

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0073
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Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 100 DP 1270372, 267 - 269 Condamine Street MANLY VALE NSW 2093
Proposed Development:	Modification of Development Consent DA2019/0114 granted for Demolition of the existing building and construction of a shop top housing development, comprising 27 dwellings, 4 retail tenancies and carparking
Zoning:	Warringah LEP2011 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Manly Vale Developments No 3 Pty Ltd
Applicant:	Manly Vale Developments No 3 Pty Ltd

Application Lodged:	08/03/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	16/03/2022 to 30/03/2022
Advertised:	16/03/2022
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 35%
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The modification application is supported by amended drawings and documents as follows:

- DA-00 to DA-06, DA-08, DA-10, DA-13, DA-18 (Issue J)
- DA-07, DA-09, DA-12, DA-14 (Issue K)
- DA-15 to DA-17 (Issue H)
- Updated BCA Report
- Updated Access Report
- Updated Traffic & Parking Report
- Updated Acoustic Report
- Updated Flood Report
- Updated Geotechnical Report

- Revised BASIX certificate.

The modification works involve the following changes to the building:

1. Extend 'Stair 2' to the roof top to provide a required exit to the Communal Open Space area.
2. Relocate 9 of the 31 Air Conditioning Condenser units to the roof top area.
3. The skylight to kitchen area of unit 18 is deleted and replaced with glass blocks to the north wall to the void feature.
4. The area of Retail space is reduced and Bulky Goods Room and toilets added, with selected service rooms relocated.
5. The total of retail area reduced from 327 sqm to 303 sqm.
6. RL's of basement lowered increasing excavation. (approved basement RL5.07 modified for a new deeper RL4.07)
7. The internal driveway ramp grade increased to 25%.
8. BASIX revision to reflect amendments to the units from the original application.
9. Height of Lift 1 over-run increased by 290 millimetres (mm). The original consent RL to the top of lift was RL28.450. The proposed modification indicates the top of lift at RL28.740) The overall maximum height variation to the building is therefore increased to 35% or 2.89m.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings

Warringah 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

SITE DESCRIPTION

Property Description:	Lot 100 DP 1270372 , 267 - 269 Condamine Street MANLY VALE NSW 2093
Detailed Site Description:	<p>The site has a 28.397metre (m) wide frontage to Condamine Street, a 34.45m wide frontage to Kenneth Road, and a total area of 1075.3m². Prior to approval of DA2019/0114 the site comprised a one and two storey commercial premises and a number of outbuildings, with vehicular access and perpendicular parking along the Kenneth Road frontage.</p> <p>The site has a cross fall of approximately 4m from the western side boundary down towards the Condamine Street frontage, with a slope of approximately 12%.</p> <p>The site is surrounded by a variety of different land uses and buildings of varied age and character, with a number of recent development approvals under construction or yet to be acted upon.</p> <p>In front of the site Condamine Street is a seven lane classified road, with bus lanes and intermittent parking restrictions on both sides of the street. The Condamine Street road reserve immediately adjacent to the site comprises a narrow footpath, with no street trees or overhead infrastructure. Kenneth Road is a three lane local road, that lacks formal kerb and guttering for the majority of the frontage of the site. Traffic lights control the intersection of Condamine Street and Kenneth Road, with signalised pedestrian crossings on the western, northern and eastern sides of the intersection.</p>

Map:



SITE HISTORY

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

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

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

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

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p>Yes</p> <p>The modification, as proposed in this application, is concurred to be of minimal environmental impact for the following reasons provided in consideration by the applicant:</p> <ul style="list-style-type: none"> • The stair roof does not impact any views, privacy, solar access to adjoining properties or increased bulk and scale as the stair roof cannot be seen from any public space. • Modification work is relevant to Condition 4(a) which requires that all building works comply with the BCA.

