

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2021/0014
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Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 21 DP 11320, 323 - 325 Condamine Street MANLY VALE NSW 2093 Lot 22 DP 11320, 323 - 325 Condamine Street MANLY VALE NSW 2093 Lot 123 DP 737259, 327 - 329 Condamine Street MANLY VALE NSW 2093 Lot 25 DP 11320, 331 Condamine Street MANLY VALE NSW 2093 Lot 20 DP 11320, 321 Condamine Street MANLY VALE NSW 2093
Proposed Development:	Review of Determination of Application DA2020/0824 for demolition works and construction of a shop top housing development and strata subdivision
Zoning:	Warringah LEP2011 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Manly Vale Developments No.2 Pty Ltd
Applicant:	Manly Vale Developments No.2 Pty Ltd

Application Lodged:	15/04/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	09/08/2021 to 23/08/2021
Advertised:	09/08/2021
Submissions Received:	5
Clause 4.6 Variation:	4.3 Height of buildings: 26.8%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 11,279,007.00
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EXECUTIVE SUMMARY

The application seeks a review of the determination of DA2020/0824, which was refused by the NBLPP

on 16 December 2020. The four storey shop top housing development was refused due to the extent of the height exceedance, the inadequacy of the clause 4.6 submission, the visual impact of the non-compliant top floor, conflicting vehicular and pedestrian arrangements, and inconsistency with SEPP 65 and the ADG, specifically with regard to solar access, natural ventilation, ceiling heights and building separation to the west.

In response to the refusal of DA2020/0824, the review application has been accompanied by amended plans to reduce the number of units proposed (from 31 to 27), with an increase to the size of the internal light well, and changes to the internal layout of the upper floors and the facades of the development. The application now also proposes the dedication of land along Somerville Place (under a proposed Voluntary Planning Agreement offer) to facilitate the widening of the laneway.

Despite these amendments, the majority of the matters identified in the reasons for refusal remain unsatisfactory and as a consequence of the changes to the design, new issues and areas of non-compliance have now arisen. The proposal remains non-compliant with the maximum building height development standard, with the entirety of the upper floor protruding above the 11m height plane and one storey above the three storey height limit. The massing of the development, with nil setbacks to each boundary on Levels 2 and 3, is at odds with that of surrounding and nearby development, and results in unreasonable impacts upon the amenity of adjoining dwellings and the character of the streetscape.

Submissions were received from five (5) nearby residents and business owners in objection to the development, primarily concerned with regard to the bulk and scale of the development, the transition to the low density land to the west, and impacts upon the laneway. With the exception of concerns regarding the laneway, these concerns remain unaddressed in the amended proposal, despite forming part of the reason for the refusal of the original application.

The application significantly departs from numerous applicable controls prescribed by WLEP 2011, WDCP 2011 and the ADG, and overall, the proposal presents as an over development of the site. The application is referred to the NBLPP with a recommendation of refusal.

PROPOSED DEVELOPMENT IN DETAIL

The application has been lodged under the provisions of section 8.3 of the EP&A Act seeking a review of the refusal of development application DA2020/0824, which sought consent for:

- the demolition of all existing site improvements,
- the construction of a four storey shop top housing development comprising 31 residential units and 4 retail tenancies, over two levels of basement car parking,
- associated earthworks, landscaping and infrastructure, and
- the strata subdivision of the resultant development.

In response to the refusal of DA2020/0824 and in response to Council's preliminary review of the subject application, the development has been amended and consent is now sought for the following:

- the demolition of all existing site improvements,
- the construction of a four storey shop top housing development comprising 27 residential units and 4 retail tenancies over two levels of basement car parking,
- associated earthworks, landscaping and infrastructure,
- reconstruction of Somerville Place and the dedication of a 1.5m wide strip of land adjacent to Somerville Place to Council (subject to a draft VPA offer), and
- the strata subdivision of the resultant development.

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

Environmental Planning and Assessment Act 1979 - Section 8.3 -
Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - Zone B2 Local Centre
Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - 6.2 Earthworks
Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
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 - C2 Traffic, Access and Safety
Warringah Development Control Plan - D2 Private Open Space
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk
Warringah Development Control Plan - D18 Accessibility and Adaptability
Warringah Development Control Plan - F1 Local and Neighbourhood Centres

SITE DESCRIPTION

Property Description:	Lot 21 DP 11320 , 323 - 325 Condamine Street MANLY VALE NSW 2093 Lot 22 DP 11320 , 323 - 325 Condamine Street MANLY VALE NSW 2093 Lot 123 DP 737259 , 327 - 329 Condamine Street MANLY VALE NSW 2093 Lot 25 DP 11320 , 331 Condamine Street MANLY VALE NSW 2093
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	Lot 20 DP 11320 , 321 Condamine Street MANLY VALE NSW 2093
Detailed Site Description:	<p>When consolidated, the site is irregular in shape with a 35.645m wide frontage to Condamine Street (east), a 31.090m wide frontage to Sunshine Street (south), a 38.075m wide frontage to Somerville Place (west) and a total area of 1274.4m². The site experiences a cross fall from the upper north-western corner down towards the south-eastern corner of approximately 1.87m and a maximum gradient of 5.5%.</p> <p>The site currently contains one and two storey mixed use buildings with vehicular access and parking gained via Somerville Place.</p> <p>Condamine Street is a six-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 covered footpath, with no street trees or overhead infrastructure.</p> <p>Sunshine Street is a two-lane local road, with time restricted parking on both sides of the street. The Sunshine Street road reserve immediately adjacent to the site comprises a covered footpath, with no street trees or overhead infrastructure.</p> <p>Somerville Place is a single lane, one-way laneway that connects between Sunshine Street and King Street to the north.</p> <p>The western side of Condamine Street contains commercial and shop top housing developments of varying age, character and scale, including older single storey retail premises and more recent three-five storey shop top housing development. The eastern side of Condamine Street is more varied again, inclusive of retail premises, the Manly Vale Community Centre, residential development and shop top housing development.</p> <p>Low density residential development is located immediately to the west of the site, on the opposite side of Somerville Place.</p>

Map:



SITE HISTORY

On 13 October 2019, a pre-lodgement meeting was held in relation to the redevelopment of the subject site for the purpose of a four storey shop top housing development.

On 24 July 2020, DA2020/0824 was lodged with Council.

On 16 December 2020, DA2020/0824 was refused by the NBLPP for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy 65 - Design Quality of Residential Flat Development. The development fails to comply with the provision of SEPP 65, in particular relating to the principals of context and the requirements of the Apartment Design Guide in relation to solar access, cross ventilation and building separation to the residential zoned land to the west. The development does not provide adequate floor to ceiling heights for the retail tenancies 3 and 4 and the residential lobby accessed from Sunshine Street as required by SEPP 65.
2. **Building Height**
Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011. In this regard, the Panel is not satisfied that the applicant's written request demonstrates there are sufficient environmental planning grounds to justify contravening the development standard. The Panel is not satisfied that the development will be in the public interest as the development is not consistent with the objectives of the height of buildings development standard regarding compatibility with the height, bulk and scale of nearby developments and that the development will minimise visual impact of the top floor (Level 3) from the public domain and surrounding lands.
3. **Building Setbacks (Top floor)**
Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B5 Side Boundary Setbacks of the Warringah Development Control Plan. The upper floor is not sufficiently setback

to minimise the visual impact of level three as viewed from the surrounding lands and public domain.

4. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C2 Traffic, Access and Safety of the Warringah Development Control Plan. The development does not result in a satisfactory outcome with regards to pedestrian and vehicle safety along Somerville Place due to the width of the existing laneway and the intensity of the development proposed.*

The minutes from the NBLPP meeting on 16 December 2020 provide the following reasons for this determination:

The Panel generally agrees with the assessment report, with the exception of the assessment of the clause 4.6 written request. The Panel does not consider there to be sufficient environmental planning grounds to justify contravening the development standard. The Panel considers the bulk and scale of the building to be inconsistent with the surrounding developments, in particular the upper level (level 3) of the development, which is not sufficiently setback from each street frontage to minimise the visibility of the top floor as viewed from the surrounding lands.

On 15 April 2021, the review application was lodged with Council. At the time of lodgement, the application sought consent for the following:

- the demolition of all existing site improvements,
- the construction of a four storey shop top housing development comprising 30 residential units and 4 retail tenancies over two levels of basement car parking,
- associated earthworks, landscaping and infrastructure,
- the dedication of a 1.5m wide strip of land adjacent to Somerville Place to Council (subject to a VPA), and
- the strata subdivision of the resultant development.

On 28 June 2021, Council requested amendments and/or additional information in relation to the following:

- internal amenity of the proposed residential units, specifically in relation to solar access, natural ventilation, areas of private open space, internal layouts, and accessibility/adaptability,
- visual privacy, specifically in relation to overlooking of the adjoining dwelling to the west,
- building height non-compliance,
- adaptability, noting the absence of an updated accessibility report,
- vehicular access,
- treatment of the 1.4m strip of land to be dedicated to Council,
- stormwater management,
- ceiling heights of retail tenancies, and
- treatment of the public road reserve.

On 30 July 2021, amended architectural, civil and landscape plans were received by Council. The amended plans demonstrated further amendment to the design and layout of the upper levels, including a reduction from 30 units to 27 units. The civil and landscape plans also detailed the treatment of the land to be dedicated to Council, removing the proposed landscaping to be replaced by a widened roadway.

On 2 September 2021, an amended Clause 4.6 submission, amended stormwater plans, swept path

diagrams, and an amended BASIX Certificate were provided to Council.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Evaluation

Section 4.15 (1) Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for commercial purposes for an extended period of time. The proposal was supported by a Preliminary Site Investigation Report that confirms that there is a low risk of potential contamination. See further discussion with respect to SEPP 55.
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&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested and subsequently provided during the assessment process.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the</p>

Section 4.15 (1) Matters for Consideration	Comments
	issue of a Construction Certificate. This matter can be addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed 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	This assessment has found the proposal to be contrary to the relevant requirements of the WLEP 2011, WDCP 2011 and SEPP 65 and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

Section 8.3 Application for and conduct of review

In accordance with Section 8.3 of the EP&A Act, an applicant may request a review of a determination of a development application. As the development application was determined within the 'prescribed period', the review must be lodged and determined within 12 months of the date of determination of the development application. The prescribed period is the period commencing on 25 March 2020 and ending on 25 March 2022, which was included in the *COVID-19 Legislation Amendment (Emergency Measures - Miscellaneous) Bill 2020* to provide additional measures to mitigate the impacts of the current pandemic. To meet this requirement, noting that the development application was determined on 16 December 2020, the subject review application must be determined before 16 December 2021.

Section 8.3(3) provides that whilst the applicant may amend the proposal, the consent authority must be satisfied that the amended proposal presented in the review application remains substantially the same as that considered in the original development application. The applicant has made changes to the development, including the reduction of 31 units to 27 units. However, despite the change to the density of the development, the proposal is considered to remain essentially and materially the same as that previously proposed, and thus Council can be satisfied in this regard.

Section 8.3(5) prescribes that an application to review a decision by a local planning panel must also be determined by the local planning panel. As such, the application is referred to the NBLPP for determination.

Overall, the review application is consistent with the provisions of section 8.3 of the EP&A Act, subject to the matter being determined before 16 December 2021.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 09/08/2021 to 23/08/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Tiles By Kate - Classic Tileworld	337 Condamine Street MANLY VALE NSW 2093
Mr Elia Francis Chahwan	2 Sunshine Street MANLY VALE NSW 2093
Ms Stephanie Mary Dryden	4 / 254 Condamine Street MANLY VALE NSW 2093
Ms Roslyn Leigh Rose	77 Wearden Road FRENCHS FOREST NSW 2086
Mr Dominic Leonard Ms Lauren Kelly	8 Sunshine Street MANLY VALE NSW 2093

In some instances, Council received multiple submissions from the same property owner. In accordance with Council's Community Participation Plan, multiple submissions from one property are counted as one submission.

