounding properties are assessed as consisting of constraints on the development potential of surrounding sites, visual, privacy, overshadowing and noise.

The physical impact of the development is not acceptable as there is a direct impact on the surrounding residential development to the north, which has been granted approval for shop top housing and

residential to the west will also be impacted on in terms of visual impact.

2. *Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

Comment:

As discussed throughout this report and within this planning principle, the development is not considered to result in an appearance that is in harmony with the buildings around it and the character of the street.

The development is considered to be inconsistent with this principle.

Conclusion to character assessment

The above character assessment has found that, in the context of the Land and Environment Court Planning Principles, the proposal is incompatible with the character of the local area and surrounding wider locality.

This matter warrants the refusal of the Development Application.

SEPP (Infrastructure) 2007

Clause 45 - Ausgrid

Clause 45 of SEPP Infrastructure requires the Consent Authority to consider any development application (or an application for modification of a 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 5m 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 5m of an overhead electrical power line

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Clause 102 – Impact of road noise or vibration on no-road development

Clause 102 applies to residential development adjacent to a road corridor or freeway with an annual average daily traffic volume of more than 40,000 vehicles and which the consent authority considers would be likely to be adversely affected by road noise or vibration.

The RMS has published traffic volume maps for NSW ('Traffic Volume Maps for Noise Assessment for Building on Land Adjacent to Busy Roads'). The noise assessment for the development is indicated on Map 12 as mandatory under Clause 102 of the SEPP as the volume of traffic along Condamine Street exceeds 40,000 vehicles.

Clause 102(2) also requires the consent authority to consider any guidelines that are issued by the Director-General for the purposes of this clause and published in the Gazette. The supporting guidelines (as published by The Department of Planning in 2008) guide development adjacent to railway lines and along motorways, tollways, freeways, transitways and other 'busy' roads. For new residential developments, internal noise levels of 35 dB(A) have been set for bedrooms during the night-time period and 40 dB(A) for other habitable rooms.

Clause 102(3) prohibits the consent authority from granting consent to residential development adjacent to a road corridor or freeway unless it is satisfied that appropriate measures will be taken to ensure that the above-mentioned LAeq levels are not exceeded. In response, the applicant has submitted an acoustic report, prepared by Rodney Stevens Acoustic, dated 6 July 2017. The report concludes that subject to adopting the recommendation of the report, the application is satisfactory in addressing the requirements of Clause 102.

In this regard, the consent authority can be satisfied that appropriate measures will be taken to address Clause 102 subject to conditions.

Schedule 3 – Traffic generating development to be referred to the Roads and Maritime Services (RMS)

Schedule 3 of the SEPP requires that the following developments are referred to the RMS as Traffic Generating Development, as the development proposes a vehicular access from Condamine Street which is a Classified Road. As such, the development triggers a requirement to refer the application to the RMS under Column 3 of Schedule 3.

The RMS has provided their response which advises that insufficient information has been provided for RMS to properly assess the traffic impact of the development application. In this regard, the following information has been requested by the RMS:

1. *Details of the proposed vehicle access points and the parking provisions for the proposed development, including compliance with the requirements of the relevant Australian Standards (ie: turn paths, sight distance requirements, aisle widths, etc).*
2. *Swept path plans for the largest vehicle to enter and exit the site in a forward movement, demonstrating that vehicles can enter and exit the site simultaneously.*

Given the above, this issue has been included as a reason for refusal.

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?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11.0m	19.275m	75.2%	No

Compliance Assessment

Clause	Compliance with Requirements
Part 2 Permitted or prohibited development	Yes
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
5.3 Development near zone boundaries	No
5.9AA Trees or vegetation not prescribed by development control plan	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.3 Flood planning	No
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard has taken into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement:	11.0m
Proposed:	19.275m
Is the planning control in question a development standard?	YES
Is the non-compliance with to the clause requirement a Numerical and/or Performance based variation?	Numerical
If numerical enter a % variation to requirement	75.2%

The proposal must satisfy the objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the WLEP 2011. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the WLEP 2011 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the WLEP 2011 are:

(1) The objectives of this clause are as follows:

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

development,

Comment: The proposed height and number of storeys proposed is considered excessive and will set an undesirable precedent for the locality that envisages 11m/3 storey development. Accordingly, the height of the proposed development is not compatible and would be excessive in terms of its scale as compared to other developments in the surrounding locality.

