

1 October 2019  
2190379

Mr Ray Brownlee  
Chief Executive Officer  
Northern Beaches Council  
1 Belgrave Street,  
Manly, NSW 2095

Dear Mr Brownlee,

## **SECTION 4.55(2) MODIFICATION – RELOCATION OF CAR PARKING ENTRY 9-15 LAWRENCE STREET, FRESHWATER**

This application has been prepared by Ethos Urban on behalf of IPM Pty Ltd pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify Development Consent DA2017/1294 relating to 9-15 Lawrence Street, Freshwater.

The modifications relate to:

- The relocation of the car park entry to the rear of the site, via Council's Oliver Street carpark;
- Extension of the shopfront along Lawrence Street in place of the currently approved car park entry, resulting in an additional 51m<sup>2</sup> of retail shop area;
- Reduction of one retail car space;
- Repositioned loading dock; and
- Amended layout of the retail end of trip facilities.

This application identifies the consent, describes the proposed modifications and provides a planning assessment of the relevant matters for consideration contained in section 4.55(2) of the EP&A Act and is accompanied by:

- Architectural Plans prepared by Nettleton Tribe (**Attachment A**); and
- Traffic Impact Statement prepared by Transport and Traffic Planning Associates (**Attachment B**).

This statement should be read in conjunction with the original Statement of Environmental Effects (SEE) prepared by Ethos Urban dated 15 December 2017.

## **1.0 Background**

Development consent DA2017/1294 was granted by Northern Beaches Council on 26 June 2018 for:

*'Demolition works and the construction of a shop top housing development'.*

Since the determination of the original consent, one modification has been approved by the Council which amended an error within the approved access report that accompanied DA2017/1294.

This application represents the second modification application. In considering this application it is important to note that construction of the approved development under DA2017/1294 is now well underway, with much of the ground floor having been built to date. As such, the assessment and determination of this modification is time critical as it has significant implications for the construction program.

## 2.0 Consent proposed to be modified

Development consent DA2017/1294 was granted by Northern Beaches Council on 26 June 2018 for:

‘Demolition works and the construction of a shop top housing development’.

One modification has been made to this development consent, which amended an error in an access report that accompanied DA2017/1294.

## 3.0 Proposed modifications to the consent

### 3.1.1 Relocation of car park entry to rear of site

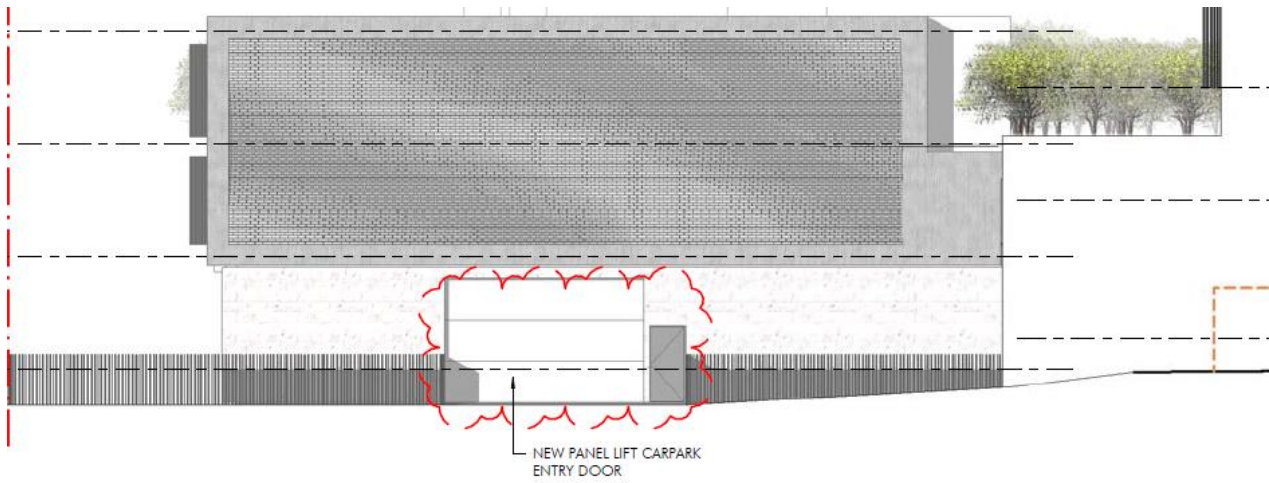
It is proposed to relocate the car park entry from the currently approved access point on the southern side of the site, via Lawrence Street, to access through the Council owned Oliver Street car park, which adjoins the site to the west. This alternative access point to the site was previously considered as part of DA2017/1294, whereby it was considered that access via Council’s Oliver Street car park provided the best traffic outcome, whilst this was the case the Lawrence Street access was ultimately approved after a detailed assessment process with Council. Since this time a Planning Proposal has been lodged by Council to change the classification of the Oliver Street car park to operational land, thereby enabling its use as a means of accessing the site. The Applicant’s latest correspondence with the Department of Planning, Industry and Environment suggests that Gateway approval for the subject Planning Proposal is imminent.