Each of the five (5) submissions received were in objection to the proposed development. The concerns raised in the submissions received are addressed as follows:

- **Proximity of development to dwellings on Sunshine Street**

Submissions were received in objection to the limited setback between the proposed development and adjacent dwelling houses. In particular, the submissions highlight non-compliance with the provisions of the ADG that identify the need for greater setbacks on sites that transition to low density. The submissions state that the proximity of the development is exacerbated by the sheer number of units oriented towards the dwellings to the west, the lack of appropriate screening to areas of private open space, and the removal of the landscaping previously proposed along Somerville Lane.

As discussed with regard to the ADG and clause B6 (Merit Assessment of Side Setback) of WDCP 2011, the proposed development does not provide an appropriate transition to the low density development to the west, and the impacts upon the amenity of the adjoining dwelling are unacceptable. The application is recommended for refusal in this regard.

- **Visual impact of fourth floor**

Objection has been raised in regards to the proposed incorporation of a fourth floor, inconsistent with the three storey height limit prescribed by WDCP 2011. The additional floor is said to add excessive bulk to the development, particularly as seen from the low density zone to the west. The overall bulk and scale of the development is excessive and the proposal is recommended for refusal in this regard.

- **Parking**

Submissions have been received in objection to the development on the grounds of insufficient parking. The submissions suggest that the provision of 1 space for 2 bedroom units is inadequate, and question where the additional cars are to be parked. The proposed development exceeds the minimum parking requirements prescribed by WDCP 2011. The site is located in a highly accessible location with excellent public transport services. It is anticipated that this will reduce demand for private vehicles at the site and in the general area.

- **Bulk, scale and character**

Submissions received state that the development is out of character with the locality, with excessive bulk and scale presenting to the public domain. The proposal exceeds the maximum building height development standard, the number of storeys control and all minimum front and side setback controls. The proposed building sits one storey higher than the tallest neighbouring development and is uncharacteristic of the massing and scale of nearby built form. The proposal is recommended for refusal in this regard.

- **Construction traffic management**

Submissions have been received raising concerns with regard to construction traffic management, with nearby business owners concerned regarding the obstruction of the rear one-way laneway. The submissions suggest that the two-way travel should be permitted during construction.

Should the application be approved, conditions of consent can be imposed to ensure appropriate traffic management during construction. However, the laneway is too narrow to accommodate two-way travel, even in the short term.

- **Traffic**

Submissions have been received in objection to the resultant additional traffic utilising the laneway post construction. The application was supported by a Traffic and Parking Assessment which confirms that the traffic associated with the proposed development is not unreasonable and will not exceed the capacity of the laneway. The report has been endorsed by Council's Traffic Engineer in this regard.

- **Exhaust**

Concern has been raised with regard to exhaust from the basement carpark. The exhaust from the basement carpark is to be expelled from the roof, in accordance with relevant Australian Standards.

- **Drainage**

The adjoining property owner has raised concerns with regard to drainage along the laneway, and potential impacts upon their property. The application proposes to upgrade the existing laneway adjacent to the development site, inclusive of all stormwater infrastructure. The stormwater plans have been reviewed by Council's Development Engineer and no concerns are raised in this regard.

- **Treatment of Somerville Lane**

The adjoining property owner has raised concern with regard to the design and construction of

the laneway, requesting the removal of the kerb and gutter along the western edge (to be replaced by rollback kerb), and the installation of no parking signs and speed bumps. The applicant has provided civil plans detailing the construction of the proposed roadworks, which have been supported by Council's Development Engineer and Traffic Engineer. The use of roll back kerb and the installation of speed humps are not supported.

- **Request for additional vehicle access**

The adjoining property owner has made a request for additional vehicular access to their property from Somerville Lane. Such a request should be made separately to Council under the provisions of s138 of the Roads Act.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>No objection.</p> <p><i>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</i></p> <p><i>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</i></p>
Environmental Health (Contaminated Lands)	<p>No objection, with conditions.</p> <p><i>Demolition of a number of structures (likely) containing hazardous materials such as asbestos and lead based paints, an environmental report was reviewed. Based on the findings in the report, Environmental health are satisfied that the development works can comply with the State requirements for control of contaminated land and hazardous materials by following the recommendations put forward in the environmental report.</i></p>
Environmental Health (Industrial)	<p>No objection, with conditions.</p> <p><i>Environmental health analysis of a proposal for 'shop top housing'. Combination of rooftop exhausts with 33 air conditioning units adjacent existing residential dwellings -consideration of potential noise impacts. Based on the Noise Policy for Industry recommendations and the lowest background measurements in the acoustic report, an industrial interface, RBL/intrusive noise trigger level (Urban, night time) is set at 45 dB(A). The applicant has provided calculations for distance and parapet attenuation (dampening), and a cumulative noise level for rooftop mechanical plant as 44 dB(A). This sits within the allowable noise-creating provisions and will likely only be discernible on the quietest nights when all mechanical plant are operating. Rock breaking of low-medium strength bedrock will have to occur during excavation, therefore surrounding residences will need to be notified of those activities (at least) one week prior. We have not recommended restrictions on operating hours for commercial/retail operations as this</i></p>

Internal Referral Body	Comments
	<p><i>can be done if/when a DA is submitted for the use of each space.</i></p>
Landscape Officer	<p>No objection, with conditions.</p> <p><i>The application is for review of determination under section 8.2(1)(a) of the EPA Act for development application DA2020/0824.</i></p> <p><i>The development application is for demolition of existing site structures and the construction of a shop top housing development located on land zoned B2 Local Centre, and associated works including landscape works.</i></p> <p><i>The application is assessed by Landscape Referral against State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP65), and associated Apartment Design Guide (ADG), and Warringah Local Environmental Plan (WLEP) and Warringah Development Control Plan 2011 (WDCP), including but not limited to the following clauses:</i></p> <ul style="list-style-type: none"> <i>• Principle 5: Landscape, of SEPP65 requires " that ... landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenitywell designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood. Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity...."</i> <i>• WLEP: it is noted that no deep soil requirements exist under Warringah Local Environmental Plan for land zoned B2 Local Centre.</i> <p><i>Landscape Plans are provided with the application including on structure planters within the site. The planters to the landscaped lightwells support taller palm species suitable for the light levels and the depth of planters shall be 1 metre, and all other planters to terraces and boundaries shall be 600mm soil depth. Additionally the Landscape Plans include public domain proposals for paving and street tree planting.</i></p> <p><i>The public domain works within the road reserve verge shall be part of a road reserve works application under section 138 and 139 of the Roads Act, and subject to conditions of consent. The street tree planting proposed shall be altered to satisfy Council's standard street tree planting detail that requires the tree pit to be located at the back of kerb, and the species type selection shall be based on a suitable outcome in consideration of the constraints of underground utilities across the road verge. Street tree planting locations, species and size shall be as selected and advised by Council.</i></p> <p><i>Under the Apartment Design Guide, section 4T Awnings and Signs, and in consideration of the Northern Beaches Public Space Vision & Design Guidelines under section D12.2 Street Awnings, the awning structure shall be a continuous awning across the frontage, and shall be setback to provide a minimum 1.5 metre from the face of the kerb</i></p>

Internal Referral Body	Comments
	<p><i>to accommodate utility poles and street trees. Such awning design over the public road verge encourages pedestrian activity along streets and in conjunction with active frontages, and together with building entries provides a public address, thereby contributing to the identity of a development, and additionally provides shelter from the elements.</i></p> <p><i>Landscape Referral raise no objections to the proposal subject to conditions of consent.</i></p>
NECC (Development Engineering)	<p>No objection, with conditions.</p> <p><i>The amended civil plans and stormwater plans are satisfactory. No objection to approval, subject to conditions as recommended.</i></p>
NECC (Water Management)	<p>No objection, with conditions.</p>
Strategic and Place Planning	<p>Objection.</p> <p><i>REV2021/0014 seeks a review of the Northern Beaches Local Planning Panel's decision to refuse DA2020/0824 for demolition and construction of a shop top housing development. The applicant has updated this application to purportedly address the Panel's reasons for refusal.</i></p> <p><i>The Northern Beaches Section 7.12 Contributions Plan 2021 applies to the land. If supported, a condition will need to be imposed requiring the payment of a monetary contribution based on the cost of works. The stated cost of works is \$11,279,007 however this is not supported by a report from a quantity surveyor.</i></p> <p><i>The Contributions Plan states "where the proposed cost of carrying out the development is \$1,000,001 or more – a quantity surveyor who is a registered member of the Australian Institute of Quantity Surveyors" is required to provide the cost estimate. If this application is supported, the applicant should be asked to provide an updated cost estimate from a registered quantity surveyor.</i></p> <p><i>The submitted Statement of Environmental Effects states: "the application seeks to provide for the dedication of a 1.4 metre wide x 38.075 metre long strip of land adjacent to Sumerville Place to Northern Beaches Council to provide for future laneway widening consistent with that achieved along the balance of Sumerville Place to the north of the site. This dedication also provides for improved pedestrian and vehicle safety along Somerville Place in response to the concerns expressed by Council in its refusal of the application. We propose that this dedication occur by way of a Voluntary Planning Agreement (VPA) with the requirement to enter into a VPA with Council pursuant to section 7.4 of the Environmental Planning and Assessment Act, 1979 (the Act) dealt with by way of an appropriately worded deferred commencement condition."</i></p> <p><i>On 28 June 2021, Council wrote to the applicant to request additional information. This request also advised that the proposal to dedicate a</i></p>

Internal Referral Body	Comments
	<p><i>1.4m strip of land to Council for pedestrian and vehicular access should include the provision of works to achieve this outcome.</i></p> <p><i>The applicant provided a response to Council's request for additional information on 30 August 2021. This correspondence included a plan identifying the land to be dedicated to Council and a plan showing the proposed works on this land. The applicant also outlined the terms of a potential future VPA as:</i></p> <p><i>"Land to be dedicated – A 1.435 metre wide by 38.075 metre area of the land totalling 54.6m² as depicted on Architectural plan DA-100(A) at Attachment 1.</i></p> <p><i>Works within dedicated area of land – The drainage, road pavement widening, kerb and gutter and footpath works proposed within the dedication area of land are depicted on plans C01(A), C02(A), C03(A) and to C04(B) prepared by Istruct Consulting Engineers a copy of which is at Attachment 2. These works will be completed by the developer prior to issue an Occupation Certificate.</i></p> <p><i>Cost or works within dedicated area of land – It is anticipated that the civil works proposed within the dedicated area of land will cost approximately \$50,000.</i></p> <p><i>Timing - The land will be dedicated to Council upon completion of the civil works proposed within the dedicated area of land and prior to issue of an Occupation Certificate.</i></p> <p><i>We anticipate that the civil works proposed within the dedicated area of land will be offset against the section 7.11 contributions."</i></p> <p><i>This correspondence also reiterated the request for council to impose a deferred commencement condition requiring the applicant to enter into a planning agreement.</i></p> <p><i>Council's Planning Agreement Policy encourages an offer to be submitted prior to the lodgement of a DA. The Policy also requires a formal offer to be assessed by the Development Contributions Committee. Any offer will need to demonstrate adequate public benefit. It is noted that the application does not accompany a formal offer to enter into a planning agreement. No assessment has been completed on the terms of the potential future VPA.</i></p> <p><i>Once a formal offer is received and assessed by the Committee, if supported, a draft Planning Agreement can be prepared and reported to Council for consideration. A draft Planning Agreement will need to be prepared in accordance with the relevant Practice Note and publicly exhibited in accordance with the requirements of the EP&A Regulation.</i></p> <p><i>I have spoken with the applicant's planning consultant to advise that a deferred commencement condition could be imposed however the applicant will need to consider the risk that the Committee or the Council do not support the terms of a future offer thereby preventing the consent from becoming operational.</i></p> <p><u><i>Recommendations</i></u></p>