Section 4.55(1A) - Other Modifications	Comments
	<ul style="list-style-type: none"> • The Air conditioner condensers and screens do not increase the height of the building beyond that of the consent. The units and screens are at the same height as the approved planters to the roof terrace. • The replacement of the skylight with glass blocks results in no impacts to adjoining public or private spaces. The glass blocks do not impact on any visual or acoustic privacy as they are obscure and face into the western facing courtyard which has apartments 10 and 19 facing the glass blocks. The glass blocks are open to the boundary to 1 Kenneth Road and do not impact upon privacy to that property. • The revisions to the retail ground floor have been dealt with totally internal to the building with no change to the façade or the circulation within the building.. • The reduction of retail area results in no impacts to adjoining public or private spaces. The reduced retail area reduces the net carparking as per the DCP control. • The lowering of the basement is a combined consequence of new legislation in the <i>Development & Building Procedures Act 2020</i> requiring additional falls to structural slabs, new Building Code of Australia 2019 / National Construction Code regulations that required the sprinkler room, both of which combined to alter the structural design to require thickening of slabs over the multiple falls in the three floors from ground level carpark entry, basement 1 and basement 2. • The increased driveway gradient results in no impacts to adjoining public or private spaces as the change is entirely internal to the development and maintains compliance with Australian Standards. • BASIX revision is required for the building to correspond with the design changes. • In the original consent indicates an RL to the top of lift of RL28.450. The proposed modification indicates the top of lift at RL28.740. This increases the overall building height (extra 290mm) due to a different lift model use however no unreasonable impact to views, overshadowing, noise or amenity from the minor change to the lift housing structure.
<p>(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and</p>	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/0114 for the following reasons:</p> <ul style="list-style-type: none"> • The location of the lift in the centre of the floor plate results in no impacts to adjoining public or private spaces. The lift does not impact any views, privacy,

Section 4.55(1A) - Other Modifications	Comments
	<p>solar access to adjoining properties or increased bulk and scale as the stair roof cannot be seen from any public space.</p> <ul style="list-style-type: none"> • The changes involve internal and minor external works generally contained within the footprint and envelope. • The modification works do not change the building footprint, envelope, retail to residential composition, building bulk, car parking numbers, external facade to the streetscape or any other major external components the development such as balconies, unit outlooks or residential density. • The increased excavation results in no impacts to adjoining public or private spaces as the change is entirely internal to the development. • The internal revision of the floor plan to accommodate sprinkler services does not have any effect on controls beyond that of the consent. The revisions assist to provide BCA compliance and with Australian Standards that is required by the consent and legislation. • No change to Transport for NSW (TfNSW) conditions is required.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.</p>
<p>(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.</p>	<p>No submissions were received in relation to this application.</p>

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into

consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	<p>See discussion on “Environmental Planning Instruments” in this report.</p> <p>Note: While the modification seeks a further variation to a development standard (height of buildings) the application is appropriate to be considered under Section 4.55(1A) and is quantified as a minor modification / minor change. The NSW Planning Directions to local Councils (Variation to Development Standards) has been reviewed with respect to permitting variations above 10% for development applications and the use of Planning Panels for that purpose. Consideration of the modification being 'minor' has been made in contexts as summarised by <i>Pepper J in Agricultural Equity Investments Pty Ltd v Westlme Pty Ltd (No 3) [2015] NSWLEC 75</i>.</p> <p>The application of "Clause 4.6" has previously been made with the original DA assessment with the new changes being limited as discussed above and are subject to the separate facultative power of Section 4.56 of the Act. The modification has not raised any public objections and discussions / review of the modification report between Managerial levels of Council have resolved that referral to a Local Planning Panel is not triggered as per the Directions.</p>
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>in this case.</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 has been addressed via a condition in the original consent</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent and changes to the regulations are included with the modification conditions.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter has been addressed via a condition in the original consent.</p>
<p>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>	<p>(i) Environmental Impact The environmental impacts of the proposed modification of development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. The proposed modifications are consistent with the reasons for granting of approval and the original consent documents and application details have been reviewed including submission issues from the original DA.</p> <p>(ii) Social Impact The proposed modification of development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed modification of development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed modification of the development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>

Section 4.15 'Matters for Consideration'	Comments

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 16/03/2022 to 30/03/2022 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported, with modified conditions.</p> <p>The modification application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Landscape Officer	<p>Supported, without modified conditions.</p> <p>The modification application proposes minor amendments to the building that does not alter the landscape outcome of the development.</p>
NECC (Development Engineering)	<p>Supported, without modified conditions.</p> <p>The proposed modification has been reviewed and is supported. Councils traffic engineer has confirmed their support of the changes to the basement ramp grades. Additionally the proposed lowering of the basement is supported as the previous <i>Crozier Geotechnical</i> report has indicated that the water table will not be intercepted.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>Supported, without modified conditions.</p> <p>The property at 267-269 Condamine St, Balgowlah is tagged as being</p>