Therefore, the development is considered to be inconsistent with this objective and this is included as a reason for refusal.

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

Comment: The visual impact of the proposal on the adjoining development is found to be unacceptable. The impact of the proposal have not been “minimised” and a compliant building would achieve greater consistency with this objective. The visual impact of the development is unacceptable in its current form.

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

Comment: The site is not located within visual proximity to a coastal or bush environment such that it would have an adverse impact.

It is considered that the development satisfies this objective.

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

Comment: Although not readily visible from any parks and reserves, the development will be visible from the public domain of Condamine Street and Pitt Street to the west of the site.

The visual impact of the development when viewed from the Condamine street and surrounding public streets including Pitt Street is inconsistent with this objective.

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the B2 Local Centre zone.

The underlying objectives of the B2 Local Centre zone

- *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 proposed development does not provide any form of retail and business uses at the ground level, which will serve the needs of people who live in, work in and visit the local area.

It is considered that the development does not satisfy this objective.

- *To encourage employment opportunities in accessible location's.*

Comment: Apart from the requirement of having one (1) on-site manager for the boarding house, there are no other uses (such as retail and business) uses provided that will provide employment opportunities.

It is considered that the development does not satisfy this objective.

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

Comment: The Manly Vale local centre is limited in available public and private non-residential car parking which could serve to encourage residents and patrons to use alternative means of transport, including walking and cycling.

It is noted that the site is located within walking distance to two bus stops which service high-frequency Sydney Bus routes running through the centre via the main thoroughfare of Condamine Street.

The development will increase the residential population of the centre area which could, in turn, increase public transport patronage, particularly commuters to the Sydney CBD, Warringah Mall and Dee Why.

It is considered that the development satisfies this objective.

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

Comment: The development includes sufficient sightlines to the north and south of the driveway intersection to enable safe pedestrian safety.

It is considered that the development satisfies this objective.

It is considered that the development satisfies this objective.

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

Comment: The proposed development has been conceived on the basis that the subject site is a constraint in terms of the location of the creek. The site should be developed to some extent in a special manner with strong corner definition and built form that emphasizes its unique location, but this should be carried out in a manner which is generally consistent with the applicable planning controls under.

However, when it comes to the overall building height limit in metres and number of storeys, the proposal exceeds the maximum allowable height and number of storey control for no discernable reason apart from incorporating additional rooms. Therefore, the non-compliance with the development standards in relation ultimately determines the scale of the building, cannot be supported. The building should substantially be reduced in height and scale and mass to be consistent with this objective.

It is considered that the development does not satisfy this objective.

- *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 rear of the site abuts the R2 Low-Density Residential zone which predominantly consists of low density detached style residential dwellings in landscaped settings.

The development, the subject of this application, will impact upon the amenity of the neighbouring residential zone in terms of the visual impact as discussed in this report.

It is considered that the development does not satisfy this objective.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the WLEP 2011?

(1) The objectives of this clause are as follows:

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

Comment: The proposed variation does not provide an appropriate degree of flexibility. The proposed variation contributes to the inconsistency of the development with the objectives of the B2 zone, Clause 4.3 of the WLEP 2011 and inconsistent with the existing local character.

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

Comment: The proposed variation does not achieve a better outcome for or from the development and is therefore not supported.

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

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

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

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

Comment: As indicated previously in this report, the proposal exceeds the maximum allowable height for no discernable reason apart from incorporating additional boarding rooms. The applicant has failed to sufficiently justify that compliance with the development standard is unreasonable or unnecessary in this instance or to provide sufficient environmental planning grounds to justify contravening the height of buildings development standard.