Internal Referral Body	Comments
	<p><i>The applicant should be asked to provide an updated cost estimate from a registered quantity surveyor to inform an accurate determination of the required development contribution.</i></p> <p><i>If the application is to be supported, the requirement to enter into a planning agreement could be addressed by an appropriately worded condition of consent.</i></p>
Traffic Engineer	<p>Objection.</p> <p><i>It is noted that the amended plans now provide for 27 units comprised of 2 x 1 bedroom units, 20 x 2 bedroom units and 5 x 3 bedroom units and 327 sqm of retail floor area. A parking supply of 62 spaces comprised of 36 residential car spaces, 6 visitor spaces & 20 retail spaces is to be provided. 3 motorcycle parking spaces have also been provided off Somerville Place.</i></p> <p><i>The residential parking component exceeds the DCP requirement of 34 residential spaces and 5.4 visitor spaces (rounded up to 6). The retail parking component meets the DCP retail carparking requirement.</i></p> <p><i>In terms of traffic concerns previously raised:</i></p> <p><i>The amended plans have failed to address concerns raised in the traffic referral comments dated 14/5/21 with regard to the inadequacy of the loading bay. The loading bay remains inadequate as it provides insufficient clearance even for small rigid vehicles and caters only for passenger vehicles and vans and it is therefore evident that much of the loading and unloading activity generated by the development will take place on-street. It is however considered impractical to cater for a loading bay of appropriate size without significant redesign work and an on-street Loading Zone will therefore be required. A condition of consent will be drafted requiring that plans for an on-street Loading Zone catering for Medium Rigid Vehicles on the Sunshine Street frontage of the site be submitted for consideration by the Traffic Committee.</i></p> <p><i>There is still concern regarding the adequacy of the vehicular access into the site. AS2890.1 section 2.5.2 (c) requires that a B85 and B99 vehicle should be able to pass at the intersection point of the driveway and carpark access ramp. There should likewise be an ability for traffic entering from Somerville Place to pass an exiting vehicle. The swept path plots provided by the applicant's traffic consultant show that it is not possible for a B85 vehicle and B99 vehicle to concurrently enter and exit the site from Somerville Place or to pass each other when exiting from the basement carpark. To address this shortcoming the traffic consultant proposes that a sign be erected at the top of the ramp asking exiting motorists to Give Way. As this will require exiting vehicles to stop and give way on a regular basis and relies upon exiting motorists having clear sight lines to incoming traffic from Somerville Place which could not be guaranteed the proposed solution is deemed inadequate. It is considered that these concerns can be</i></p>

Internal Referral Body	Comments
	<i>addressed by widening of the portion of the driveway between Somerville Place and the basement carpark ramp which would eliminate any conflict. This would result in the deletion of one or two motorcycle passing bays but their presence is not critical to approval of the development application. It is not considered that this concern can be satisfactorily conditioned so further redesign of the vehicular access into the site is required prior to approval of the DA.</i>
Waste Officer	No objection, with conditions.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	No objection, with conditions. 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.
NSW Roads and Maritime Services (Traffic Generating Development)	No objection, with conditions. Transport for NSW confirmed that the requirements in their letter dated 23 August 2020 remain applicable to the amended development and need to be included in any consent issued by Council under this review.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1)(a) of SEPP 55 requires the consent authority to consider whether land is contaminated. In response to the requirements of the SEPP, the applicant has submitted a Preliminary Environmental Site Investigation (dated 31 March 2020 and prepared by EI Australia). The report concludes that there are no known or likely sources of contamination and that the land is considered to be suitable for the proposed commercial and residential use. This position is supported by Council's Health Officers (see referral response above).

SEPP 65 - Design Quality of Residential Apartment Development

The application seeks consent for a four storey shop top housing development, comprising 27 dwellings, and as such, the provisions of SEPP 65 apply to this development.

Design and Sustainability Advisory Panel

The application was referred to the DSAP on 27 May 2021 for review, the notes from which are attached to this report. The DSAP was not supportive of the proposal, and provided a series of recommendations, which are addressed as follows:

1. *Reduce the overall bulk of the building and reduce the GFA by approximately 600sqm*

Comment: The GFA of the proposed development was reduced by approximately 182m², with a reduction of three units. This reduction appears to be primarily associated with the increase to the central light well, with no reduction to the bulk of the building as seen from the public domain. The amended proposal has not adequately responded to this recommendation.

2. *Consider an "L" shaped form with a courtyard /roof terrace in the north west corner with the aim of provide dual aspect to as many of the units as possible and improving the relationship to the adjoining sites on Sunshine St.*

Comment: The applicant has not amended the proposal in this regard. Rather, the applicant has chosen to increase the central lightwell in order to increase the amount of cross-ventilated apartments. However, the size/area of the lightwell is deficient, and the applicant has not demonstrated the three storey height of the lightwell is appropriate on all elevations. The proposal has been designed with the tallest part of the development along the northern elevation of the lightwell, which impacts upon the amount of sunlight penetrating into the lightwell. The amended proposal has not adequately responded to this recommendation.

3. *As noted in previous advice and as outlined above, a variation to the height and an increase from 3 to 4 storeys may be considered favourably if and only if the benefits compared to a complying scheme can be demonstrated, noting that recommendation #1 would still apply.*

Comment: The applicant has not undertaken any comparative analysis of a compliant scheme, nor is there any suggestion that the height non-compliance enhances the amenity of the proposed development. The amended proposal has not adequately responded to this recommendation.

4. *Improve legibility and ease of vehicular movement.*

Comment: Access arrangements remain unresolved. The amended proposal has not adequately responded to this recommendation.

5. *Consider a reduction in the amount of car parking on site, this should be discussed with Council staff prior to any amendments to your application.*

Comment: The comment from DSAP regarding a reduction in parking was made with regard to a numerically compliant scheme. The amended proposal now exceeds the minimum requirements of DCP, which is at odds with the direction provided by the DSAP. The amended proposal has not adequately responded to this recommendation.

6. *Significantly increase the dimensions of the 'light wells or convert to a generous roof terrace or raised courtyard.*

Comment: The central courtyard has been increased from approximately 6m x 6m to 12m x 8m. As above, the amended proposal has not adequately responded to this recommendation.

7. *Consider incorporating an accessible roof terrace for common use.*

Comment: The application does not propose an accessible roof top terrace for common use. The amended proposal has not adequately responded to this recommendation.

8. *Resolve detailed amenity and interior planning issues, including:*

- *Natural light and ventilation of lobbies*
- *Room dimensions*
- *Locate laundries away from front doors(units 3, 7 etc)*
- *"I" shaped configuration of K/L/D areas that will mean constant artificial lighting (unit 6)*
- *Sealed windows (glass block in lieu of openable window)*
- *Separation between habitable rooms*
- *Outlook*
- *Avoidance of 'snorkel' bedrooms (units 8,10,11 etc)*

Comment: Whilst some aspects of the interior planning issues have been addressed, many remain unresolved and new issues have arisen in the amended scheme. The amended proposal has not adequately responded to this recommendation.

9. *Consider utilising electric heat pump hot water and induction cooktops to replace the use of gas.*

Comment: The application proposes to maintain gas cooktops and water heaters as originally proposed. The amended proposal has not adequately responded to this recommendation.

10. *The Panel recommends inclusion of a substantial amount of rooftop PV (1.5kW/unit).*

Comment: The application does not propose any photovoltaic solar cells. The amended proposal has not adequately responded to this recommendation.

11. *Add external windows to bathrooms and utility rooms wherever possible including ground level retail toilets.*

Comment: 2 of the 27 (7%) units proposed have one bathroom with an operable window. The amended proposal has not adequately responded to this recommendation.

Overall, the amended proposal has not appropriately responded to the recommendations provided by the DSAP.

Design Quality Principles

Clause 28 of SEPP 65 requires a consent authority to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration) the design quality of the development when evaluated in accordance with the design quality principles identified in Schedule 1 of SEPP 65, and the Apartment Design Guide ('ADG').

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

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

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

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

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

Comment: The proposed development is located in the Manly Vale B2 Local Centre zone. Condamine Street is one of the main roadways through the Northern Beaches LGA, with an extremely high volume of passing traffic. Condamine Street is characterised by larger scale development, and the presence of other four storey development is acknowledged. However, the form and massing of the proposed development is not considered to appropriately respond to the context and character of the Condamine Street, including development of a greater scale recently approved further to the south. Furthermore, the proposal does not appropriately respond to character of Sunshine Street, which comprises low density residential development.

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

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

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

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

Comment: The bulk and scale of the building is inconsistent with the existing and desired character of the local centre. Whilst the presence of other four storey development is not denied, the scale and massing of the development is unlike any other development within the visual catchment of the site. The height and bulk of the proposal along all facades is not appropriately modulated or articulated and is unlike any other development along Condamine Street, which is characterised by development that steps back from the street as the height of the development increases. The application places too much emphasis on the concept of nearby four storey development, without any analysis of the pattern of surrounding built form.

- **Principle 3: Density**

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

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

Comment: There are no provisions within WLEP 2011 or WDCP 2011 that relate to the density anticipated on the subject site, and as such, the appropriateness of the density proposed is appraised based on the amenity of the development, the size/scale of the development and the impact of the development upon the surrounding environment. Whilst a higher density may be appropriate in this general location, the proposed development does not appropriately respond to the constraints of the site and a high level of amenity for future occupants and adjoining properties is not achieved. The proposed development appears to be attempting to squeeze too

many units onto the site.

- **Principle 4: Sustainability**

Good design combines positive environmental, social and economic outcomes.

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

Comment: The application was supported by a BASIX Certificate, which includes recommendations to ensure that the building performs meets minimum industry standards. However, the BASIX Certificate does not relate to the development before Council. Furthermore, the application does not appear to have made any amendments in response to specific sustainability concerns raised by the DSAP, and the proposal remains highly reliant upon artificial lighting and ventilation.

- **Principle 5: Landscape**

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

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.

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

Comment: The site is located within a high density local centre that has no landscaped area requirements prescribed by WDCP 2011. Whilst the amended proposal demonstrates an increase to the area of landscaping within the central light-well, the amended design results in the removal of landscaping along the western facade that assisted to mitigate impacts upon the amenity of dwellings to the west. The landscaped solution along the Condamine Street facade is also questioned, noting the presence of extensive underground infrastructure within the road reserve and the proximity of the canopy to the roadway.

- **Principle 6: Amenity**

Good design positively influences internal and external amenity for residents and neighbours.

Achieving good amenity contributes to positive living environments and resident well being.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.

Comment: As detailed in the assessment against the ADG and WDCP 2011, the proposed development is not appropriately resolved and fails to provide a reasonable level of amenity for future occupants of the development. Furthermore, the proposal also attributes to impacts upon the amenity of adjoining properties.

- **Principle 7: Safety**

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

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

Comment: Whilst the proposal is generally acceptable in this regard, concern remains with regard to the amenity of the footpath noting the absence of a continual awning along both the Sunshine Street and Condamine Street facades.

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

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

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

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

Comment: Whilst the application provides a reasonable mix of apartment sizes, the application fails to demonstrate the appropriate level of liveable or adaptable apartments, as required by the ADG and WDCP 2011.

- **Principle 9: Aesthetics**

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

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

Comment: The proportions of the proposed development do not appropriately respond to the context of the site. When compared to previous versions of the scheme, the architectural treatment of the facade is also less resolved and lacks the fine-grain response required in consideration of the width of the development and the context of the site. Further, the angled geometry of the Condamine Street facade does not relate to the rest of the building, specifically the curvature of both corner detailed elements.

ADG Assessment

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

DC – Is the development consistent with the Design Criteria?

DG – Is the development consistent with the Design Guidance?

O – Is the development consistent with the Objective?