Internal Referral Body	Comments
	<p>within the Medium Flood Risk Precinct. However it is only a very tiny part of the property, less than 1m inside the property boundary in the south-east corner, which is affected. The proposed modifications are minor and do not impact on the building footprint or flood risk.</p> <p>No flood related objections.</p>
Strategic and Place Planning (Urban Design)	<p>Supported, without modified conditions.</p> <p>The proposed modifications are minor in nature and will have will have minimal environmental impact. The changes involve internal and minor external works generally contained within the footprint and envelope approved. As such there is no objection to the proposed amendments.</p>
Traffic Engineer	<p>Supported, without modified conditions.</p> <p>The proposed modifications incorporate a reduction in the retail floor area which results in a reduction in the retail parking requirement by one space although no changes to the level of parking provision is proposed.</p> <p>The modification also includes some steepening of the internal carpark ramps from 20% to 22.5% and 25%. The steepened sections are at lengths less than the 20m maximum specified in AS/NZS 2890.1 clause 2.5.3(b)(ii) and incorporate appropriately graded transitions and are therefore acceptable. Satisfactory clearances are also available along the ramps and within the carparking layers.</p> <p>There are therefore no traffic engineering concerns regarding the modification and the modified plans are acceptable with no additional conditions proposed.</p>
Waste Officer	<p>Supported, without modified conditions.</p> <p>Waste Management Assessment Existing conditions OK. NOTE: the conditions recommended are already part of the parent consent and no modified wording or new conditions is recommended. Ray Creer Waste Services Officer</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>Supported with modified conditions.</p> <p>The modification proposal was referred to <i>Ausgrid</i>. A response has been received on 26.4.2022 that no objections are raised with appropriate advice regarding Ausgrid assets recommended.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. The provisions of the SEPP and Draft SEPP were considered with the original DA assessment and the modification does not require further detailed assessment of the SEPP in this regard for the modification work.

SEPP 65 - Design Quality of Residential Apartment Development

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

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

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

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

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and

(c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development is for modification of consent to DA2019/0114 approved for the erection of a 4 storey mixed use shop-top housing development with basement carparking.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

As previously outlined within this report Clause 50(1A) of the Environmental Planning and Assessment 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.

Clause 28 of SEPP 65 requires:

(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- (a) the advice (if any) obtained from the design review panel, and
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and
- (c) the Apartment Design Guide.

DESIGN REVIEW PANEL

The modification is for minor changes relating to BCA and existing conditions which does not require referral to Councils Design Review Panel.

DESIGN QUALITY PRINCIPLES

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 modification maintains consistency with the original design verification statement and the objective of this principle. No significant change is proposed to the overall appearance of the building which remains substantially the same in terms of height, bulk, scale and dwelling density. The modification is consistent with this objective.

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 modification work does not increase the overall appearance of building bulk. Changes proposed are essentially related to BCA compliance and design solutions to conditions or recent legislative changes for building standards / regulations. The modification is consistent with this objective.

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:

The modification does not alter the density of the development and remains consistent with this objective.

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 modification does not reduce or remove any principle elements of sustainability. Minor design refinements are proposed to address conditions including selected elements of the BCA or Australian standards that require compliance for new construction work.

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 usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment:

All landscaping elements remain consistent with the conditions of consent and approved plans to ensure appropriate landscape elements are included for the building design. The proposal is consistent with this objective.

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:

The amenity of the building remains consistent with the parent development consent and the changes to the plans do not create any unreasonable or additional amenity impacts for adjacent land. The proposal is consistent with this objective.

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:

The modification will maintain appropriate levels of safety and access. The building work is required to comply with conditions, building safety standards, regulations and current requirements of the BCA / NCC. The modification does not reduce security or passive surveillance and remains consistent with this objective.

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, providing opportunities for social interaction amongst residents.

Comment:

The mix of apartments and density remains the same with minimal change to communal open space elements. The modification remains consistent with this principle.