In recognition of the proposed change to the Oliver Street car park land, IPM Pty Ltd has held further discussions with Council to explore the idea of changing the site’s vehicle access point from Lawrence Street to Oliver Street for the following reasons:

- It will enhance pedestrian safety and amenity on Lawrence Street;
- It will reduce vehicular conflicts and disruption on the main access route;
- It will maximise on-street parking provision; and
- It will maximise street activation and deliver an improved urban design outcome for Lawrence Street.

An image of the proposed car park entry through Council’s Oliver Street car park is shown in **Figure 1** below. It contains a new panel lift car park entry door, controlling access to the site and will serve as the site’s only vehicular access point. An aerial image illustrating the proposed access route is provided in **Figure 2** below.

No changes will be required to the Council car park to accommodate this access point, as the Council car park currently contains a driveway that aligns with the proposed garage entrance. This door will be replaced by the car park entry door described above and shown in **Figure 1**.



**Figure 1 Modified car park entry**

Source: Nettleton Tribe



**Figure 2 Proposed site access route via Council's Oliver Street car park**

Source: Nearmap & Ethos Urban



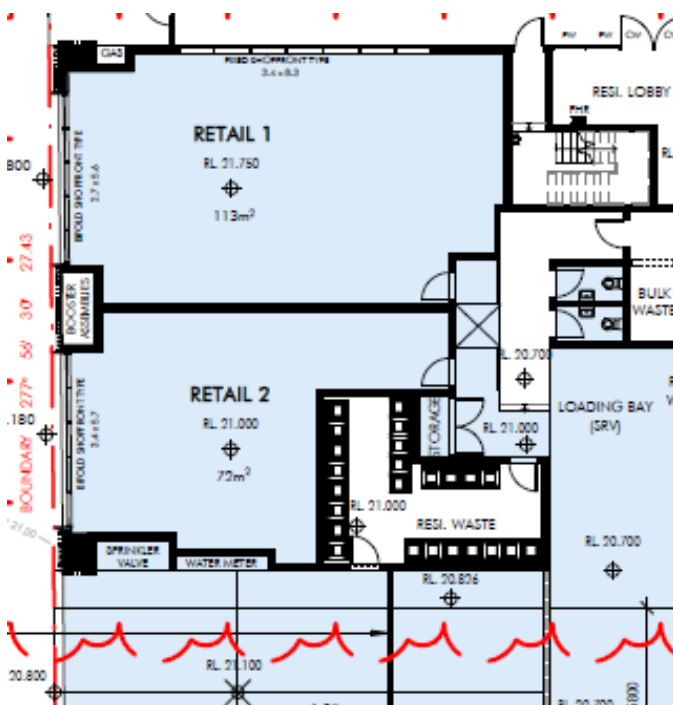
### 3.1.2 Extension of shopfront along Lawrence Street

The proposed modification involves an expansion of the retail uses provided at the site, fronting the main frontage at Lawrence Street. Specifically, it involves 51m<sup>2</sup> of additional retail floor space in place of the existing vehicular crossover and driveway. The existing awning along the Lawrence Street façade will also be extended, in line with the requirement set out in Condition 3 of DA2017/1294. An image of the revised, activated Lawrence Street frontage is provided in **Figure 3** below. Furthermore, **Figures 4** and **5** illustrate the exact nature and extent of the reconfiguration of retail uses at the site. The extension of the retail uses provided has also resulted in a need to amend the layout of the retail end of trip facilities.