ADG reference	Subclause	Design Criteria	DC	DG	O
Part 3 Siting the Development					
3A Site analysis	3A-1	Design decisions based on site analysis.	-	N	N

ADG reference	Subclause	Design Criteria	DC	DG	O
3B Orientation	3B-1	Layouts respond to the streetscape and optimise solar access.	-	Y	Y
	3B-2	Overshadowing of neighbouring properties is minimised during mid winter.	-	Y	Y
3C Public domain interface	3C-1	Transition between private and public places is achieved without compromising safety and security.	-	Y	Y
	3C-2	Amenity of the public domain is retained and enhanced.	-	Y	Y
3D Communal and public open space	3D-1	Communal open space has a minimum area equal to 25% of the site.	N	N	N
		Development must achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (midwinter).	N	N	N
	3D-2	Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting.	-	N	N
	3D-3	Communal open space is designed to maximise safety.	-	N	N
	3D-4	Public open space is responsive to the existing pattern and uses of the neighbourhood.	-	-	-
3E Deep soil zones	3E-1	At least 7% of the site are shall comprise deep soil zones.	N	N	N
3F Visual privacy	3F-1	A minimum setback of 6m is to be provided between habitable rooms and balconies and side or rear setbacks, and a minimum setback of 3m is to be provided is to be provided between non-habitable rooms and side and rear setbacks.	N	N	N
	3F-2	Building design elements increase privacy without compromising access to light and air and balance outlook from habitable rooms and private open space.	-	Y	Y
3G Pedestrian access and entries	3G-1	Entries and pedestrian access connects to and addresses the public domain.	-	Y	Y
	3G-2	Access, entries and pathways are accessible and easy to identify.	-	Y	Y
	3G-3	Large sites provide pedestrian links for access to streets and connection to destinations.	-	-	-
3H Vehicle access	3H-1	Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.	-	N	Y
3J Bicycle and car parking	3J-1	Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.	-	-	-
	3J-2	Parking and facilities are provided for other modes of transport.	-	Y	Y
	3J-3	Car park design and access is safe and secure.	-	Y	Y
	3J-4	Visual and environmental impacts of underground car parking are minimised.	-	Y	Y
	3J-5	Visual and environmental impacts of on-grade	-	-	-

ADG reference	Subclause	Design Criteria	DC	DG	O										
		parking are minimised.													
	3J-6	Visual and environmental impacts of above ground enclosed car parking are minimised.	-	-	-										
Part 4 Designing the building															
Amenity															
4A Solar and daylight access	4A-1	Living rooms and private open space of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at midwinter.	N	N	N										
		A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	N	N	N										
	4A-2	Daylight access is maximised where sunlight is limited.	-	N	N										
	4A-3	Design incorporates shading and glare control, particularly for warmer months.	-	N	N										
4B Natural ventilation	4B-1	All habitable rooms are naturally ventilated.	Y	Y	Y										
	4B-2	The layout and design of single aspect apartments maximises natural ventilation.	-	Y	Y										
	4B-3	At least 60% of all apartments are naturally cross ventilated.	Y	Y	Y										
		Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Y	Y	Y										
4C Ceiling heights	4C-1	As measured from the finished floor level, the minimum ceiling height for: - habitable rooms is 2.7m, - non-habitable rooms is 2.4m, and - ground floor non-residential uses is 3.3m.	N	N	N										
	4C-2	Ceiling height increases the sense of space in apartments and provides for well proportioned rooms.	-	Y	Y										
	4C-3	Ceiling heights contribute to the flexibility of building use over the life of the building.	-	Y	Y										
4D Apartment size and layout	4D-1	Apartments are required to have the following minimum internal areas:	N	Y	Y										
		<table><tr><th>Apartment Type</th><th>Min. internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 Bedroom</td><td>50m²</td></tr><tr><td>2 Bedroom</td><td>70m²</td></tr><tr><td>3 Bedroom</td><td>90m²</td></tr></table>	Apartment Type	Min. internal area	Studio	35m²	1 Bedroom	50m²	2 Bedroom	70m²	3 Bedroom	90m²			
		Apartment Type	Min. internal area												
		Studio	35m²												
		1 Bedroom	50m²												
		2 Bedroom	70m²												
	3 Bedroom	90m²													
The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.															
Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	N	N	N												
4D-2	Habitable room depths are limited to a maximum of 2.5 x ceiling height.	N	N	N											

ADG reference	Subclause	Design Criteria	DC	DG	O																	
		In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	N	N	N																	
	4D-3	Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobes).	N	N	N																	
		Bedrooms have a minimum dimension of 3m (excluding wardrobes).	Y	Y	Y																	
		Living rooms or combined living/dining rooms have a minimum width of 3.6m for 1 bedroom apartments and 4m for 2 bedroom apartments.	Y	Y	Y																	
		The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	Y	Y	Y																	
4E Private open space and balconies	4E-1	All apartments are required to have primary balconies as follows:	N	N	N																	
		<table><tr><th>Apartment Type</th><th>Min. area</th><th>Min. depth</th></tr><tr><td>Studio</td><td>4m²</td><td>-</td></tr><tr><td>1 Bedroom</td><td>8m²</td><td>2m</td></tr><tr><td>2 Bedroom</td><td>10m²</td><td>2m</td></tr><tr><td>3 Bedroom</td><td>12m²</td><td>2.4m</td></tr></table>			Apartment Type	Min. area	Min. depth	Studio	4m²	-	1 Bedroom	8m²	2m	2 Bedroom	10m²	2m	3 Bedroom	12m²	2.4m			
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		2 Bedroom	10m²	2m																		
	3 Bedroom	12m²	2.4m																			
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m².			-	-	-																
	4E-2	Primary private open space and balconies are appropriately located to enhance liveability for residents.	-	Y	Y																	
	4E-3	Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.	-	N	N																	
4E-4	Private open space and balcony design maximises safety.	-	Y	Y																		
4F Common circulation and spaces	4F-1	The maximum number of apartments off each circulation core on a single level is eight.	Y	Y	Y																	
	4F-2	Common circulation spaces promote safety and provide for social interactions between residents.	-	Y	Y																	
4G Storage	4G-1	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is to be provided:	Y	Y	Y																	
		<table><tr><th>Apartment Type</th><th>Min. area</th></tr><tr><td>Studio</td><td>4m³</td></tr><tr><td>1 Bedroom</td><td>6m³</td></tr><tr><td>2 Bedroom</td><td>8m³</td></tr><tr><td>3 Bedroom</td><td>10m³</td></tr></table>			Apartment Type	Min. area	Studio	4m³	1 Bedroom	6m³	2 Bedroom	8m³	3 Bedroom	10m³								
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		Studio	4m³																			
		1 Bedroom	6m³																			
		2 Bedroom	8m³																			
	3 Bedroom	10m³																				
At least 50% is to be located within the apartment.																						
4G-2	Additional storage is conveniently located,	-	Y	Y																		

ADG reference	Subclause	Design Criteria	DC	DG	O
		accessible and nominated for individual apartments.			
4H Acoustic privacy	4H-1	Noise transfer is minimised through the siting of buildings and building layout.	-	N	N
	4H-2	Noise impacts are mitigated within apartments through layout and acoustic treatments.	-	N	Y
4J Noise and pollution	4J-1	In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings.	-	N	N
	4J-2	Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.	-	N	N
Configuration					
4K Apartment Mix	4K-1	A range of apartment types and sizes is provided to cater for different household types now and into the future.	-	Y	Y
	4K-2	The apartment mix is distributed to suitable locations within the building.	-	Y	Y
4L Ground floor apartments	4L-1	Street frontage activity is maximised where ground floor apartments are located.	-	-	-
	4L-2	Design of ground floor apartments delivers amenity and safety for residents.	-	-	-
4M Facades	4M-1	Building facades provides visual interest along the street while respecting the character of the local area.	-	N	N
	4M-2	Building functions are expressed by the facade.	-	Y	Y
4N Roof design	4N-1	Roof treatments are integrated into the building design and positively respond to the street.	-	Y	Y
	4N-2	Opportunities to use roof space for residential accommodation and open space are maximised.	-	Y	Y
	4N-3	Roof design incorporates sustainability features.	-	Y	Y
4O Landscape design	4O-1	Landscape design is viable and sustainable.	-	Y	Y
	4O-2	Landscape design contributes to the streetscape and amenity.	-	Y	Y
4P Planting on structures	4P-1	Appropriate soil profiles are provided.	-	Y	Y
	4P-2	Plant growth is optimised with appropriate selection and maintenance.	-	Y	Y
	4P-3	Planting on structures contributes to the quality and amenity of communal and public open spaces.	-	Y	Y
4Q Universal design	4Q-1	Universal design features are included in apartment design to promote flexible housing for all community members.	-	N	N
	4Q-2	A variety of apartments with adaptable designs are provided.	-	N	N
	4Q-3	Apartment layouts are flexible and accommodate a range of lifestyle needs.	-	Y	Y
4R Adaptive reuse	4R-1	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	-	-	-
	4R-2	Adapted buildings provide residential amenity while not precluding future adaptive reuse.	-	-	-

ADG reference	Subclause	Design Criteria	DC	DG	O
4S Mixed Use	4S-1	Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement.	-	Y	Y
	4S-2	Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents.	-	Y	Y
4T Awnings and signage	4T-1	Awnings are well located and complement and integrate with the building design.	-	N	N
	4T-2	Signage responds to the context and desired street character.	-	-	-
Performance					
4U Energy efficiency	4U-1	Development incorporates passive environmental design.	-	N	N
	4U-2	Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer.	-	Y	Y
	4U-3	Adequate natural ventilation minimises the need for mechanical cooling.	-	Y	Y
4V Water management and conservation	4V-1	Potable water use is minimised.	-	Y	Y
	4V-2	Urban stormwater is treated on sit before being discharged to receiving waters.	-	Y	Y
	4U-3	Flood management systems are integrated into site design.	-	-	-
4W Waste management	4W-1	Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.	-	Y	Y
	4W-2	Domestic waste is minimised by providing safe and convenient source separation and recycling.	-	Y	Y
4X Building maintenance	4X-1	Building design detail provides protection from weathering.	-	Y	Y
	4X-2	Systems and access enable ease of maintenance.	-	Y	Y
	4X-3	Material selection reduces ongoing maintenance costs.	-	Y	Y

Detailed ADG Discussion

- **Site analysis (3A-1)**

Objective 3A-1 identifies the importance of detailed site analysis to inform the proposed design. A detailed site analysis should include the pattern of building frontages, street setbacks, overall heights (storeys and metres) and important parapet heights. In circumstances where a development is reliant upon the precedent of other four storey built form in the streetscape, an application should be supported by comparative analysis demonstrating such height and bulk of other built form. Whilst the application includes photographs of other four storey development along Condamine Street, the application lacks any detail in relation to the massing and proportions of these developments, specifically the heights (in metres) and setbacks of the upper floors.

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

With no communal open space, the proposal is non-compliant with the design criteria of Objective 3D-1 of the ADG that requires an area of communal open space of at least 318m², being 25% of the area of the site. With no communal open space, the proposal is also

inconsistent with the second design criteria of this Objective, which requires good solar access to 50% of the communal open space in midwinter. In circumstances where the number of units receive little to no sunlight in mid-winter, and where the areas of private open space of a number of units are sited in somewhat hostile environments, the provision high quality and usable open space would be of great benefit to the development. Nonetheless, it is also appreciated that each area of private open space proposed is adequately sized to provide functional private open space and the proposed development is sited in close proximity to local parks and community facilities.

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

The proposal does not provide any deep soil landscaping, and is non-compliant with the design criteria of Objective 3E-1 that requires 7% of the site, or 89m², to be deep soil. Whilst the provision of an area equivalent to 7% may not be reasonable in light of the B2 Local Centre zoning of the site and the absence of any landscaped area requirements in WDCP 2011, the lack of deep soil planting is of detriment to the proposal, specifically with regard to the interface with the adjoining R2 Low Density Residential zoned land. Furthermore, the lack of deep soil is not appropriately compensated by landscaping at upper levels of the development, with integrated planting generally limited to the central light wells and the perimeter of the upper-most level.

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

The central light well has not been designed to achieve the minimum spatial separation requirements prescribed by Objective 3F-1 of the ADG, noting that the distance between the kitchen window of Unit 25 is located at a distance of only 8.5m from the window of Bedroom 2 of Unit 26 (3.5m short of the 12m minimum requirement for setbacks between habitable rooms). The 6m spatial separation between the western facade of the proposed development and the dwelling at 2 Sunshine Street also falls short of the design guidance of Objective 3F-1, which prescribes that the spatial separation should be increased to 9m when adjacent to land of a lower density zoning. The design guidance also identifies that the resultant setback is required to provide for a transition in scale and landscaping, neither of which is achieved in the proposed development, as the entire 6m distance is associated with the resultant laneway.

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

Objective 3H-1 of the ADG prescribes that vehicle access points are to be designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes. Whilst the siting of the proposed driveway along Somerville Place is consistent with the design guidance for driveways to be located on secondary streets or laneways where available, the application has not satisfactorily demonstrated that the driveway has been designed to achieve safe vehicular access.