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

Comment:

APARTMENT DESIGN GUIDE

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context	Satisfactory in context of

	and is it sited appropriately?	the approved plans and modification work.												
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	No change												
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	Satisfactory												
Communal and Public Open Space	Appropriate communal open space is to be provided as follows: 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)	Remains satisfactory in context of the approved plans and conditions of consent. Consistent with approved plans / conditions.												
Deep Soil Zones	Deep soil zones are to meet the following minimum requirements: <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> <tr> <td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	Consistent with approved plans / conditions.
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
Visual Privacy	Minimum required separation distances from buildings to the side and rear boundaries are as follows: <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8</td><td>9m</td><td>4.5m</td></tr> </tbody> </table>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8	9m	4.5m	Consistent with approved plans / conditions.			
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8	9m	4.5m												

	<table> <tr> <td>storeys)</td><td></td><td></td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	storeys)			Over 25m (9+ storeys)	12m	6m	
storeys)								
Over 25m (9+ storeys)	12m	6m						
Pedestrian Access and entries	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	Consistent with approved plans / conditions.						
Vehicle Access	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p>Consistent with approved plans / conditions.</p> <p>In the original consent provided a maximum ramp of 20% grade. The proposed modifications result in minor increases in the gradients to 22.5% and 25%.</p> <p>The Australian standard provides a maximum of 25% gradient.</p>						
Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other</p>	<p>Consistent with approved plans / conditions.</p> <p>The increased excavation has no impact on any other parts of the development.</p> <p>The carpark layout remains generally unaltered providing the same circulation, number of car spaces, exits and services.</p>						

modes of transport.

Visual and environmental impacts are minimised.

Part 4 Designing the Building

Amenity

Solar and Daylight Access

To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:

- Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.

Consistent with approved plans / conditions.
The inclusion of a glass block fire rated wall to the northern wall of the kitchen provides both BCA compliance and satisfies the need to improve daylight amenity to the apartment. The proposed glass blocks are a suitable replacement for the deletion of the skylight.

The proposed modification requires deletion of dot point 1 of Condition 24 which imposed the skylight.

- A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.

Satisfactory

Natural Ventilation

The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:

- At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.

Satisfactory

- Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.

Consistent with approved plans / conditions.

Ceiling Heights

Measured from finished floor level to finished ceiling level, minimum ceiling heights are:

Minimum ceiling height	
Habitable rooms	2.7m
Non-habitable	2.4m
For 2 storey	2.7m for main living area floor

Consistent with approved plans / conditions.

	<table><tr><td>apartments</td><td>2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table>	apartments	2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use					
apartments	2.4m for second floor, where its area does not exceed 50% of the apartment area											
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope											
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use											
Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum 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> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>Satisfactory.</p> <p>The residential apartment layout mix has not changed. The proposed modifications do not alter the number of apartments or type of apartments, nor the areas, windows and walls.</p>
Apartment type	Minimum internal area											
Studio	35m ²											
1 bedroom	50m ²											
2 bedroom	70m ²											
3 bedroom	90m ²											
	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.	<p>Satisfactory.</p> <p>The modification updates the BASIX with a compliant BASIX certificate relevant to the approved plans.</p>										
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	<p>Satisfactory.</p>										
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	<p>Satisfactory.</p>										
	Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space).	<p>Satisfactory.</p>										
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	<p>Satisfactory.</p>										
	<p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none">3.6m for studio and 1 bedroom apartments4m for 2 and 3 bedroom apartments	<p>Satisfactory.</p>										

	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Satisfactory.															
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	Satisfactory.
	Dwelling Type	Minimum Area	Minimum Depth														
	Studio apartments	4m ²	-														
	1 bedroom apartments	8m ²	2m														
	2 bedroom apartments	10m ²	2m														
3+ bedroom apartments	12m ²	2.4m															
The minimum balcony depth to be counted as contributing to the balcony area is 1m																	
	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 15m ² and a minimum depth of 3m.	N/A															
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Satisfactory.															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A															
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²	Satisfactory.					
	Dwelling Type	Storage size volume															
Studio apartments	4m ²																
1 bedroom apartments	6m ²																
2 bedroom apartments	8m ²																
3+ bedroom apartments	10m ²																
At least 50% of the required storage is to be located within the apartment.																	
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Satisfactory. Consistent with approved plans / conditions.															
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Satisfactory.															
Configuration																	

Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Consistent with approved plans / conditions.										
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	N/A										
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Consistent with approved plans / conditions.										
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	Consistent with approved plans / conditions. In the original consent indicates an RL to the top of lift of RL28.450. The proposed modification indicates the top of lift at RL28.740. The applicant has provided reason that: <i>"The reason for the 290mm increase is that all lift manufacturers supplying lifts to Sydney Australia ceased to offer their "low headroom lifts" to residential flat buildings and the product is unavailable. The lowest lift possible to the market was selected to replace the original lift, with an increase of 290mm in height."</i>										
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Satisfactory.										
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes: <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m³</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Satisfactory. Consistent with approved plans / conditions
Plant type	Definition	Soil Volume	Soil Depth	Soil Area								
Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent								

	<table><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m³</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m³</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table>	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		
Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent																							
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Shrubs			500-600mm																								
Ground Cover			300-450mm																								
Turf			200mm																								
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features	Consistent with approved plans / conditions.																									
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	Consistent with approved plans / conditions.																									
Mixed Use	<p>Can the development be accessed through public transport and does it positively contribute to the public domain?</p> <p>Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.</p>	<p>Consistent with approved plans / conditions.</p> <p>The reduction of retail from 327m² to 303m² has only one point of relevance. The planning controls dictate that car parking shall be provided at the rate of 6.1 spaces per 100m² of retail. This would result in the requirement for retail parking to be 18.48 (or 19) spaces in comparison to the original consent of 19.95 (or 20) spaces. The proposal therefore results in an excess of 1 car space for retail use.</p> <p>The reduction of retail area results in no impacts to adjoining public or private spaces as the change is entirely internal to the development.</p>																									

Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.	Consistent with approved plans / conditions.
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Consistent with approved plans / conditions.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Consistent with approved plans / conditions.
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	Consistent with approved plans / conditions.
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Consistent with approved plans / conditions.

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

- (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
- (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
- (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

Note. The *Building Code of Australia* specifies minimum ceiling heights for residential flat buildings.

Comment:

The revised internal planning of the retail/ground floor level results in no impacts to adjoining public or private spaces. The proposed modification is relevant to Condition 4(a) which requires that all building works comply with the BCA. The modification does not require any amendment to the BCA condition of consent as the plans seek to accommodate regulatory compliance conditions.

The implementation of changes to the BCA in the middle of 2019 placed a new obligation on 4 storey residential buildings that requires that this type of building must be sprinklered. This requirement did not exist in the BCA at the time of submission of the original DA on 11 February 2019. The new BCA

requirement provides that the building must provide a Sprinkler Pump Room and Sprinkler Tank Room which caused the planning of the ground floor retail area to be revised.

The revisions to this floor have been dealt with totally internal to the building with no change to the façade or the circulation within the building.

The changes are:

- a) Sprinkler rooms replace Access WC and services which are located elsewhere in the floor and basement
- b) Bulky goods room is relocated, and Access WC takes its location. Bulky goods is located closer to residential waste and utilises better efficiencies in corridor space.
- c) Minor reduction to retail areas (refer item 5 below)
- d) Store rooms relocated internal to retail
- e) Additional retail WC (ambulant) added

In summary, the change to the lift height (being the maximum height of the building is minor and has no unreasonable impact on surrounding land.

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

- (a) the design quality principles, and
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

(3) To remove doubt:

- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
- (b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Conclusion on SEPP 65 considerations:

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

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an

application for modification of consent) for any development carried out:

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

Comment:

The requirements of the SEPP and Ausgrid were addressed with the original development application and a referral response from *Ausgrid* have been provided for inclusion with recommended modification conditions. No further detailed consideration is required pursuant to the SEPP.

Other Service Infrastructure Authorities

The proposed modifications do not require referral to Transport for NSW (TfNSW) and no other service infrastructure authority issues are raised pursuant to the SEPP. The requirements of Sydney Water are managed by separate processes administered directly by Sydney Water.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Approved	Proposed*	Variation	Complies
Height of Buildings:	11m	14.6m (3.6m variation / 33%)	14.89m	35%	No*

*A modification of consent may seek variation, or a further variation to a development standard without the need to rely on "Clause 4.6". A modification therefore operates as a "free-standing provision" as originally outlined by the *NSW Land and Environment Court* judgment in *North Sydney Council v Michael Standley & Associates Pty Ltd [1998] NSWSC 163*.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	N/A
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
5.21 Flood planning	Yes

