

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2017/1294
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Responsible Officer:	Adam Mitchell
Land to be developed (Address):	Lot A DP 356986, 9 Lawrence Street FRESHWATER NSW 2096 Lot CP SP 1172, 15 Lawrence Street FRESHWATER NSW 2096
Proposed Development:	Demolition works and the construction of a shop top housing development
Zoning:	Warringah LEP2011 - Land zoned B2 Local Centre Warringah LEP2011 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Local Planning Panel
Land and Environment Court Action:	No
Owner:	Freshwater 2 Pty Ltd
Applicant:	IPM Holdings Pty Ltd

Application lodged:	20/12/2017
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	12/02/2018 to 14/03/2018
Advertised:	13/01/2018
Submissions Received:	36
Recommendation:	Approval

Estimated Cost of Works:	\$ 8,201,888.41
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ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant

- Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Local Environmental Plan 2011 - Zone B2 Local Centre
 Warringah Development Control Plan - C2 Traffic, Access and Safety
 Warringah Development Control Plan - C3 Parking Facilities
 Warringah Development Control Plan - D2 Private Open Space
 Warringah Development Control Plan - D3 Noise
 Warringah Development Control Plan - D4 Electromagnetic Radiation
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - E7 Development on land adjoining public open space
 Warringah Development Control Plan - F1 Local and Neighbourhood Centres
 Warringah Development Control Plan - 1. Built form in Freshwater
 Warringah Development Control Plan - 3. Street activation
 Warringah Development Control Plan - 5. Access and loading
 Warringah Development Control Plan - 8. Signage

SITE DESCRIPTION

Property Description:	Lot A DP 356986 , 9 Lawrence Street FRESHWATER NSW 2096 Lot CP SP 1172 , 15 Lawrence Street FRESHWATER NSW 2096
Detailed Site Description:	<p>The subject site consists of two allotments located on the northern side of Lawrence Street, Freshwater. The site is located within the precinct identified as "<i>Special Area G5</i>" Freshwater Village in the Warringah Development Control Plan 2011.</p> <p>Pursuant to the Warringah Local Environmental Plan 2011 the site is zoned for B2 Local Centre development.</p> <p>The site is irregular in shape in the that the north-western corner of the site is intersected by a Council owned carpark (the Oliver Street carpark) by 7.3m and for a length of 27m. Notwithstanding the irregular intersection as above, the two allotments combined have a street frontage to Lawrence Street of 27.43m and an overall depth of 102m equating to a total surveyed area of 2,608.6m². The boundaries of the site are shown on the aerial image below.</p> <p>Presently both allotments are underdeveloped commensurate to the potential of the site afforded by the</p>

current planning controls and accommodate a series of one and two storey brick buildings with a shared driveway that runs centrally down the site from Lawrence Street. The rear portion of the allotments are lawned with several mature trees scattered throughout.

Topographically the sites incline towards the south-west by approximately 5.0m. The slope of the land is not steep and is consistent across the site.

The site has two easements which traverse it at present; one being an easement to drain water parallel to the rear boundary and the second being a 1.2m wide easement for underground cables which traverses the rear of the site diagonally.

SURROUNDING DEVELOPMENT

The location of the development site is unique by virtue of its eclectic surrounds.

North

Due north of the site is a large allotment accommodating two residential flat buildings (22 strata allotments) and car parking accessible off of Soldiers Avenue, Freshwater. Directly abutting the northern boundary of the subject development site is a car parking building that provides for a 25m spatial separation between the boundary and the residential flat building.

North-east

North-east of the site is the Mamora Street Uniting Church which, by virtue of scale, is irregular within the Mamora Street streetscape.

East

The eastern boundary of the allotment abuts two other allotments. The first allotment is located on Lawrence Street and is, by virtue of what is permissible, under developed, and the rear 50% of the allotment is vacant.

The second allotment is larger and has a narrow street frontage to Marmoa Street. This allotment has recently been developed into the 'Kahana' complex that consists of 17 strata allotments. The buildings directly adjoining the eastern boundary of the subject site are two 3-storey residential flat buildings with basement car parking. The buildings are built with a nil side boundary setback.