- **Solar and daylight access (4A-1, 4A-2 and 4A-3)**

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

Unit No. Internal External Compliance Unit No. Internal External Compliance

01	Yes**	Yes	Yes	15	Yes**	Yes	Yes
02	Yes**	Yes	Yes	16	No	No	No
03	Yes**	Yes	Yes	17	No*	No*	No*
04	Yes**	Yes	Yes	18	Yes	No*	No*
05	Yes**	Yes	Yes	19	No	No	No

06	No	No	No	20	No	No	No
07	No*	No*	No*	21	Yes	Yes	Yes
08	No*	No*	No*	22	Yes	Yes	Yes
09	No	No	No	23	Yes	Yes	Yes
10	No	No	No	24	No	No	No
11	Yes**	Yes	Yes	25	Yes	Yes	Yes
12	Yes**	Yes	Yes	26	Yes	Yes	Yes
13	Yes**	Yes	Yes	27	Yes	Yes	Yes
14	Yes**	Yes	Yes				

*Achieves 2 hours if calculated from 8:30am

**Receives solar access through high level windows

As outlined above, only 16 of the 27 (60%) apartments proposed receive 2 hours of direct sunlight to windows associated with living rooms and areas of private open space between 9am and 3pm in midwinter. The proportion improves (20/27 or 74%) if you consider sunlight received at 8:30am. However, in accordance with Objective 4A-2 of the ADG, high level windows (with sills 1.5m or greater) are only to be used as a secondary light source in habitable rooms. In this regard, it is noted that the living room windows of 10 of the 27 (37%) proposed units are high level windows, and each of these windows is relied upon to meet the 60% currently achieved.

Whilst it is acknowledged that the number of units receiving compliant levels of solar access has increased compared to that proposed in DA2020/0824, concern is maintained in relation to the amenity of the development, specifically with respect to the amount of direct sunlight and natural daylight afforded to the proposed units.

As proposed, 2 of the 27 units (7%) will receive no sunlight to living rooms and areas of private open space. In addition to this, a further 4 units will not receive any direct sunlight to windows associated with the living room and only marginal sunlight to areas of private open space, such that 22% of the proposed dwellings will not receive any sunlight within the units in midwinter. The amount of daylight to these units (Units 06, 09, 10, 16, 19 and 20) is also questioned, noting that the living spaces are located behind deep set covered terraces, up to 3.8m back from the front facade. Units 09, 10, 19 and 20 each share a common wall with an internal light well, yet the proposal has not been designed to allow for these units to benefit from the daylight afforded by these design elements. In light of such design decisions, it is difficult to suggest that the development has been designed to maximise daylight to the units proposed.

Objective 4A-1 of the ADG also identifies that development should be designed to maximise its northern aspect, with single aspect unit facing north or east. Despite the provision of two light wells that would facilitate a northerly aspect, the proposal does not incorporate a single north facing apartment.

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

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

The ceiling height of the top floor apartments is limited to 2.4m, inconsistent with the 2.7m minimum prescribed for habitable spaces. It is noted that the ground floor plan indicates non-compliance with the minimum ceiling level prescribed in relation to retail spaces. However, this appears to be in error, as greater heights are demonstrated in section. If the application was to be approved, a condition of consent could be imposed to ensure compliant ground floor ceiling heights.

- **Apartment size and layout (4D-1 and 4D-3)**

Objective 4D-1 of the ADG prescribes the minimum internal areas of each apartment size, as follows:

Type	Area
1 Bedroom / 1 Bath (1+1)	50m ²
2 Bedroom / 1 Bath (2+1)	70m ²
2 Bedroom / 2 Bath (2+2)	75m ²
3 Bedroom / 1 Bath (3+1)	90m ²
3 Bedroom / 2 Bath (3+2)	95m ²

8 out of 27 (30%) proposed units do not comply with these minimum requirements, as follows:

Unit No.	Type	Area	Compliance	Unit No.	Type	Area	Compliance
01	3+2	90m ²	No	15	3+2	90m ²	No
02	1+1	50m ²	Yes	16	2+2	71m ²	No
03	2+2	72m ²	No	17	2+2	86m ²	Yes
04	2+1	71m ²	Yes	18	2+2	87m ²	Yes
05	3+2	90m ²	No	19	2+1	71m ²	Yes
06	2+2	71m ²	No	20	2+2	83m ²	Yes
07	2+2	86m ²	Yes	21	3+2	96m ²	Yes
08	2+2	86m ²	Yes	22	2+2	95m ²	Yes
09	2+1	71m ²	Yes	23	2+2	76m ²	Yes
10	2+2	83m ²	Yes	24	2+2	76m ²	Yes
11	3+2	90m ²	No	25	2+1	72m ²	Yes
12	1+1	50m ²	Yes	26	2+1	77m ²	Yes
13	2+2	72m ²	No	27	2+1	70m ²	Yes
14	2+1	71m ²	Yes				

Objective 4D-3 of the ADG prescribes that each master bedroom is to have a minimum area of 10m², with a 1.8m wide wardrobe. 9 of the 27 (33%) units proposed comprise undersized master bedrooms (<10m²), 2 of the 27 (7%) units proposed have an undersized wardrobe, and one unit (Unit 21) has no wardrobe in the master bedroom.

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

Objective 4E-1 of the ADG prescribes the minimum area of private open space for each apartment type. With an area of 10m², the terraces of 2 of the 27 (6%) units proposed, being Units 5 and 15, are non-compliant with the 12m² minimum prescribed for 3 bedroom units.

Objective 4E-1 also advises that operable walls or enclosed winter gardens may be appropriate

for balconies in close proximity to roads. None of the balconies oriented to Condamine Street offer any mitigation measures or buffering from the noise levels associated with traffic along Condamine Street.

Objective 4E-3 of the ADG prescribes that private open space and balcony design is to be integrated into and contribute to the overall architectural form of the building. Objective 4E-3 places preference on solid balustrades, and encourages the use of operable screens, hoods and pergolas to control sunlight and wind. The design of the west facing balconies on Levels 1 and 2 comprise an open style balustrade that is inappropriate given the proximity of the balconies to the private open space of the dwelling next door. The design of the upper floor balconies lack appropriate weather protection, specifically with regard to exposure to the south and west. As above, the design of the east facing balconies, that overlook Condamine Street, inappropriately lack any screening measures to buffer the noise associated with traffic along the classified roadway.

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

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

- **Noise and Pollution (4J-1 and 4J-2)**

Objectives 4J-1 and 4J-2 of the ADG advise that the development should be designed, with appropriate construction techniques employed, to minimise exposure to noise sources. As above, the Condamine Street facing units have not been sensitively designed to minimise impacts of noise associated with road traffic for the proposed balconies. Whilst conditions of consent could be imposed to ensure appropriate construction measures are employed to minimise internal noise, the acoustic amenity of the balconies remains unresolved.

- **Facades (4M-1)**

Objective 4M-1 of the ADG prescribes that building facades should provide visual interest along the street while respecting the character of the local area. As discussed in further detail below with regard to the front setback control of WDCP 2011, the scale, massing and composition of the facades of the development do not appropriately respond to that of surrounding and nearby development.

- **Roof design (4N-3)**

Objective 4N-3 identifies that roof design should maximise solar access to apartments in winter and provide shade during summer, with skylights and ventilation systems integrated into the roof design. The proposed roof form does not incorporate appropriate eaves to protect the development from inclement weather and does not comprise any skylights, which is somewhat of a missed opportunity, particularly when some of the top floor units receive minimal and non-compliant levels of solar access.

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

Objective 4Q-1 of the ADG prescribes that 20% of units proposed should be designed in accordance with the Liveable Housing Guidelines Silver Level Standard. Objective 4Q-2 of the ADG advises that the development should provide adaptable housing units in accordance with Council policy. As discussed with regard to clause D18 of WDCP 2011, 10% (rounded up) of units should be designed in accordance with Class C of AS4299. The previous application (DA2020/0824) was supported by an Access Report at lodgement, however no updated report has been presented with regard to the amended plans currently before Council, and compliance

with these requirements cannot be confirmed.

- **Awnings (4T-1)**

Objective 4T-1 prescribes that awnings are to be well located along streets with high pedestrian activity and located over building entries for amenity. WDCP 2011 also emphasises the need for continuous awnings within local centres. The proposed development does not provide a continuous awning over the Condamine Street and Sunshine Street road reserves.

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

The BASIX Certificate provided to support the application does not relate to the proposal before Council and as such, Council cannot be satisfied that the development has been designed to meet industry standards. Further, the low level of daylight to units increases reliance on artificial lighting and heating, inconsistent with the guidance of this objective. The application also failed to appropriately respond to DSAP's recommendations in this regard.

DA2020/0824 was refused due to inconsistency with SEPP 65 and the ADG, specifically with regard to context, solar access, cross ventilation and building separation to the residential zoned land to the west. Whilst the proposal has made improvements with regard to solar access and natural ventilation, the proposal has not adequately addressed the concerns raised with regard to context, solar access and building separation. Furthermore, the amended proposal is also inconsistent with other aspects of the ADG, such that the proposal presents as an over-development of the subject site. In accordance with clause 30 of SEPP 65, development consent must not be granted to the application, as the proposal does not have adequate regard to the objectives of the ADG and the design quality principles of SEPP 65.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1112833M_04 dated 30 August 2021).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	35	35

However, upon review, the details relied upon in the amended BASIX Certificate do not align with the amended application before Council. For example, the BASIX Certificate identifies 68 car spaces when only 62 spaces are nominated in the architectural plans. Furthermore, the area of units and the amount of bedrooms listed on page 3 do not align with the architectural plans. As such, Council cannot be satisfied that the proposal meets the minimum required targets of the BASIX Certificate.

SEPP (Infrastructure) 2007

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

The proposed development, which comprises parking for more than 50 motor vehicles,

constitutes Traffic Generating Development, and a referral to TfNSW is required in accordance with clause 104 of this policy. The application was referred to the RMS who did not raise any objection to the proposal, subject to the imposition of conditions of consent:

Clause 101 of SEPP (Infrastructure) requires the consent authority to be satisfied of certain matters relating to development with a frontage to a classified road. The consent authority can be satisfied of these matters, noting that:

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

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	Variation	Complies
Height of Buildings:	11m	13.9m	2.9m (26.4%)	No

Compliance Assessment

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

Detailed Assessment

Zone B2 Local Centre

The proposed development cannot be said to be consistent with all of the objectives of the B2 Local Centre zone, as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

Comment: The proposed shop top housing development comprises four retail tenancies at the ground level that will contribute to the range of retail, business, entertainment and community uses within the vicinity of the site.

- *To encourage employment opportunities in accessible locations.*

Comment: The site is located in close proximity to bus stops serviced by multiple bus routes, including the B1 bus service. The proposed retail facilities will provide for additional employment opportunities at the site, which is located in a highly accessible location.

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

Comment: The advantageous siting of the development will promote the use of public transport and encourage future residents to use active forms of transport.

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

Comment: The proposed development appropriately activates the Condamine Street and Sunshine Street facades, and the proposed road widening will maximise pedestrian safety along Somerville Place. However, concern is raised in relation to the lack of a continuous awning along Condamine Street and Sunshine Street, which Council specifically requested to be maintained. The lack of a continuous awning creates an unpleasant and inconsistent street experience along the road reserve, particularly during inclement weather.

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

Comment: The proposed four-storey development will sit a full storey higher than the recently completed development to the north, and two storeys higher than development permitted to the west. Whilst the existence of other four storey development along Condamine Street is not denied, the scale of the proposal, and the lack of appropriate articulation and landscaping, results in a development that does not favourably relate to the surrounding urban form.

- *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 land to the west of the subject site is zoned R2 Low Density Residential and contains one and two storey dwelling houses. The proposed development does not appropriately respond to the residential nature of the adjoining land, and the proposal has not been designed to ensure that the amenity of the neighbouring site is appropriately maintained.

4.3 Height of buildings

and 4.6 Exceptions to development standards

With a maximum building height of 13.95m, the proposed development is non-compliant with the 11m maximum building height prescribed by clause 4.3 of WLEP 2011. The maximum building height is a development standard, as defined by the EP&A Act, and as such, the provisions of clause 4.6 of WLEP

2011 can be applied.