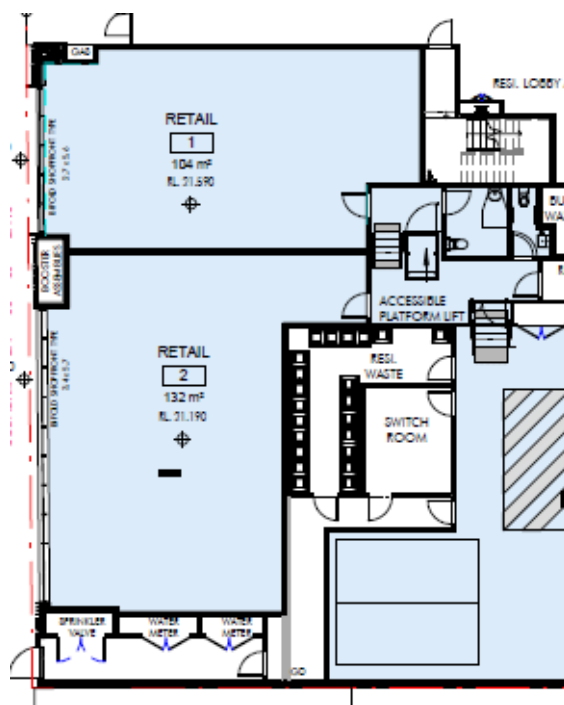
**Figure 3** Proposed modification to Lawrence Street frontage