South

Due south of the sites is Lawrence Street. Across Lawrence Street is a commercial building with roof-top car parking. There is a 20m spatial separation between the two sites.

West

The western boundary of the site is the most eclectic of all the sites interfaces.

Due west for the first 75m of the site is a similarly under developed allotment with a frontage to Lawrence Street. At the time of writing, this site also has a development application lodged with Council for the construction of a 3-storey 12 unit shop top housing development, not dissimilar to that being proposed on the subject site (refer to DA2017/1284)

Further north along the western boundary is the Oliver Street carpark intersection that forms the irregular shape of the subject allotment. The carpark has 39 spaces and has access to the west on Oliver Street and access (through the Harbord Shopping Centre carpark) to Lawrence Street. For reasons elaborated further in this report, the development site is not gaining vehicular access from these carparks.

Further west and in the north-west is a large Ausgrid substation and telecommunications facility.

The greater context of Freshwater is predominantly characterised by single detached dwellings houses of varying age, size and construction. The small Freshwater Village area that this site is within is highly desirable and as such, special consideration is given to the developments within the precinct.

Map:



SITE HISTORY

A review of aerial imagery has revealed that the subject site has accommodated some form of

development from 1943 onwards. Since this time numerous structures have been placed on the land and surrounding sites.

Development Application No. 2010/0697

An application for demolition works and construction of a mixed use development was lodged with Council on 10 May 2010. The development site was large and included 5-19 Lawrence Street, 22A Albert Street and 18-22 Marmora Street, with a combined total area of 9,565.6m².

In total the development included 337 car parking spaces, four 3-4 storey mixed use and residential flat buildings, three detached dwellings and seven townhouse style developments.

On 22 June 2010 Council raised a number of concerns regarding the proposal. The application was subsequently withdrawn on 6 August 2010.

Development Application No.2010/1446

Following the withdrawal of DA2010/0697, the applicant revised the proposal to be for demolition of existing buildings and construction of a mixed use retail and residential development comprising of shop top housing buildings, a residential flat building and two levels of basement car parking. The application was lodged on 9 September 2010. In total, the proposal had 91 apartments, 7 townhouses and 3,415m² of retail space.

The application was heard before the Sydney East Joint Regional Planning Panel for determination on 9 December 2010. The meeting minutes read:

1) The Panel resolves unanimously to refuse the application. The Panel notes that this is not consistent with the recommendation of the first planning assessment report, which the Panel finds thorough and sound. It is simply that the Panel has come to a different planning value judgment.

2) The Panel notes that the supplementary assessment report recommends refusal. The Panel also notes that the recommendation of the Warringah Development Assessment Panel is to defer the application. The Panel believes, however, that deferral would be appropriate only if some new information or amendment were expected, and this is not true in this case.

3) The Panel's reasons for refusal are as follows:

a) The proposal breaches both the eleven-metre and the three-storey height limits.

b) The proposal is inconsistent with the Desired Future Character of the Harbord (Freshwater) Village Locality. That character is best expressed by the words "mix of small retail and business uses with low-rise shop top housing". A four-storey apartment building without retail or business component does not fit this description.

c) The public opposition to the proposal is overwhelming. It includes nearly 2000 objectors as well as the local and State representatives of the community. In some cases objectors represent a private interest; however, in this case the objectors are so numerous and so many of them are not directly affected by the development, that their opposition must be considered to represent the public interest.

Following this determination by way of refusal, the applicant lodged a Class 1 Appeal with the Land and Environment Court of NSW on 15 December 2010. The matter of *Freshwater Village Developments Pty Ltd v Warringah Council* was heard before the court on 4, 5 and 6 April 2011, with a decision date of 24 May 2011. The decision was to dismiss the appeal in its entirety.

This development scheme was not further pursued upon the subject site.

Prelodgement Meeting PLM2015/0094

On 27 August 2015 Council met with a developer to discuss a preliminary concept proposal for demolition works, construction of shop top housing, two residential flat buildings, basement car parking and landscaping works.