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

What is the extent of the breach?

The proposed development reaches a maximum height of 13.95m, representative of a 2.95m or 26.8% variation to the 11m maximum building height development standard. The maximum height occurs in relation to the northern lift overrun in the centre of the development. However, the extent of non-compliance is not limited to this one portion of the building, but rather the entire upper floor, which reaches up to 2.2m above the height plane on the Condamine Street elevation, up to 1.2m above the height plane on the Somerville Place elevation and up to 2m above the height plane on the Sunshine Street elevation. The extent of non-compliance is illustrated in blue in the diagrams below.



Figure 1 - Condamine Street facade with height



Figure 2 - Sunshine Street facade with height

Has the applicant's submission addressed the relevant criteria?

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

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

Comment: In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater*

Council [2007] NSWLEC 827, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard. The applicant's submission has not satisfactorily demonstrated that the proposed development will achieve consistency with the objectives of the building height development standard, particularly with regard to the following objectives:

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

Comment: The submission from the applicant relies upon other existing and approved four storey development along Condamine Street, and notes that the upper level is setback from the street and softened by landscaped planters. However, the submission fails to appropriately consider the context of the development site, specifically the presence of a recently constructed three storey building to the north, and two storey development to the south and west. Further, the proposal also fails to consider the scale of the development, and the extent of the proposed breach, which is not insignificant and far exceeds that of other development along Condamine Street.

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

Comment: The applicant has not demonstrated that the visual impact of the non-compliant portion of the development has been appropriately minimised. The application appears to solely rely upon the presence of planter boxes to soften the visual impact of the upper floor. However, the planter boxes are sited 5m forward of the minimum front setback with nil setbacks to the street and negatively contribute to the overall bulk and scale of the development. In some areas, the planter boxes themselves also extend above the height plane. Increasing the height and bulk of the lower levels of the development to screen the non-compliant upper floor is not considered to be an appropriate response to an objective that aims to minimise visual impact of built form.

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

Comment: As above, the clause 4.6 submission has not demonstrated that the visual impact of the non-compliant portion of the development has been appropriately managed.

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

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

1. The four storey height is complementary and compatible with other recent development approvals along Condamine Street. Compliance would require the removal of the entire upper level resulting in a 3 storey built form that would not appropriately respond to the sites prominent corner location and would appear inconsistent with the height and cohesive streetscape established by recently approved development along Condamine Street.

2. Approval of the building height breaches will facilitate the dedication of land along Somerville Place and the widening of the public laneway.
3. The loss of the top floor would make the project unviable noting the purchase price of the land.
4. Approval of the height variation will promote good contextually appropriate design which will facilitate enhanced amenity outcomes to and from the development. The building is of a good design and is an orderly and economic use and development of the land, considered with objectives 1.3(c) and (g) of the EP&A Act.

These propositions are not supported, as follows:

1. The site is located in the middle of the B2 zoned strip of Condamine Street and is not identified in any policy or document as a prominent corner or gateway site. Furthermore, noting the recently constructed three storey building to the north and other surrounding and nearby two storey development, it cannot be said that a three storey building would be inconsistent or incohesive with the streetscape.
2. The applicant is placing too much weight on nearby precedence without any real analysis of whether the situations are comparable. The existence of a fourth storey on a nearby building does not create an automatic entitlement to include seven units about the height plane on the subject site.
3. The dedication of the laneway proposed in the application is essential to the proposed development in order to achieve appropriate access to the site, irrespective of whether the proposal comprises three or four storeys. Furthermore, there appears to be no correlation between the dedication of 54.6m² of land for the purpose of road widening and the 675m² of floor space proposed on the upper level above the height plane.
4. The comment regarding the viability of the proposal is unfounded, and the purchase price of the land is not sufficient planning grounds to justify exceedance of the height control.
5. The applicant has not demonstrated that the height non-compliance provides improved amenity for future occupants or adjoining properties. Further, it is yet to be demonstrated that the height breach is a result of a good design response that is contextually appropriate. The proposed development fails against many provisions of the ADG and WDCP 2011, with non-compliance with multiple general amenity provisions including solar access, room proportions, ceiling heights and privacy.

The applicant's submission is not considered to establish sufficient environmental planning grounds to justify the proposed contravention of the building height development standard.

Therefore, the consent authority cannot be satisfied that the applicant's request has satisfactorily addressed the matters required by clause 4.6(3) of WLEP 2011.

Is the proposal in the public interest?

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

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

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

Comment: The height and scale of the proposed development is inconsistent with nearby and surrounding built form and will result in an abrupt change when viewed from the west along from Sunshine Street. The scale and massing of the development is also of concern, with little to no vertical articulation to break down the width of the proposal, which exceeds that of all other development sites along Condamine Street. This is considered to be of particular importance noting the non-compliant massing of the upper floors, which extend forward of the 5m front building line and above the 11m height plane.

As above, whilst the existence of other four storey development is acknowledged, the site is not in the immediate vicinity of any other four storey development and there has been no analysis of the size, scale and setback of the fourth floor proposed compared to other approvals further along the street.

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

Comment: The visual impact of the proposed development has not been appropriately minimised. Despite an increase to the massing of the third storey in an attempt to hide the non-compliant upper level, the fourth floor is still visually prominent from the public domain. In fact, over the course of the assessment of this application, the height of the development has increased, the setback of the upper floor has decreased, and to address concerns regarding solar access, the setbacks of the lower levels fronting Condamine Street have been altered. As a consequence of these amendments, the visual impact of the upper floor of the development has been increased compared to that proposed at lodgement and that presented in the original development application.

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

Comment: Not applicable.

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

Comment: As above, the clause 4.6 submission has not satisfactorily demonstrated that the proposal will result in an appropriate visual impact when seen from adjoining streets and public places.

Furthermore, as discussed separately above, the proposal is not considered to be consistent with the relevant objectives of the B2 Local Centre Zone.

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

Has concurrence been obtained?

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

Conclusion

Overall, the consent authority cannot be satisfied of the matters prescribed by clause 4.6 of WLEP 2011, and the proposed building height variation cannot be supported.

6.2 Earthworks

The proposal is consistent with the objectives of this clause, as follows:

- (a) *the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality*

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

- (b) *the effect of the proposed development on the likely future use or redevelopment of the land*

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

- (c) *the quality of the fill or the soil to be excavated, or both*

Comment: The excavated material will be processed according to the Waste Management Plan for the development. Should the application be approved, a condition can be included requiring any fill to be of a suitable quality.

- (d) *the effect of the proposed development on the existing and likely amenity of adjoining properties*

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Should the application be approved, conditions have been included to limit impacts during excavation/construction.

- (e) *the source of any fill material and the destination of any excavated material*

Comment: The excavated material will be processed according to the Waste Management Plan for the development. Should the application be approved, a condition can be included requiring any fill to be of a suitable quality.

- (f) *the likelihood of disturbing relics*

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

- (g) *the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area*

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

6.4 Development on sloping land

Under this clause, development consent must not be granted to development on land to which this

clause applies unless the consent authority is satisfied that:

- (a) *the application for development has been assessed for the risk associated with landslides in relation to both property and life, and*
- (b) *the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and*
- (c) *the development will not impact on or affect the existing subsurface flow conditions.*

The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective and therefore, Council can be satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

The application has also been assessed in relation to stormwater. Council's Development Engineers have raised no objections to approval, subject to conditions, such that Council can be satisfied that the development will not cause significant detrimental impacts because of stormwater discharge from the development site or that the development will not result in adverse impacts or effects on the existing subsurface flow conditions.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation	Complies
B2 Number of storeys	3	4	1 storey or 33%	No
B6 Merit Assessment of Side Boundary Setbacks	Merit	North -Nil West (Somerville) - Nil*	See discussion	No
B7 Front Boundary Setbacks	Ground - Nil	Nil	-	Yes
	Level 1 - Nil	Condamine - Nil Sunshine -Nil	- -	Yes Yes
	Level 2 - 5m	Condamine - Nil Sunshine - Nil	5m 5m	No No
	Level 3 - 5m	Condamine - 3.4m Sunshine - 3.4m	1.6m 1.6m	No No

***Note:** In consideration of the relationship and siting of dwelling at 2 Sunshine Street, the setback to Somerville Place has been considered as a side setback in this assessment report.

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
C1 Subdivision	Yes	Yes
C2 Traffic, Access and Safety	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	N/A	N/A
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	No
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	No	No
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E10 Landslip Risk	Yes	Yes
F1 Local and Neighbourhood Centres	No	No

Detailed Assessment

B2 Number of Storeys

The proposed four storey development is inconsistent with the three storey height limit prescribed by this control. Whilst the presence of four storey development along Condamine Street is acknowledged, precedence alone is unable to be relied upon in circumstances where the proposed development is inconsistent with the objectives of the control, as follows:

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

Comment: The upper floor of the proposed development is visible from the public domain and will clearly read as a fourth storey. The prominence of the fourth storey is somewhat enhanced by the lack of four storey development in the immediate vicinity of the site. The adjoining recently constructed building to the north is three storeys in height, and development to the south and west is two storeys in height and of a considerably reduced scale.

The proposal has also been amended to remove the vertical breaks along the Condamine Street facade, and whilst the facade now features elements of varying angles, the facade is one continual and unbroken plane. This actively increases the bulk and scale of the development, particularly as the site is the widest development site along Condamine Street.

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

Comment: The proposal has been amended to reduce the setback of the top floor to Condamine Street and Sunshine Street, resulting in greater visibility of the top floor from the public domain. The proposal attempts to hide the upper floor roof plane with planter boxes in the same alignment of the facade of the level below, however this results in an increase to the bulk of the development immediately adjacent to the street, which is not consistent with the bulk and scale of nearby development.

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

Comment: The proposed development does not result in any unreasonable impacts upon views.

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

Comment: The proposed inclusion of a fourth floor results in three additional units with private open space oriented towards the low density residential development to the west. To mitigate this impact, the application proposes a continual 38m long planter box along the western facade of the upper floor comprising hedge planting capable of reaching maturity heights of approximately 1.5m. Whilst mitigation measures are required, the visual dominance of the development as seen from the neighbouring property at 2 Sunshine Street is overwhelming.

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

Comment: Not applicable.

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

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

B6 Merit Assessment of Side Boundary Setbacks

The subject site is bounded on three side by roadways. In consideration of the relationship and siting of the dwelling at 2 Sunshine Street, the setback to Somerville Place is considered a side setback in this assessment report, as opposed to a third street frontage. Noting that the side setback controls provide for a merit assessment of the proposed setback, this is not considered to prejudice the development in any way.

The application proposes the dedication of 1.4m wide strip of land adjacent to Somerville Lane. For the purpose of this assessment, the setbacks are measured from the resultant boundary to be created as a result of the land dedication.

The application proposes nil setbacks to both the west and the north. These setbacks are considered on merit with regard to the objectives of the control, as follows:

- *To provide ample opportunities for deep soil landscape areas.*

Comment: The development does not provide any deep soil landscaping. During the course of this assessment, the application was amended to remove all landscaping along the western side of the development. Whilst the removal of the landscaping was required in order to facilitate necessary road widening, the incorporation of landscaping is equally important along the western facade to minimise the impact of the development at the interface with the adjoining low density zone.

- *To ensure that development does not become visually dominant.*

Comment: The proposed development is visually dominant as seen from the adjoining dwelling at 2 Sunshine Street. The application provides little to no softening of the development, with 13 of the 27 proposed units oriented towards the dwelling at 2 Sunshine Street. As above, the development previously proposed deep soil landscaping, inclusive of canopy trees, along the western facade of the development, which assisted to soften the visual impact of the development as seen from the west. The difference between the previous version of the proposal that featured landscaping along the western facade and the design now before Council is highlighted by Figures 3 and 4, below.