Source: Nettleton Tribe



**Figure 4** Approved retail configuration

Source: Nettleton Tribe



**Figure 5** Proposed retail configuration

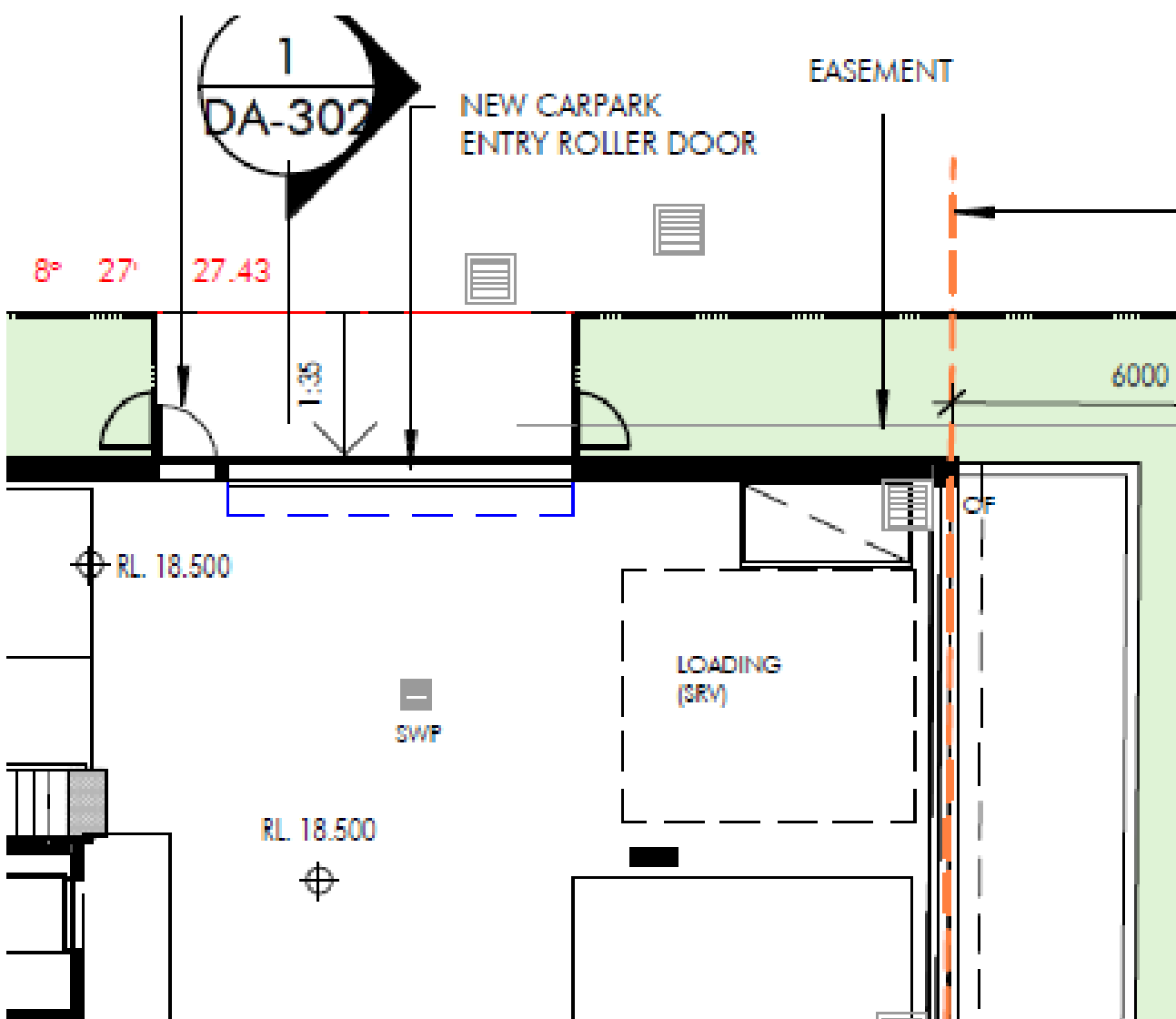
Source: Nettleton Tribe

### 3.1.3 Reduction of car parking spaces

In line with the required parking provision pursuant to the Warringah DCP 2011, the approved development includes 46 car parking spaces, comprising 30 residential, five (5) visitor and eleven (11) retail parking spaces. The proposed modification seeks to reduce car parking by one (1) parking space, bringing the total number of retail spaces down to ten (10). This is required to accommodate the additional retail space used to activate Lawrence Street.

### 3.1.4 Repositioned loading dock

The proposed reconfigurations that have occurred as a result of the modifications included within this application necessitate the repositioning of the loading dock from its approved location. The loading dock is proposed to be moved adjacent to the proposed new entry to the car park, via Council’s Oliver Street car park. An image identifying the exact location of the repositioned loading dock is provided in **Figure 6**.



**Figure 6** Loading dock location

Source: Nettleton Tribe

### 3.2 Modification to conditions

The proposed modifications described above necessitate amendments to the consent conditions which are identified below. Words proposed to be deleted are shown in **~~bold strike through~~** and words to be inserted are shown in ***bold italics***.

#### 2. 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) Approved Plans

<b>Architectural Plans – Endorsed with Council’s stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
10524_DA-001 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-002 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-101 Issue <b>AA G</b>	<b><i>21 August 2019</i></b> <del>26 April 2018</del>	Nettleton Tribe Partnership Pty Ltd
10524_DA-102 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-103 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-104 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-201 Issue <b>CB</b>	<b><i>21 August 2019</i></b> <del>18 December 2017</del>	Nettleton Tribe Partnership Pty Ltd
10524_DA-202 Issue C	26 April 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-203 Issue <b>CB</b>	<b><i>21 August 2019</i></b> <del>18 December 2017</del>	Nettleton Tribe Partnership Pty Ltd
10524_DA-301 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd
2416 LP-01 Issue B	5 December 2017	John Lock & Associates Landscape Architecture
2416 LP-02 Issue B	5 December 2017	John Lock & Associates Landscape Architecture
2416 LP-03 Issue B	5 December 2017	John Lock & Associates Landscape Architecture

[...]

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Arboricultural Impact Assessment and Tree Management Plan (ref:2911)	3 November 2017	Redgum Horticultural
BCA Assessment Report – Rev. 01 (170401)	5 December 2017	Concise Certification
BASIX Certificate No. 881423M	11 December 2017	Eco Certificates Pty Ltd
DA Access Report	8 May 2019	Wall to Wall Design and Consulting Pty Ltd
Electromagnetic Field Survey	27 November 2017	EMR Surveys Pty Ltd
Stage 1 Preliminary Environmental Site Assessment	16 November 2017	EIS (Environmental Investigation Services)

Geotechnical Investigation (Ref:22337SYrpt5)	9 November 2017	JK Geotechnics
NatHERS Certificate No. 0002271760	11 December 2017	Eco Certificates Pty Ltd
Assessment of Traffic, Transport and Parking Implications – Rev E (Ref:17067)	December 2017	Transport and Traffic Planning Associates
<b>Traffic Impact Statement</b>	<b>24 September 2019</b>	<b>Transport and Traffic Planning Associates</b>

[...]