The proposal is inconsistent with the objectives of the height of buildings development standard and B2 zone and is not considered to be in the public interest.

(4) Development consent must not be granted for development that contravenes a development

standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

Comment: It is considered that the written statement provided by the applicant has failed to sufficiently justify that compliance with the development standard is unreasonable or unnecessary in this instance or to provide sufficient environmental planning grounds to justify contravening the height of buildings development standard.

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

Comment: The proposed development in its current form is considered contrary to the public interest because of its incompatibility with the surrounding environment.

It is considered that it is in the public interest in this case to maintain the standard contained in environment planning instruments which have been duly prepared with public consultation. It is considered that these documents are also a measure of the public interest. Therefore, it is considered that the proposal is contrary to the public interest.

For reasons detailed above, the proposal is considered to be inconsistent with the objectives of the B2 Local Centre zone in the WLEP 2011.

(b) the concurrence of the Director-General has been obtained

Comment: Given the inconsistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of buildings Development Standard can not be assumed.

6.3 Flood planning

This clause applies to land below the flood planning level and requires consideration of flood impacts. The subject site is identified as flood-prone land being affected by the Probable Maximum Flood levels. The land is identified as having a High Risk of Flooding.

A flood risk assessment has been submitted with the application, as prepared by BMY WBM Pty Ltd, dated July 2017. The report provides the following conclusions:

"This Flood Impact Assessment has included the refinement of an existing TUFLOW hydraulic model developed by BMT WBM for the Manly Lagoon Flood Study (2013). The refined model has then been used to define existing flood conditions for a range of flood magnitudes and form a baseline with which to assess potential flood impacts associated with the proposed development.

The proposed development at 255 Condamine Street, Manly Vale, largely satisfies the flooding requirements within Council's DCP and LEP as detailed in Section 4.2. However, there may be some issues with localised

flood impacts and/or velocities to resolve. The Flood Emergency Response Plan strategy will also require development through to an adopted Plan, once a proposed development layout/configuration has been accepted by Council.

The existing design flood conditions for a range of flood event magnitudes are represented in Appendix A through a flood mapping series, incorporating peak flood extents, levels, depth and velocity distribution. Overall, the developed flood conditions are largely compatible with existing conditions in the vicinity of the site. The impacts of the proposed development are presented in terms of relative change from the existing peak flood level and peak flood velocity distributions, as presented in Appendix B and Appendix C respectively. The post-development flood conditions are presented in Appendix D for comparison.

The setting of the ground floor parking level above the 1% AEP flood and the habitable floor levels above the PMF serves to minimise risk to property and risk to life associated with flooding of the site. In order to minimise flood damages within the parking area and ground floor entrance area during the event of a major flood, essential services such as electrics should be situated above the FPL of 11.5 m AHD. The building components below the FPL should also be constructed from flood compatible materials".

The flooding issues have been assessed by Council's Development Flood Engineer, as detailed in the referral section of this report. A number of issues of concern have been raised in relation to the submitted information, which warrants the refusal of the application.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B2 Number of storeys	3	5	2 Floors (66.6%)	No
B5 Side Boundary Setbacks	North - Merit Assessment	GL - 0.0m - 3.0m 1L to 4L - 0.0m - 1.9m	- -	Yes
	South - Merit Assessment	GL to 4L - 0.0m	-	Yes
B7 Front Boundary Setbacks Condamine Street	GL and 1L - Aligned to Street Frontage	GL to 1L - Nil	-	Yes
	2L and up - 5.0m	2L - Nil 3L and up- 5.0m	100% -	No Yes
B9 Rear Boundary Setbacks	Merit Assessment	GL to 4L- 6.0m	-	Yes

- Ground Level - GL
- First Level - 1L
- Second Level - 2L
- Third Level - 3L
- Fourth Level - 4L

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
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	Yes	Yes
C3 Parking Facilities	N/A	N/A
C4 Stormwater	N/A	N/A
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	No	No
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	No	No
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D15 Side and Rear Fences	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	No	No
E8 Waterways and Riparian Lands	No	No
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	No	No
F1 Local and Neighbourhood Centres	No	No

Detailed Assessment

B2 Number of Storeys

Description of non-compliance

The development does not comply with the control in that it proposes the construction of five (5) storeys which exceeds the control by two (2) storeys.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

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

Comment: The development is located within the medium density area of the Manly Vale local centre and is currently sandwiched between two established commercial developments which achieve heights of between two (2) and four (4) storeys.