In principle, Council raised no fundamental concerns regarding the application subject to design modifications and further analysis of the critical issue of the reclassification of the Oliver Street carpark. A follow-up prelodgement meeting was held on 8 October 2015 to further discuss the proposal and revisions made in light of the comments made in PLM2015/0094.

Prelodgement Meeting PLM2017/0100

Prior to the lodgement of this current development application, the applicant met with Council on 5 September and 24 October 2017 to discuss the design scheme. A number of design amendments were discussed, and the formal non-verbatim minutes of the meeting highlight the primary areas of discussion in its conclusion as follows:

The proposal to obtain vehicular access of Lawrence Street is not preferred; however Council acknowledges the attempts made by the Applicant to amalgamate with the adjoining property to the west to reduce the number of crossings, in lieu of obtaining access over the Oliver Street Carpark to the rear of the site. Council acknowledges that the re-classification of the public carpark has not occurred and that the landowner has waited a significant time period for that to happen.

As discussed later in this report, the issue of vehicular access is a fundamental consideration in the assessment of this application.

Following the favourable comments from Council in the prelodgement meeting, the application proceeded to lodge the current development application on 20 December 2017.

PROPOSED DEVELOPMENT IN DETAIL

This development application seeks consent for demolition works and the construction of a three storey shop top housing development across two allotments. Specifically consent it sought for:

- Demolition of existing one and two storey retail and shop top housing buildings and associated outbuildings;
- Construction of a three-storey shop top housing development, comprising;
 - 23 residential units;
 - 185m² of ground level retail floorspace;
 - 410m² of communal open space on the first floor podium;
 - 46 car parking spaces (35 residential, 11 retail) and a loading dock on the ground floor; and
- Removal of five frees (with eight trees to be retained and protected);
- Associated landscaping works.

The development comprises of a single storey podium level at ground level accommodating two retail premises, car parking, storage and other infrastructure. Above the podium level the building is separated into three two-storey 'towers' spaced across the site.

For the purposes of this report, the three tower elements are hereforth referred to as follows:

- Southern-most building - *Building A* (fronting Lawrence Street)
- Central building - *Building B*

- Northern-most building - *Building C*

The architecture of the proposal is contemporary and modular in appearance with landscaping at the north and throughout the first floor podium level.

Herein this report, these works are referred to as the 'development'.

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 (the 'WDCP 2011') applies to this proposal.
Section 4.15 (1) (a)(iia) – 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 of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</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 of consent.</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 of consent.</p>

Section 4.15 Matters for Consideration'	Comments
	<p>Clause 98 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 of consent.</p> <p>Clause 143A 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 may be addressed via a condition of 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 development on the natural and built environment are addressed under the WDCP 2011 section in this report. In summary, it is not found that the development will have an environmental impact of such a magnitude that would warrant the refusal of the application.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. Overall it is found that the development will contribute to the social atmosphere of Freshwater Village by providing additional high-quality housing and retail spaces in a primary location.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed 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>During the public exhibition period of this application a number of submissions in objection to the proposal were received. The magnitude of submissions received is consistent with the public interest that the Freshwater community has in development in their area, particularly within <i>the village</i> (i.e. along Lawrence Street). The submissions have been addressed in detail elsewhere in this report, and it is concluded that the scale, intensity and magnitude of the proposed development is not inconsistent with other recent surrounding developments and does not unreasonably or detrimentally impact upon the community, thereby it can be said that the redevelopment of the site for the purpose of a shop top housing development is in the public interest.</p>

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 36 submission/s from:

Name:	Address:
Mrs Ann Marie Skarratt	12 / 32 Undercliff Road FRESHWATER NSW 2096
Mr Murray Regan	1 / 6 Lawrence Street FRESHWATER NSW 2096
Ms Merran Rosemary Doyle	1 / 8 Lawrence Street FRESHWATER NSW 2096
Mr John Gilbert Gude	61 Surfers Parade FRESHWATER NSW 2096
Northern Sydney Local Health District - Health Promotion	Health Promotion Level 5 2c Herbert Street ST LEONARDS NSW 2065
Mrs Sandra Elizabeth Young	29 Aranda Drive Davidson NSW 2085
Mr Geoffrey Charles Young	29 Aranda Drive DAVIDSON NSW 2085
Deirdre Hatton	29 Aranda Drive DAVIDSON NSW 2085
Christopher William Bull	20 Undercliff Road FRESHWATER NSW 2096
Ms Jennifer Gaye Leete	5 / 32 Undercliff Road FRESHWATER NSW 2096
Marianne Brigid Roberts	12/18 Marmora Street FRESHWATER NSW 2096
Philip John Roberts	12/18 Marmora Street FRESHWATER NSW 2096
Kara Louise Coleman	14 / 18 Marmora Street FRESHWATER NSW 2096
Gordon Russell	9 / 18 Marmora Street FRESHWATER NSW 2096
Mr Peter Eric Harley	4 Marmora Street FRESHWATER NSW 2096
Ms Cheryl Anne Pearson	5 Marmora Street FRESHWATER NSW 2096
Friends Of Freshwater Inc	4 Marmora Street FRESHWATER NSW 2096
Mr Andro Tomich	24 Johnson Street FRESHWATER NSW 2096
Mr Michael David Vanderfield	2b Pavilion St QUEENSCLIFF NSW 2096
Ms Jane Anne Calcraft	Po Box 201 FRESHWATER NSW 2096
William Joseph Calcraft	129 Harbord Road FRESHWATER NSW 2096
Mrs Toni Frances Evans	3 Marmora Street FRESHWATER NSW 2096
Scott Osmund McLachlan	13 / 18 Marmora Street FRESHWATER NSW 2096
Mr Terry John Pinson	4 Wattle Road BROOKVALE NSW 2100
Mr Russell Henry Beardmore	8 Beach Street CURL CURL NSW 2096
Pamela Joan Bullen	16 / 18 Marmora Street FRESHWATER NSW 2096
Abigail Hartley	52 Wyadra Avenue FRESHWATER NSW 2096
Mrs Denise Faith Goldstein	36 Oceanview Road FRESHWATER NSW 2096
Mrs Vyk Louise Bergseng	24 Kooloorra Avenue FRESHWATER NSW 2096
Ms Christine Anne Frith	104 Soldiers Avenue FRESHWATER NSW 2096
Mr Darryn Edward Lang	24 Marmora Street FRESHWATER NSW 2096
Mrs Catherine Ainslie Vautier	2 / 30 Charles Street FRESHWATER NSW 2096
Mr William Mackenzie	15 Delmar Parade DEE WHY NSW 2099

Name:	Address:
Morrison	
Mrs Lynn Lowe	49 Undercliff Road FRESHWATER NSW 2096
Ann Elizabeth Sharp	77 Brighton Street CURL CURL NSW 2096
BBF Town Planners	1 / 9 Narabang Way BELROSE NSW 2085

First Notification

Upon receipt of this development application, Council commenced its statutory notification period between 12 January 2018 - 15 February 2018 pursuant to Part A.7 of the Warringah Development Control Plan 2011 (WDCP 2011). During this time Council was made aware that several surrounding properties had not been formally notified of the subject development.

Upon review it was evident that an administrative error had resulted in several surrounding properties not being correctly notified in accordance with Council's policies.

Second Notification (Renotification)

Accordingly, Council recommenced the notification period of the application on 12 February 2018 until 14 March 2018 to ensure that surrounding residents were given a sufficient timeframe to comment on the application (61 days in total).

The matters raised in the submissions include:

1. Pedestrian safety on Lawrence Street
2. Vehicular access through the Oliver Street carpark
3. Electromagnetic Field (EMF) effects
4. Site amalgamation
5. Built form - building height
6. Stormwater management
7. Amenity impacts - solar access and acoustic impacts
8. Loss of trees

The submission matters are addressed as follows:

1. Pedestrian Safety on Lawrence Street

Submissions received note that Lawrence Street is characterised as a pedestrian-friendly environment that is harmonious with the notion of a 'village centre.' Submissions request that no new driveway crossings should be permitted onto Lawrence Street, as permitting such development could impact on the safety of pedestrians with entering and exiting traffic from the site.