#### Reason for Modification:

The architectural plans are being amended to reflect the proposed design changes. A Traffic Impact Statement has been prepared to support the subject modification application.

## 4.0 Substantially the same development

Section 4.55(2)(a) of the EP&A Act states that a consent authority may modify a development consent if “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)”.

**Table 1** provides an assessment of the quantitative modification to the development, setting out a comparison between the original development consent and the proposed modifications.

**Table 1 Comparison between the proposed development and original approval**

Element	Approved Development	Proposed Development	Difference
Site Area	2,609m <sup>2</sup>	2,609m <sup>2</sup>	Nil
GFA	2,813m <sup>2</sup>	2,864m <sup>2</sup>	51m <sup>2</sup>
FSR	1.08:1	1.10:1	0.02:1
Maximum building height	RL33.20	RL33.20	Nil
Ground level boundary setbacks			Nil
<ul style="list-style-type: none"> <li>• North</li> <li>• South</li> <li>• East</li> <li>• West</li> </ul>	<ul style="list-style-type: none"> <li>• 6m to rear boundary (5.5m at Levels 1 and 2), 0m to Council car park boundary, (6m at levels 1 and 2)</li> <li>• 0m (5m at Level 2)</li> <li>• 0m</li> <li>• 0m to boundary with 21 Lawrence Street, 2.4m to boundary with Council car park</li> </ul>	<ul style="list-style-type: none"> <li>• 6m to rear boundary (5.5m at Levels 1 and 2), 0m to Council car park boundary, (6m at levels 1 and 2)</li> <li>• 0m (5m at Level 2)</li> <li>• 0m</li> <li>• 0m to boundary with 21 Lawrence Street, 2.4m to boundary with Council car park</li> </ul>	
Apartments	23	23	Nil
Apartment mix	<ul style="list-style-type: none"> <li>• 1 bedroom: 2 (8.7%)</li> <li>• 2 bedroom: 14 (60.9%)</li> <li>• 3 bedroom: 7 (30.4%)</li> </ul>	<ul style="list-style-type: none"> <li>• 1 bedroom: 2 (8.7%)</li> <li>• 2 bedroom: 14 (60.9%)</li> <li>• 3 bedroom: 7 (30.4%)</li> </ul>	Nil

Element	Approved Development	Proposed Development	Difference
Car parking	<ul style="list-style-type: none"> <li>Residential: 35</li> <li>Retail: 11</li> <li>Total: 46</li> </ul>	<ul style="list-style-type: none"> <li>Residential: 45</li> <li>Retail: 10</li> <li>Total: 45</li> </ul>	-1
Landscaped area	<ul style="list-style-type: none"> <li>182m<sup>2</sup></li> </ul>	<ul style="list-style-type: none"> <li>182m<sup>2</sup></li> </ul>	Nil
Site coverage	<ul style="list-style-type: none"> <li>2,490m<sup>2</sup> (95.4%)</li> </ul>	<ul style="list-style-type: none"> <li>2,490m<sup>2</sup> (95.4%)</li> </ul>	Nil
Deep soil area	119m <sup>2</sup> (4.6%)	119m <sup>2</sup> (4.6%)	Nil
Operational matters	The operation of the development will not be altered by the proposed modification.		

As demonstrated by the comparison table, the development as proposed to be modified is substantially the same development as that originally approved in that it:

- Continues to provide car parking access in the most appropriate and least impactful location at the site, in a manner consistent with Council's preferred access arrangements;
- Will continue to operate with the same uses throughout the approved development and retain its land use definition as a shop top housing development;
- Does not result in any changes to the built form or height; and
- Does not give rise to any new unacceptable environmental impacts on the surrounding area.

## 5.0 Planning assessment

Section 4.55(3) of the EP&A Act requires a consent authority to take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the proposed development and the reasons given by the consent authority for the granting of the original consent.

The planning assessment of the proposed modified development remains generally unchanged with respect to the above matters. The following matters however warrant further assessment.