The site to the north of the subject site has recently been granted approval for shop-top housing, that is prominently 3-storey development with the 4th storey located towards the front of the site. The development was also required to provide a substantial setback to the west and southern boundaries.

The proposal is a large-scale development that provides no articulation to the side and rear boundaries. In this context, the proposed scale of the development will not be commensurate to that of neighbouring development within the local centre, the development will visually dominate its surrounds and will be noticeable from the streetscape.

The proposal does not satisfy this Objective.

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

Comment: The proposed development does not maintain the visual continuity and patterns of buildings nor protect and enhance the visual quality of the streetscape.

The development will not impact upon views from waterways or land zoned for public recreation purposes.

The proposal does not satisfy this Objective.

- *To provide equitable sharing of views to and from the public and private properties.*

Comment: The development will infill the site to achieve a height of 19.275m. The infilling of this site to that height will obstruct east-facing views from the afore-mentioned neighbouring residential properties to the west.

The proposal does not satisfy this Objective.

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

Comment: The development does not provide reasonable amenity level to the adjoining and nearby properties with regards to its visual impact.

The proposal does not satisfy this Objective.

- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Comment: The development provides for a flat roof form which is stepped down the site to follow the topography. This provides sufficient variation to the roof form.

The proposal satisfies this Objective.

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

Comment: The development exceeds the permitted 11.0m overall building height as stipulated under the Height of Buildings Development Standard in the WLEP 2011 by 8.275m. The non-compliant overall building height has been assessed against the provisions of Clause 4.6 under the WLEP and was found to be inconsistent with the Objectives of the Development Standard and the Objectives of the zone. In this respect, the non-compliance is not supported.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

B6 Merit Assessment of Side Boundary Setbacks

The development does not satisfy the objectives of this Clause. In particular, the setback of the proposed upper storeys does not minimise the visual impact of the development, when viewed from the adjoining development to the north and south.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

B7 Front Boundary Setbacks

Description of non-compliance

The control stipulates the following requirements:

- Ground and first floors of the building: Aligned to street frontage.
- For any storey above the first floor: 5.0m.

The non-compliance relates to the 2nd Level at nil setback, which is required to be setback 5m

Merit consideration:

The proposed development does satisfy the objectives of this control, the development adds to unreasonable building bulk and scale to the Street (Condamine Street). The non-compliance is particularly noticeable due to the building height and number of storeys non-compliances.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the

Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

B10 Merit assessment of rear boundary setbacks

The development does not satisfy the objectives of this Clause. In particular, the setback of the proposed upper storeys does not minimise the visual impact of the development, when viewed from the adjoining development to the west.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

C6 Building over or adjacent to Constructed Council Drainage Easements

The proposal is to build over an existing open channel which is not supported by Council. This issue is discussed in detail in the referral section of this report and included as reason for refusal.

D6 Access to Sunlight

The Development Application includes certified shadow diagrams which indicate that the development will create additional overshadowing to the neighbouring properties to the south and west of the subject site. whilst it can be argued that the level of overshadowing is compliant with Clause D6– Access to Sunlight.

However, the level of overshadowing cast by the development can be reduced by lowering the building height, increasing the side setbacks, and having a break in the building, such that the development provides two separate buildings which would be consistent with other developments along Condamine Street (recently approved or under construction). However, this would require a re-design of the development and is beyond the scope of this particular Development Application.

D9 Building Bulk

Clause D9 requires buildings to have a visual bulk and an architectural scale that is consistent with structures on adjoining or nearby land. The bulk of the development is addressed in detail in the various sections of this report, where there are a number of concerns that are raised in relation to the bulk of the proposed buildings.