Comment

The proposed development is entitled to have a vehicular access point onto Lawrence Street as no

other locations are available at this point in time (as elaborated upon later in this report). Whilst it is noted that it is preferable to have no new driveway crossings onto Lawrence Street, this is not a feasible nor realistic expectation given the constraints attributed to this site and the legal right to have access from the public road.

The application is accompanied by an *Assessment of Traffic, Transport and Parking Implications* (dated 2017 and prepared by Transport and Traffic Planning Associates). This report has been reviewed and the design independently assessed by Council's Traffic Engineers who have recommended approval to the proposal subject to a number of conditions.

A specific condition has been imposed (Pedestrian safety measures at driveway) that details safety measures to be installed prior to the issuing of the Occupation Certificate.

Accordingly, this matter is resolved by way of condition and does not warrant refusal of the application.

2. Vehicular Access through Oliver Street Carpark

Submissions received detail that the proposed development should obtain vehicular access via the Oliver Street carpark to the north-west rather than from Lawrence Street, thus negating any requirement for the new crossing onto Lawrence Street.

Comment

The Oliver Street carpark is classified as "Community Land" and not "Operational Land" pursuant to the Local Government Act 1993, and this classification acts as an impediment for the development to gain vehicular access via this carpark. Pursuant to the Roads Act 1993, the site is entitled to a vehicular access point and therefore, at this time, the only opportunity is via Lawrence Street.

There is presently public interest in the reclassification of the Oliver Street carpark which, in the context of this application, would result in a favourable outcome as noted by the submissions received. In this regard, it is found that a reasonable solution for vehicular access is to future-proof the site so that, if and when the Oliver Street carpark is reclassified to Operational Land, the development will physically be able to obtain access between the allotments. Such considerations must be taken into account at DA stage and prior to construction.

Council has requested that the applicant amend the architectural plans to notate 'Provision of possible future link to Oliver Street carpark'. Such notation exists on Drawing 10524-DA-101 dated 26 April 2018.

The purpose of having this link available to the development in future (whether it be constructed or not at the time the carpark is reclassified) is to enable the developer the option to connect the two carparks to reduce the quantum of usage of the Lawrence Street crossing, or to eliminate it entirely. If such were to occur, the applicant would have the opportunity to lodge a new development application for an additional retail premise in the location of the proposed Lawrence Street driveway which would enhance the village atmosphere of Lawrence Street, enhance public safety and provide for all vehicular movements from the public carpark and Oliver Street.

Accordingly, it is found that the recommendations of this report adequately future-proof the development site to enable future access to the Oliver Street carpark should this option become available.

3. Electromagnetic Field (EMF) Effects

Submissions received raise concern about the potential EMF impact upon occupants of the subject

development.

Comment

The development application is accompanied by an electromagnetic survey dated 27 November 2017 by EMR Surveys Pty Ltd. The report is prepared by an industry expert. The report and application as a whole has been reviewed by Council's Environmental Health Officer whom has raised no objections to the proposed development, subject to conditions as included in the recommendations of this report.

4. Site Amalgamation

Submissions received note that there is logic in amalgamating sites at 9 - 15 and 21 Lawrence Street, Freshwater in order to have a more harmonious development and to reduce the number of vehicular crossings onto Lawrence Street. At the time of writing this report, there is also an application for a shop top housing development at the adjoining 21 Lawrence Street, which is currently under assessment by Council (refer DA2017/1284).

Comment

It is concurred that the amalgamation of these sites could be beneficial in that it would provide for one larger development site and, potentially, a more contextually appropriate development. From review of the submissions received, the predominant reason raised for site amalgamation would be to reduce the quantum of driveway crossings on Lawrence Street.

In accordance with the Planning Principles established in the Land and Environment Court case *Karavellas v Sutherland Shire Council [2004] NSWLEC 251*, the applicant has provided documentation detailing why the amalgamation of the allotments is not feasible.