### 5.1 Warringah Local Environmental Plan 2011

The proposed modification application's consistency with the Warringah Local Environmental Plan 2011 (WLEP) is outlined in **Table 2** below. Further detail is provided in the following sections where necessary.

**Table 2 Summary of consistency with WLEP**

Clause	Comments
Clause 2.3 Zone Objectives and Land Use Table	The proposed modification will not alter the land use of the approved development and therefore it will remain a shop top housing development, which is permissible with consent in the B2 zone. It will continue to provide the same use, which will remain consistent with the B2 zone objectives. Further discussion regarding land use and permissibility is provided at <b>Section 5.3</b> .
Clause 4.3 Height of Buildings	There are no changes proposed to the height of the approved development.

### 5.2 Warringah Development Control Plan 2011

The proposed modifications will generally not change the development's consistency with the controls contained in the Warringah Development Control Plan 2011 (WDCCP). This is demonstrated in **Table 3** below. Where variations are proposed an assessment is provided below.



**Table 3 Assessment of Compliance with WDCP**

Control	Comments	Compliance
<b>Part B Built Form Controls</b>		
B7 Front Boundary Setbacks	As per the 'Front Boundary Setback' DCP Map, the site is classified as 'L Ground and first floor maintain street front, second floor up 5m'. The proposal remains compliant with this control as the front boundary setbacks are not modified.	Y
<b>Part C Siting Factors</b>		
C2 Traffic, Access and Safety	Compliant. Refer to <b>Section 5.4</b> of this report.	Y
C3 Parking Facilities	The proposed modification will result in a minor non-compliance relating to car parking with the reduction of 1 car parking space to allow for the proposed changes to occur. Further discussion regarding this matter is provided in <b>Section 5.4</b> of this report.	N
C3(A) Bicycle Parking and End of Trip Facilities	Complies. The revised design of the development remains capable of accommodating appropriate bicycle parking for both the residential and retail components of the development.	Y
<b>Part D Design</b>		
D9 Building Bulk	Compliant. The modification application involves no changes to building bulk, as illustrated in the Architectural Plans at <b>Attachment A</b> .	Y
D10 Building Colours and Materials	Complies. Refer to the Architectural Plans at <b>Attachment A</b> .	Y
D12 Glare and Reflection	Compliant. The design of the building will generally remain the same, besides the increased amount of retail provided. It will therefore continue to minimise glare, as the design recesses many of the glass elements, and uses a materials palette which primarily consists of low-glare materials, including matte painted metals and timber.	Y
D18 Accessibility	Compliant. Refer to the Architectural Plans provided at <b>Attachment A</b> .	Y
<b>Part G Special Area Controls</b>		
<b>G5 Freshwater Village</b>		
1. Built form in Freshwater	The development will continue to comply with this part of the WDCP. Refer to the Architectural Plans at <b>Attachment A</b> .	Y
3. Street activation	The proposed modification further activates the Lawrence Street frontage by expanding the retail use across the full frontage in place of the vehicular access.	Y
5. Access and loading	Generally compliant. Refer to <b>Section 5.4</b> of this report.	Y
7. Safety and security	Compliant. Refer to the Architectural Plans provided at <b>Attachment A</b> .	Y
9. Awnings	An awning is provided along the width of the Lawrence Street frontage. Refer to the Architectural Plans at <b>Attachment A</b> .	Y

### 5.3 Land Use Permissibility

The proposal is for shop top housing which is permissible in the B2 Local Centre zone and was approved as such a use in DA2017/1294. The development was found to meet the definition of shop top because:

- The dominant use of the ground floor of the development is retail or business use;
- The residential component of the development is in the same building as the retail or business premises;
- At any given point in the building, the residential uses in that component are located at a level higher than the top most part of the ground floor retail premises or business premises that are proposed at that point; and
- When viewed from the single street frontage, the dominant use of the ground floor of the development is unambiguously for retail or business purposes, and the dominant use of the upper two floors is for residential purposes.

The above characteristics of the development remain true for the proposed modified development, therefore maintaining consistency with the precedents set in *Hrsto v Canterbury City Council (No 2) [2014] NSWLEC121* and *Arco Iris Trading Pty Ltd v North Sydney Council [2015] NSWLEC 1113*.