Figure 3 - Western facade as seen from 2 Suns



Figure 4 - Western facade as seen from 2 Suns

In relation to the upper floor, the need to extend the terraces to within 7.5m of the adjoining property for the full width of each apartment is also questioned. These terraces could readily be reduced to minimise both the visual bulk of the development (associated with the continual run of elevated planters) and the sense of overlooking for the residents of the adjoining R2 zoned properties. Furthermore, it is noted that the minor increase to the setbacks of the upper floor has resulted in the removal of recessed areas of covered private open space, and the reduction to the eaves over the western facade. The necessary amendments to reduce the visibility of the top floor should not result in adverse impacts upon the amenity of the upper floor units proposed.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment: The western facade of the proposed development is 38m wide, with only nominal (less than 500mm) variation in the setback of the facade. Furthermore, the articulation that is provided by the balconies is compromised by the proposed sliding screens, which are necessary due to the limited 6m setback between the western facade of the development and the private open space of the dwelling at 2 Sunshine Street.

- *To provide adequate separation between buildings to ensure a reasonable level of amenity and solar access is maintained.*

Comment: As a consequence of the lane-widening proposed, the development will be sited 6m from the adjoining dwelling to the west. As discussed with regard to the ADG, a 6m setback is deemed to be appropriate between development of similar densities, with a greater setbacks required where medium density development adjoins low density development. In most situations, you would also assume that the 6m setback contains some meaningful landscaping, which is absent from this proposal. The 6m spatial separation proposed, particularly in the part of the site directly opposite the private open space of 2 Sunshine Street, is inadequate and does not ensure reasonable amenity for the adjoining dwelling.

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

Comment: The proposed development does result in any unreasonable impacts upon views.

Whilst no concern is raised in relation to the setback of the development to the north, the setback of the development to the western boundary is inappropriate. Further, it is noted that in some locations, the proposed window treatments extend over the resultant boundary, encroaching on the land to be dedicated to Council.

Overall, the western facade requires strategic setbacks to facilitate deep soil landscaping and improved spatial separation between the private open space of the dwelling to the west. Further vertical articulation is also required to break down the expanse of the building, to limit the number of dwellings overlooking the adjoining low density residential development and reduce the resultant visual dominance of the proposal. The setbacks of the upper floor also require review, to provide appropriate shade and weather protection to areas of private open space without increasing the apparent size of the development.

B7 Front Boundary Setbacks

Clause B7 of WDCP 2011 prescribes a nil setback for the ground and first floor, with a 5m setback for each level above that. The proposal is inconsistent with the 5m minimum setback in relation to the second and third floor on both the Sunshine Street and Condamine Street frontages, with nil setbacks proposed on the second floor and 3.4m minimum setbacks on the third floor.

The NBLPP refused DA2020/0824 due to the bulk and scale of the proposed building, with particular concern in relation to the third floor, which was said to be insufficiently setback from each street frontage to minimise the visibility of the top floor as viewed from surrounding lands.

In relation to Sunshine Street, the height/depth of the upper floor planter boxes has been increased and the setback of the upper floor has been marginally increased to reduce the visibility of the upper floor, as shown in Figures 5 and 6 below. Whilst the upper floor of the amended proposal is less visible than that previously proposed, this has resulted in an increase to the height of the dominant facade, the loss of any articulation along the southern elevation and the removal of all weather protection to the upper floor areas of open space. The amended proposal also results in a reduction of balconies along the Sunshine Street facade, with additional internal floor space extending forward of the 5m minimum front setback and increasing the solidity of the Sunshine Street facade.



Figure 5 - Suns



Figure 6 - Suns

In relation to Condamine Street, the visual prominence of the upper floor remains largely unchanged, as shown in Figures 7 and 8. Furthermore, as a result of amendments to achieve greater solar access, the proposed Condamine Street facade is less refined and lacks the level of detail and articulation previously proposed. The angled treatment of the facade and the amended roof form also seems at odds with the curvature of the feature corner detailing. Similarly to the Sunshine Street facade, the amendments to the Condamine Street facade also include an increase to the height of the upper level planters, resulting in additional bulk along the dominant facade, and the loss of covered areas of private open space.



Figure 7 - Con



Figure 8 - Con

This unbroken and heavy treatment of the second floor roof line with nil (minimum) setbacks to the Condamine Street and Sunshine Street facade is at odds with the massing of surrounding development, where upper floors are distinctly setback from the street. The reduction to the eave projection reduces the amenity of the top floor units and the usability of the private open space. Furthermore, if approved, the proposal may lead to further ad-hoc applications for additional roof structures or awnings at the upper most level, which will erode the intent of the setback to the roof.

Overall, the proposed variations to the front setbacks are not supported, as the proposed development is inconsistent with the objectives of the front boundary setback control, as follows:

- *To create a sense of openness.*

Comment: The application proposes enclosed floor space with nil setbacks to the street on Level 2, with deep planter boxes along the front boundaries at Level 3, reaching the 11m building height with a nil setback to the boundary. This creates a very solid presentation to the

street, and increases the apparent size of the development as seen from the public domain. This design solution is unlike other development along Condamine Street, which generally comprise open balconies along the Level 2 front facade, or greater setbacks between the enclosed space and the front boundary. The forward projecting enclosed areas may be offset by vertical breaks along the facade, however these have since been removed in the amended proposal. Overall, the proposal has a very solid presentation to the street, antipathetic to the objective to achieve a sense of openness at the upper levels.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment: No other development along this stretch of Condamine Street features nil setbacks to enclosing walls at Level 2, or planters/balustrades associated with Level 3 with nil setbacks to the street. The proposal is inconsistent with the pattern of buildings along both Condamine Street and Sunshine Street. Figures 9 and 10 demonstrate the difference between the setbacks of other development along Condamine Street compared to the setbacks proposed in the subject application.

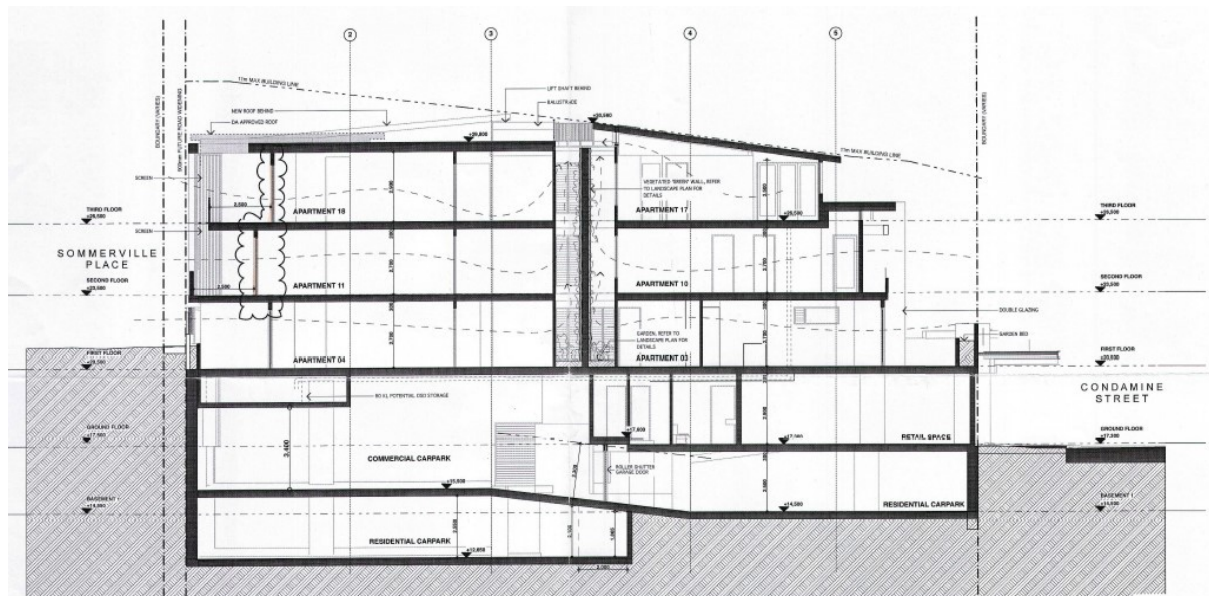


Figure 9 - The front setback

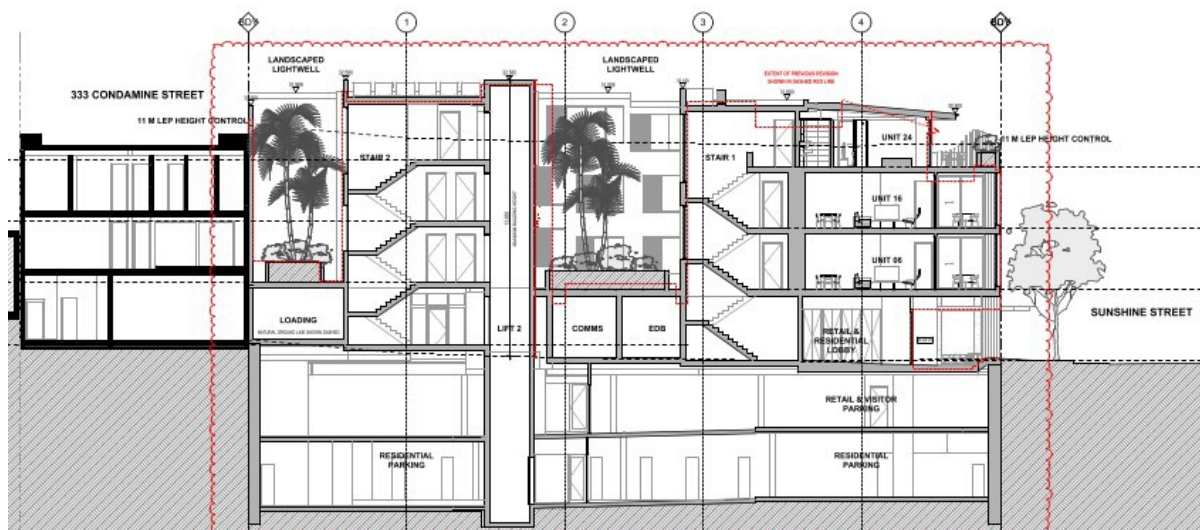


Figure 10 - The front setback

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

Comment: The proposed development does not protect the visual quality of the streetscape, in so far as the massing and scale is at odds with that of surrounding development.

- *To achieve reasonable view sharing.*

Comment: The setbacks of the upper floors to not attribute to any unreasonable impacts upon views.

C2 Traffic, Access and Safety

The proposed development is consistent with the provisions of this control that prescribe that where practicable, access should be gained from minor streets. However, as discussed by Council's Traffic Engineer, the application has not satisfactorily demonstrated that access to/from the proposed driveway and loading bay is adequate or safe, inconsistent with both the requirements and objectives of this clause.

D2 Private Open Space

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

D6 Access to Sunlight

Proposed Units

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

Adjoining development

Clause D6 of WDCP 2011 also requires at least 50% of the required area of private open space for each adjoining dwelling to receive 3 hours of direct sunlight between 9am and 3pm in midwinter. The ADG does not prescribe any minimum requirements in relation to impacts upon neighbours, and as such, these provisions of clause D6 of WDCP 2011 are relevant to the proposal. The application was supported by shadow diagrams that indicate that the proposal will result not result in additional overshadowing of any nearby areas of private open space. In this respect, it is noted that the rear area of private open space at 2 Sunshine Street is both partially self-overshadowed and overshadowed by the adjoining development at 333 Condamine Street at 9am.

It is noted that there are some irregularities in the shadow diagrams provided. The shadow diagrams appear to indicate that the adjoining one and two storey development to the west will overshadow the proposed third floor terrace in the afternoon in midwinter, which is obviously incorrect. However, the diagrams provide sufficient information to demonstrate that area of private open space at the rear of 2 Sunshine Street is both self overshadowed and overshadowed by the adjoining development at 333 Condamine Street at 9am, with no additional impact from the proposed development, which is the

primary purpose of these diagrams.

D8 Privacy

As discussed with regard to the spatial separation requirements of the ADG, the proposed development comprises 14 units that are designed with their primary orientation to the west, 6.0m - 7.5m from the boundary of the adjacent R2 low density zoned land. The applicant has attempted to address privacy concerns with the incorporation of high level sills (1.6m above the FFL) and operable screens or planters along the western edge of the areas of private open space. However, such measures negatively impact upon the internal amenity of the proposed units and do not ensure appropriate levels of privacy to the adjoining property, in so far as the use and maintenance of such screens and plantings are at the discretion of the occupants of the proposed development.