In summary, the assessment has found that the vertical and horizontal massing of development, when viewed from the front, side and rear elevations, results in a visually dominant building bulk that has no sympathetic relationship to the majority of buildings in the locality.

Accordingly, the proposed development is found to be inconsistent with the requirement of Clause D9 and this issue has been included as a reason for refusal.

F1 Local and Neighbourhood Centres

The control requires development on Condamine Street to be enhanced by ensuring the design of

buildings and use of land maintains activity at street level and creates a cohesive and attractive streetscape. Vehicle access will be provided from streets other than Condamine Street.

Comment: The proposed development does not provide any form retail/business uses on the ground floor level, so there is no activity at street level to create a cohesive and attractive streetscape. Accordingly, the proposed development does not comply with the requirement of this control.

In relation to the Vehicle access requirement, the site does not have any other access apart from Condamine Street.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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.

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

The proposed land use is permissible with consent pursuant to the provisions of SEPP (Affordable Rental Housing) 2009 and WLEP 2011 and has been assessed in accordance with the current planning controls applying to the site. An assessment of the proposal against the relevant planning controls has found that the building height/ number of storey sought by the proposal exceeds that is envisaged for

the site, particularly having regard to the visual impact and streetscape appearance of the proposed building form and the lack of landscaping provided for a development of this location, scale and configuration

There are a number of possible options for this development to occur on this site, such that it is designed in a manner that is consistent with the applicable planning controls and a development that is a more sympathetic development outcome for the site; one that is responsive to the constraints of the site and the streetscape.

The application was referred to internal departments and external authorities. In the responses, the Department of Primary Industries (Water) and Roads and has declined to issue their General Terms of Approval due to insufficient information to properly assess the application and determine its suitability, thereby prohibiting the consent authority from issuing consent under the provisions of Section 91A of the Environmental Planning and Assessment Act 1979.

NSW Roads & Maritime Service (RMS) has also requested additional information and a number of Council's internal referral bodies have each raised fundamental concerns in relation to the development, and its associated environmental impacts.

The public exhibition of the DA resulted in a total of 13 individual submissions, including both concerned residents and a number who supported the proposal. Those objecting to the proposal raised concerns primarily on the basis of the height and consequent visual impact of the development, floor and impact on the creek, and the amount of additional traffic that would be generated by the development. Those supporting the development raised the benefits of providing well design affordable housing on the site.

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 Northern Beaches Development Assessment Panel – Central , as the consent authority REFUSE Development Consent to Development Application No DA2017/0708 for the Demolition Works and Construction of Boarding House made pursuant to the SEPP Affordable Rental Housing 2009 on land at Lot 8 DP 604034,255 Condamine Street, MANLY VALE, for the reasons outlined as follows:

1. Pursuant to Section 91 of the *Environmental Planning and Assessment Act, 1979*, the Department of Primary Industries (Water) has not granted its General Terms of Approval that are required in order for the development application to be consented to.
2. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009.
3. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted with the application to address the requirement of Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007.
4. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
5. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone B2 Local Centre of the Warringah Local Environmental Plan 2011.
6. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of Buildings of the Warringah Local Environmental Plan 2011.
7. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.3 Flood Planning of the Warringah Local Environmental Plan 2011 and Clause E11 Flood Prone Land of Warringah Development Control Plan.
8. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B2 Number of Storeys of the Warringah Development Control Plan.
9. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B7 Front Boundary Setbacks of the Warringah Development Control Plan.
10. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the objectives of Clause B6 and B10 Merit Assessment of Side and Rear Boundary Setbacks of the Warringah Development Control Plan.
11. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C9 Waste

Management of the Warringah Development Control Plan.

12. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan.
13. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause E6 Retaining Unique Environmental Features and Clause E8 Waterways and Riparian Lands of the Warringah Development Control Plan.
14. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause F1 local and Neighbourhood Centres of the Warringah Development Control Plan.
15. Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest as the development results in adverse impacts on the built and natural environment.