Accordingly, the development continues to meet the definition of shop top housing and therefore remains permissible.

## 5.4 Transport and Accessibility

An assessment of the traffic, access and parking implications of the proposed has been undertaken by Transport and Traffic Planning Associates and is located at **Attachment B**. The key issues surrounding these matters are summarised below.

### 5.4.1 Access

The proposed modification will result in the primary access and exit point being relocated from Lawrence Street at the primary façade of the development, to the rear of the site, via the Council owned Oliver Street car park. As discussed and illustrated in **Section 3.1.1**, vehicles accessing the development will now do so via the Oliver Street car park.

The Traffic Impact Statement prepared by Transport and Traffic Planning Associates (**Attachment B**) outlines that the proposed change to the access arrangements is predicated on the 'first principle' of vehicular access, in that the preference is providing alternative vehicular access to a main street if possible. It states that this provides a more favourable design solution for the following reasons:

- It enhances safety and convenience of the pedestrian environment along the Lawrence Street frontage;
- It reduces vehicle conflicts and disruption at Lawrence Street;
- It helps maximise on-street parking provision along Lawrence Street; and
- It supports the achievement of a superior and preferable urban design outcome for Freshwater Village.

### 5.4.2 Parking

The modifications will result in a reduction of one retail car parking space, which means the development will be five spaces short of the required parking under the DCP. A summary of the required, approved and proposed parking provision is provided in **Table 4** below.

**Table 4 Required and Proposed Parking Provision**

Parking Type	Required Rate	Approved Provision	Proposed Provision
Residential	35	30	30
Visitor	5	5	5
Retail	15	11	10
<b>Total</b>	<b>50</b>	<b>46</b>	<b>45</b>

At the time of the approval, the required car parking provision was 46 spaces. Due to the increase in retail floor space proposed as part of this modification application, the development requires an additional four (4) parking spaces but it is proposed to reduce the number of parking spaces by one space. This reduction of one (1) car parking space is being made despite the increase in retail warranting an additional four retail spaces and a total of 50 car parking spaces under the Warringah Development Control Plan 2011. The proposed parking provision of 10 retail spaces will complement the Oliver Street car park and is considered to be sufficient to serve the needs of the development.

The Traffic Impact Statement prepared by Transport and Traffic Planning Associates (**Attachment B**) concludes that despite the non-compliance, the development will provide adequate parking for the small retail tenancies in that:

- There will be up to two (2) additional street parking spaces made available by the relocation of the access driveway on Lawrence Street (i.e. driveway width plus clearance both sides); and
- The Council car park is available for parking.

The above parking provision includes an accessible parking space as required. A loading dock space of appropriate size is also provided to service the ground floor retail area and is not included in the above calculations. This has been repositioned to the location shown in **Figure 6**.

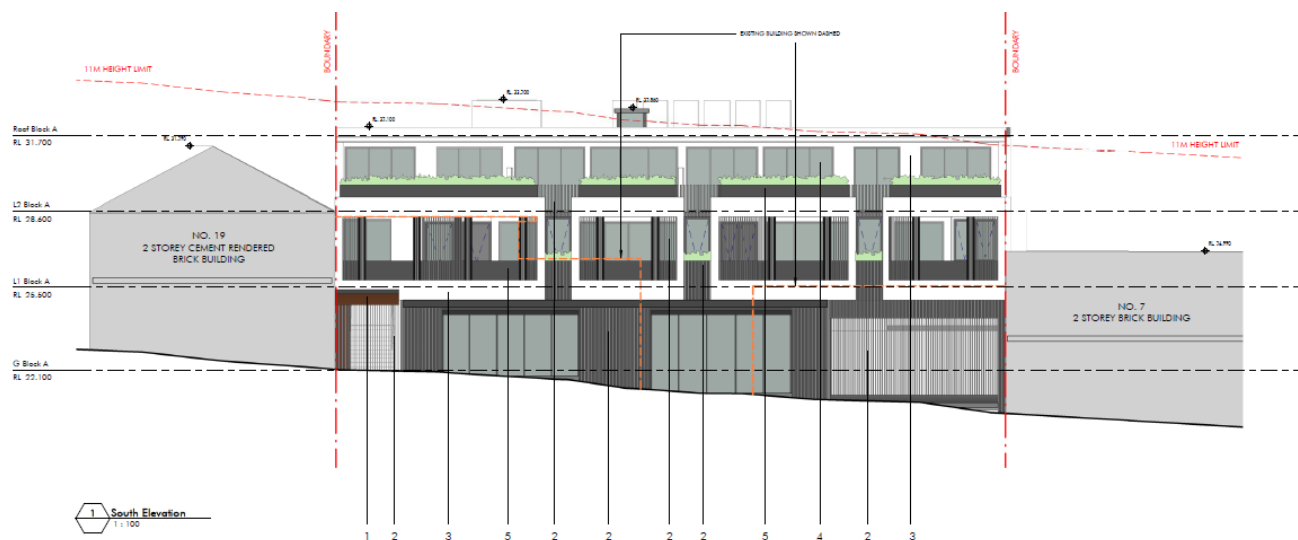
Notably, the proposed parking provision and arrangement will continue to comply with *AS2890.6 Parking facilities Off-street parking for people with disabilities*.