Clause	Compliance with Requirements
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.3 Height of buildings

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying requirements and objectives of the 'Height of Buildings' control as follows:

Height of Buildings objectives:

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

Comment

The proposal remains consistent with the approved design in terms of the built form controls (setbacks, building envelope, wall heights in comparison with the development application control remain consistent with the original consent and its planning assessment. The external wall planes, roof form, landscaped areas, private open space and internal layout for the overall building remains consistent with conditions of consent and the approved plans

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

Comment

The change to the lift shaft and associated maximum height increase does not cause any unreasonable additional overshadowing, view impact or loss of privacy to adjacent land. A number of changes are associated with construction requirements are to meet the BCA / Australian standards or improve internal amenity are therefore appropriate to be addressed as minor changes to the building works in progress (as detailed in the modification Statement of Environmental Effects provided).

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

Comment

The variation to the height of buildings development standard does create any adverse impact on Warringah coastal or bushland environments. This objective is not impacted by the modification work.

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

Comment:

The change to the building height associated with the lift shaft is not readily visible from any adjacent roads, public parks or nearby community facilities. The streetscape appearance of the building in terms of bulk, facade design, materials, colours, landscape elements, wall planes and the like remain substantially the same as approved.

Additionally, the proposed modification is given merit consideration against the Objectives of the Zone B2 Local Centre as follows, in context with the variation that has already been granted pursuant to Clause 4.6 to ensure consistency of the modification changes proposed:

Zone B2 Local Centre Objectives

- *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 modification to the building height does not raise any inconsistency with the approved development in terms of its intended use and floor space provision or housing units to be provided. Overall the proposal will assist to provide shop top housing for the local area.

- *To encourage employment opportunities in accessible locations.*

Comment

The modification to the building height and associated non-compliance does not alter the ability of the approved development to provide employment or access to transport and accessible development for the local area. The lift shaft mechanism is the principle mechanism to ensure accessible path of travel to all floors and therefore a reasonable change to the overrun mechanism.

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

Comment:

The variation to the height of the building does not affect the cycling access, pathway links to the site or public transport available.

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

Comment

The modification of consent to increase the lift overrun by 290mm does not raise any inconsistency with this zone objective

- *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 increase in the height of the building lift shaft is not readily visible from surrounding land or the streetscape and does not raise any unreasonable impacts in terms of amenity, overshadowing or building bulk. Landscaping elements will remain as part of the overall design of the building with the general appearance as approved in the original development application. The variation to the building height remains consistent with this objective and does not give rise to the implication that the development standard having been abandoned as the change is contained to a limited element of the building and for specific reasons with regard to lift mechanism available to service the building.

- *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 central position of the lift and overall design of the building remains consistent to ensure no unreasonable impact on the amenity of adjacent or nearby land uses. The development as proposed to be modified will remain consistent with this objective.

Having regard to the above assessment, it is concluded that the proposed development consistent with the relevant objectives of WLEP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance for the modification proposed to the 'Height of Buildings' development standard.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Variation	Complies
B2 Number of storeys	3 storeys	4 storeys	No change	1 storey (33%) Existing	No (As approved)
B5 Side Boundary Setbacks	West = Merit	Levels Basement, G - 3 Nil	No change	N/A	Yes
		Level 4 3m	No change	N/A	Yes
	South = Merit	Levels Basement, G - 3 Nil	No change	N/A	Yes
		Level 4 4.25m	No change	N/A	Yes
B7 Front Boundary Setbacks	Levels G -1 = Nil	Levels Basement, G - 1 Nil	No change	N/A	Yes
	Level 2 = 5m	Level 2 Nil - 4.5m	No change	0.5m - 5m (10% - 100%) Existing	No (As approved)
	Level 3 = 5m	Level 3 2.5m - 4.5m	No change	0.5m - 2.5m (10% - 50%) Existing	No (As approved)
	Level 4 = 5m	Level 4 10.6m - 18.4m	No change	N/A	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B2 Number of Storeys	No	Yes
B6 Merit Assessment of Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes
F1 Local and Neighbourhood Centres	Yes	Yes

Detailed Assessment

B2 Number of Storeys

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

B6 Merit Assessment of Side Boundary Setbacks

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

B7 Front Boundary Setbacks

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

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

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 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, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP

- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

A modification of consent may seek variation, or a further variation to a development standard without the need to rely on "Clause 4.6". A modification therefore operates as a "free-standing provision" as originally outlined by the NSW Land and Environment Court judgment in *North Sydney Council v Michael Standley & Associates Pty Ltd* [1998] NSWSC 163. The provisions of Clause 4.6 therefore do not apply. A merit consideration of the B2 Local Centre zone objectives and Height of Buildings objectives is however provided within this report.