Particularly in the area opposite the rear private open space of the dwelling at 2 Sunshine Street, the setbacks of the proposed development should be increased to facilitate greater spatial separation between dwellings and the incorporation of meaningful landscaping.

D9 Building Bulk

Clause D9 of WDCP 2011 prescribes that:

1. *Side and rear setbacks are to be progressively increased as wall height increases.*
2. *Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.*
3. *Building height and scale needs to relate to topography and site conditions.*
4. *Orientate development to address the street.*
5. *Use colour, materials and surface treatment to reduce building bulk.*
6. *Landscape plantings are to be provided to reduce the visual bulk of new building and works.*
7. *Articulate walls to reduce building mass.*

As discussed at length with regard to building height and front and side setbacks, the setbacks of the upper floors are not appropriately increased as the height of the development increases. Furthermore, whilst the proposal provides varied colours and materials across the facades of the development, the facades are not appropriately articulated in order to reduce the apparent size of the 38m wide development.

The landscaping proposed within the road reserve is unlikely to be achieved due to the extent of underground infrastructure, and with the exception of the top floor planters, there is a general lack of landscaping presenting to the public domain.

The bulk of the building is unacceptable and inconsistent with the objectives of this clause that aim to encourage good design and innovative architecture to improve the urban environment and to minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.

D18 Accessibility and Adaptability

Clause D18 of WDCP 2011 requires the development to be compliant with AS1428.2. Further, 10% of the proposed units (three units) shall be capable of being adapted to meet the Adaptable House Class C classification level under AS4299.

The Review Application relies upon the Access Report (prepared by BCA Logic dated 4 June 2020)

submitted to accompany DA2020/0824. The Access Report was produced with respect to plans dated 12 May 2020 that have not been presented to Council. The development has been amended on multiple occasions throughout the assessment of DA2020/0824 and the subject Review Application, which have impacted upon access arrangements, internal layouts and the provision of adaptable housing units, all of which are relevant to the findings and recommendations of the Access Report.

Despite request, an amended access report has not been presented to Council and as such, Council cannot be satisfied that the proposed development is compliant with AS1428.2 or that three units are capable of being adapted to meet the Adaptable House Class C classification level under AS4299. As such, the application is recommended for refusal in this regard.

F1 Local and Neighbourhood Centres

Clause F1 of WDCP 2011 prescribes the following in relation to buildings within a local centre:

1. *Buildings are to define the streets and public spaces and create environments that are appropriate to the human scale as well as being interesting, safe and comfortable.*
2. *The minimum floor to ceiling height for buildings is to be 3.0 metres for ground floor levels and 2.7 metres for upper storeys.*
3. *The design and arrangement of buildings are to recognise and preserve existing significant public views.*
4. *Development that adjoins residential land is not to reduce amenity enjoyed by adjoining residents.*
5. *The built form of development in the local or neighbourhood retail centre is to provide a transition to adjacent residential development, including reasonable setbacks from side and rear boundaries, particularly above ground floor level.*
6. *Buildings greater than 2 storeys are to be designed so that the massing is substantially reduced on the top floors and stepped back from the street front to reduce bulk and ensure that new development does not dominate existing buildings and public spaces.*
7. *Applicants are to demonstrate how the following significant considerations meet the objectives of this control:*
 - *Scale and proportion of the façade;*
 - *Pattern of openings;*
 - *Ratio of solid walls to voids and windows;*
 - *Parapet and/or building heights and alignments;*
 - *Height of individual floors in relation to adjoining buildings;*
 - *Materials, textures and colours; and*
 - *Architectural style and façade detailing including window and balcony details*
8. *Footpath awnings should be designed to allow for street tree planting.*
9. *Awnings should be consistent in design, materials, scale and overhang with adjacent retail developments.*
10. *Awnings should have an adequate clearance from the kerb.*

With particular reference to Manly Vale, clause F1 prescribes that "*Condamine Street will 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*".

The proposed development is inconsistent with multiple aspects of these controls, as follows:

1. The proposed development, which features built form to heights of 11m with nil setbacks to the front boundary, is not at human scale.
2. The ceiling heights of the upper floor units are a minimum of 2.4m in habitable rooms.
3. The proposed development, with 13 of 27 units orientated to the west, will reduce amenity enjoyed by adjoining residents.
4. The built form of development does not provide an appropriate transition to adjacent residential development above ground floor level.
5. The built form of the upper two levels is not substantially reduced and stepped back from the street front to reduce bulk and ensure that new development does not dominate existing buildings and public spaces.
6. The proposed development has not had adequate regard for the composition, pattern and massing of other buildings along the streetscape (as highlighted in the discussion of clause B7 of WDCP 2011), specifically those in the immediate visual catchment.
7. The proposal does not comprise adequate awnings, in so far as the majority of Condamine Street and Sunshine Street footpaths are to be uncovered.

Non-compliance with the provisions of this clause is not supported, as the proposed development is inconsistent with the objectives of the clause which aim to encourage low-rise shop top housing development, of a good design with innovative architecture, to create places with a village-like atmosphere that is consistent with the established scale and pattern of surrounding development.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of \$112,790 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$11,279,007.

ADEQUACY OF INFORMATION

The application is lacking critical information required to assess the application, and a number of documents provided have been superseded and are no longer relevant to the application. These matters include:

- The BASIX Certificate supplied does not relate to the amended proposal now before Council.
- The Access Report was not updated to reflect the amended architectural plans.
- The Solar Access Diagrams appear to be in error.
- The application was not supported by a QS report.

The absence or inadequacy of supporting documentation is discussed in *SHMH Properties*

Australia Pty Ltd v City of Sydney Council [2018] NSWLEC 66, as follows:

The absence or inadequacy of documents required by Sch 1, cl 2 and 2A of the EPA Regulation to accompany a development application does not necessarily make the application invalid, but it does make the development application incomplete and, in a particular case, the absence or inadequacy of the documents may be of such significance as to prevent the consent authority from performing its statutory duty under the EPA Act when determining the application (see Currey v Sutherland Shire Council (2003) 129 LGERA 223; [2003] NSWCA 300 at [35]; Cranky Rock Road Action Group Inc v Cowra Shire Council (2006) 150 LGERA 81; [2006] NSWCA 339 at [73]-[78], [88] and McGovern v Ku-ring-gai Council (2008) 72 NSWLR 504; [2008] NSWCA 209 at [198]-[200]).

The absence of information and the inconsistencies in the information presented to Council are considered to warrant the refusal of the subject 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 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

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

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

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

Council is not satisfied that:

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

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and

b) There are sufficient environmental planning grounds to justify the contravention.

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

The amended application has not adequately responded to the reasons for the refusal of DA2020/0824, as follows:

1. *Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy 65 - Design Quality of Residential Flat Development. The development fails to comply with the provision of SEPP 65, in particular relating to the principals of context and the requirements of the Apartment Design Guide in relation to solar access, cross ventilation and building separation to the residential zoned land to the west. The development does not provide adequate floor to ceiling heights for the retail tenancies 3 and 4 and the residential lobby accessed from Sunshine Street as required by SEPP 65.*

Comment: The proposal remains non-compliant with regard to solar access and building separation to the residential zoned land to the west. Whilst ceiling heights in the lobby and retail spaces have been increased, the ceiling heights of the upper floor have been reduced and no longer comply. Further concern is also raised with regard to the size and dimensions of proposed units, and the usability of areas of private open space.

2. **Building Height**
Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011. In this regard, the Panel is not satisfied that the applicant's written request demonstrates there are sufficient environmental planning grounds to justify contravening the development standard. The Panel is not satisfied that the development will be in the public interest as the development is not consistent with the objectives of the height of buildings development standard regarding compatibility with the height, bulk and scale of nearby developments and that the development will minimise visual impact of the top floor (Level 3) from the public domain and surrounding lands.

Comment: The proposal remains non-compliant with the maximum building height to a similar degree as that previously proposed. The bulk and scale of the development has not been appropriately minimised, and in some areas, the apparent size of the development has increased. The clause 4.6 submission remains unsatisfactory, in so far as it does not demonstrate that compliance is unreasonable or unnecessary, with no sufficient planning grounds to justify the proposed contravention. Furthermore, the proposal remains at odds with the objectives of the height standard and the B2 Local Centre zone with regard to the compatibility with the height, bulk and scale of nearby developments.

3. **Building Setbacks (Top floor)**
Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B5 Side Boundary Setbacks of the Warringah Development Control Plan. The upper floor is not sufficiently setback to minimise the visual impact of level three as viewed from the surrounding lands and public domain.

Comment: The setbacks of the upper floor have not been adequately increased to minimise the visual impact of the development as seen from the public domain.

4. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C2 Traffic, Access*

and Safety of the Warringah Development Control Plan. The development does not result in a satisfactory outcome with regards to pedestrian and vehicle safety along Somerville Place due to the width of the existing laneway and the intensity of the development proposed.

Comment: Whilst the proposal now provides adequate width to enable satisfactory pedestrian and vehicle safety along Somerville Place, this has resulted in the loss of deep soil landscaping necessary to provide an appropriate transition to the adjoining low density land to the west. Further, whilst the laneway width has been increased, the design of the driveway is not satisfactory, and access issues remain unresolved.

In addition to these unresolved matters, review of the amended proposal has also raised additional concerns with regard to the front setback of the development, the treatment of the facades, and accessibility.

Overall, the proposal is an over-development of the site, resulting in unreasonable impacts upon adjoining properties and the surrounding environment, with poor levels of amenity for future occupants of the proposal development.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No REV2021/0014 for the Review of Determination of Application DA2020/0824 for demolition works and construction of a shop top housing development and strata subdivision on land at Lot 21 DP 11320,323 - 325 Condamine Street, MANLY VALE, Lot 22 DP 11320,323 - 325 Condamine Street, MANLY VALE, Lot 123 DP 737259,327 - 329 Condamine Street, MANLY VALE, Lot 25 DP 11320,331 Condamine Street, MANLY VALE, Lot 20 DP 11320,321 Condamine Street, MANLY VALE, for the reasons outlined as follows:

1. The proposed development breaches the maximum building height development standard, is inconsistent with the objectives of clause 4.3 of Warringah Local Environmental Plan 2011 (WLEP 2011) and exceeds the three-storey height control of clause B2 (Number of Storeys) of Warringah Development Control Plan 2011 (WDCP 2011).
2. The applicant's written request under clause 4.6 of the WLEP 2011 seeking to justify contravention of the height of buildings development standard prescribed by clause 4.3 of WLEP 2011 has not adequately addressed and demonstrated that:
 - a) compliance with the standard is unreasonable or unnecessary in the circumstances of the case;
 - b) there are sufficient environmental planning grounds to justify the contravention, and
 - c) the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the B2 Local Centre zone.
3. In accordance with clause 30 of *State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development* (SEPP 65), development consent cannot be granted as adequate regard has not been given to the design principles of SEPP 65 or the objectives of the *Apartment Design Guide*.
4. The proposed development is inconsistent with the minimum requirements and objectives of the front and side setback controls, as prescribed by clauses (B6 Merit Assessment of Side Boundary Setbacks) and B7 (Front Boundary Setbacks) of WDCP 2011. The bulk and scale of the proposed built form is excessive, with unreasonable impacts upon adjoining properties and the streetscape.
5. The massing and design of the development fails to appropriately respond to the context of the site, inconsistent with the requirements and objectives of clauses D9 (Building Bulk) and F1 (Local and Neighbourhood Centres) of WDCP 2011.
6. The proposed driveway design is inconsistent with the requirements and objectives of clause C2 (Traffic, Access and Safety) of WDCP 2011.
7. The proposed development will result in unreasonable impacts upon the amenity of the dwelling at 2 Sunshine Street, inconsistent with the requirements and objectives of clause D8 (Privacy) of WDCP 2011.

8. The proposed development fails to provide any adaptable housing units, inconsistent with the requirements and objectives of clause D18 (Accessibility and Adaptability) of WDCP 2011.
9. The application fails to satisfy the provisions of clause 50 of the *Environmental Planning and Assessment Regulation*, in so far as the application is not supported by the relevant information listed in Schedule 1 applicable to the amended proposal before Council. A proper and comprehensive assessment was therefore unable to be undertaken by Council.