### 5.4.3 Servicing and Loading

The proposed modification involves the relocation of the loading dock to the location shown in **Figure 6** above. This position will not detrimentally impact service vehicles from accessing and exiting the site. This is demonstrated through the swept path analysis provided in the Traffic Impact Statement (**Attachment B**).

## 5.5 Built Form

The proposed modifications involve the extension of the retail uses provided in the development by 51m<sup>2</sup>, however the building envelope will not change as the additional floor space occurs as a result of the conversion of the former driveway area to GFA (retail). The awning on Lawrence Street is proposed to be extended along the entire frontage of the building, in accordance with the requirement under Condition 3 of the development consent. This improves neighbourhood amenity for the site, particularly along Lawrence Street where the vibrancy of this street front is enhanced and further activated. The changes proposed to the Lawrence Street frontage of the development are illustrated in **Figures 7 and 8**.



**Figure 7** Approved Lawrence Street awning

Source: Nettleton Tribe



**Figure 8 Proposed Lawrence Street awning**

Source: Nettleton Tribe

### 5.6 Reasons given for granting consent

Section 4.55(3) requires that the consent authority takes into consideration the original reasons given for granting the consent that is sought to be modified. The following reasons were given in support of the original consent:

- The development is a permissible use and the development is consistent with the B2 Local Centre zone objectives;
- The development fully complies with the requirements of the relevant planning instruments.
- The development is suitably defined as a shop top housing development;
- The development is compatible with the height and scale of other surrounding developments and will not cause unacceptable visual impact; and
- The quality of the architecture will improve the streetscape.

The proposed modification to the development will not impact the approved development’s consistency with the original reasons given for granting consent as:

- The proposed modification retains the same use, which is permissible and consistent with the B2 Local Centre zone objectives;
- The proposed modification continues to comply with the requirements of the relevant environmental planning instruments;
- The development remains suitably defined as shop top housing;
- The height and scale of the proposed modified development remains compatible with that of surrounding developments and will therefore not cause unacceptable visual impact; and
- The quality of the architecture will continue to improve the streetscape.

## 5.7 Site Suitability and Public Interest

The proposed modifications are suitable for the site and in the public interest as:

- They will allow for the optimal access outcome for the site, by providing access to the site's car park through the Oliver Street car park; and
- An extended shopfront will be provided along Lawrence Street, culminating in better neighbourhood amenity and street front activation.

## 6.0 Conclusion

The proposed modification application seeks modified consent for the following development:

- The relocation of the car park entry to the rear of the site, via the Oliver Street carpark;
- Extension of the shopfront along Lawrence Street in place of the car park entry, resulting in an additional 51m<sup>2</sup> of retail shop area;
- Reduction of one retail car space;
- Repositioned loading dock; and
- Amended layout of the retail end of trip facilities.

In accordance with section 4.55(2) of the EP&A Act, Council may modify the consent as:

- The consent as proposed to be modified is substantially the same development as that originally approved; and
- The proposed modification will not result in significant adverse impacts;

In light of the above, we therefore recommend that the proposed modification is supported by Council.

We trust that this information is sufficient to enable a prompt assessment of the proposed modification.

Yours sincerely,



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