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2022/0073 for Modification of Development Consent DA2019/0114 granted for Demolition of the existing building and construction of a shop top housing development, comprising 27 dwellings, 4 retail tenancies and carparking on land at Lot 100 DP 1270372,267 - 269 Condamine Street, MANLY VALE, subject to the conditions printed below:

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

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA-01 J Site Plan	30.11.2021	Gartner Trovato Architects
DA-02 J Basement B2 Plan	30.11.2021	Gartner Trovato Architects
DA-03 J Basement B1 Plan	30.11.2021	Gartner Trovato Architects
DA-04 J Ground Floor Plan	30.11.2021	Gartner Trovato Architects
DA-05 J Level 1 Plan	30.11.2021	Gartner Trovato Architects
DA-06 J Level 2 Plan	30.11.2021	Gartner Trovato Architects
DA-07 K Level 3 Plan	30.11.2021	Gartner Trovato Architects
DA-08 J Level 4 Plan	30.11.2021	Gartner Trovato Architects
DA-09 K North and East Elevations	30.11.2021	Gartner Trovato Architects
DA-10 J South and West Elevations	30.11.2021	Gartner Trovato Architects

DA-12 K Section A and C	30.11.2021	Gartner Trovato Architects
DA-13 J Sections 1 and 2	30.11.2021	Gartner Trovato Architects
DA-14 K Sections 3 and 6	30.11.2021	Gartner Trovato Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate 963230M_02	5.2.2022	Gartner Trovato Architects
Geotechnical Assessment 2018-0130	31.1.2022	Crozier Geotechnical Consultants
BCA Assessment Report 109774-BCA-r4	15.11.2021	BCA Logic
Noise Impact 5445	24.11.2021	Acoustic Dynamics

c) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

e) The development is to be undertaken generally in accordance with the following:

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	26.4.2022

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

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

C. Modify Condition 24, Amendments to the approved plans, to read as follows:

"24. Amendments to the approved plans

The following amendments are to be made to the approved plans:

- a) [deleted]

- b) Fixed ceilings are to be incorporated within Retail Tenancies 1-3, to facilitate a 300mm cavity space below the Level 1 slab. The ceilings of these retail spaces must be designed and maintained below RL 15.0m AHD, being the minimum floor level of Level 1 residential apartments.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure that the amenity of the proposal is optimised and consistency with the shop top housing definition, as prescribed by WLEP 2011"

D. Add Condition 37A Weatherproofing of External Walls, to read as follows:

"37A Weatherproofing of External Walls

Access and facilities to and within the building are to be provided for Persons with a Disability and are to comply with the Building Code of Australia and AS 1428.1. In this regard the Access Assessment Report prepared by BCA Access, dated 15/11/2021, Ref 109774-Access-r4 is to be taken into consideration as part of the assessment of the Construction Certificate.

Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability."

E. Add Condition 37B Building Code of Australia Fire Safety, to read as follows:

"37B. Building Code of Australia Fire Safety

The Building Code of Australia works and fire safety measures as detailed and recommended in the BCA Assessment Report prepared by BCA Logic, dated 15/11/2021, Report Ref No. 109774-BCA-r4 are to be considered as part of the assessment of the Construction Certificate.

Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.."

F. Add Condition 37C Building Code of Australia Access, to read as follows:

"37C Building Code of Australia Access

Access and facilities to and within the building are to be provided for Persons with a Disability and are to comply with the Building Code of Australia and AS 1428.1. In this regard the Access Assessment Report prepared by BCA Access, dated 15/11/2021, Ref 109774-Access-r4 is to be taken into consideration as part of the assessment of the Construction Certificate.

Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability."

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

Signed



Alex Keller, Principal Planner

The application is determined on 11/05/2022, under the delegated authority of:



Rodney Piggott, Manager Development Assessments