In the first instance, the applicant had attempted to purchase the adjoining land for the purpose of a larger development, however purchasing attempts were demonstrated to be unsuccessful. In the second instance, the applicant had attempted to pursue a joint venture development with the adjoining land owners for the purpose of a larger development. The terms of any joint venture development could not be agreed and resulted in the consolidated development being unviable.

It is considered that the documentation provided is satisfactory in demonstrating that attempts to amalgamate allotments were unsuccessful.

In any event, both the subject development site and No. 21 Lawrence Street are large enough to be developed independently without being constrained and will not result in site isolation. In the broader context of Lawrence Street, it is considered that the scale of development proposed is compatible with the scale of development in the streetscape. The amalgamation of the sites would inevitably result in a significantly larger form and mass of development that may be less compatible with the streetscape and the village feel of Freshwater.

Accordingly, the matter of site amalgamation is not considered reason to warrant the refusal of the application.

5. Built Form - Building Height

Submissions received note that the proposed development exceeds the maximum permissible building height pursuant to Clause 4.3 of the Warringah Local Environmental Plan 2011 (WLEP 2011).

Comment

A detailed review of the proposed variation to the building height control can be found in Part 4.6 Variation to Development Standard in this report. In summary, it is found that the height proposed is

generally compatible with surrounding developments and does not give rise to any unreasonable nor detrimental amenity or environmental impact.

Accordingly, this matter does not warrant the refusal of the application.

6. Stormwater Management

Submissions received express the importance of any development on this land having an adequate stormwater system.

Comment

The proposed stormwater management system has been reviewed by Council's Development Engineers who raise no objection to the proposed mechanisms, subject to conditions as recommended.

7. Amenity Impact

Concern is raised in the submissions received from the occupants of the adjoining building that the development may give rise to amenity impacts including loss of solar access, visual impact of the development and acoustic impacts of the at-grade carpark.

Comment

Provision of amenity has been assessed individually throughout this report. In summary the report concludes the following:

7.1. **Loss of solar access**

The development does not give rise to any level of overshadowing than is greater than what the planning controls permit. Accordingly, this matter does not warrant the refusal of the application.

7.2. **Visual impact**

Concern was raised (and elaborated upon in meetings with objectors) regarding the height of the boundary wall adjacent to the outdoor space of the adjoining Kahana development situated to the east. Design alternatives were explored and Council requested that the applicant provide additional design alternatives. The arrangement of the two buildings has resulted in it being inevitable that there will be some form of wall on the property boundary in order to provide a reasonable level of privacy between the two developments. In this instance, the design proposed is considered to be a better alternative than if a three storey building were to be proposed in this location.

7.3. **Acoustic impact**

Concern was raised about the potential acoustic impact that the at-grade carpark may have on adjoining developments, particularly through the northern and southern openings. This matter can be adequately resolved via conditions which require appropriate acoustic treatments to openings.

Accordingly, these matters are not of a magnitude to warrant the refusal of the application.

8. Loss of trees

Submissions raise objection that the development will require the removal of trees on the subject site.

Comment

The redevelopment of this site was inevitably going to require the removal of the existing trees present on the site. The proposal has been assessed by Council's Landscape Officer who raised no objections, subject to conditions as recommended. It is found that the proposed landscape plan accompanying the DA will satisfactorily mitigate the loss of trees through additional plantings.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments												
Building Assessment - Fire and Disability upgrades	<p><i>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</i></p> <p><i><u>Note:</u> The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</i></p>												
Environmental Health (Industrial)	<table border="1"> <tr> <td>Is the proposal for an industrial use?</td><td>YES</td></tr> <tr> <td>Was sufficient documentation provided appropriate for referral?</td><td>YES</td></tr> <tr> <td>Are the reports undertaken by a suitably qualified consultant?</td><td>YES</td></tr> <tr> <td>Have you reviewed the Statement of Environmental Effects, and consider ongoing use, such as: - Processes with emphasis on potential pollution (air, noise, water and land) - Hazardous Materials, liquids stored on site - Waste storage, disposal. - Mechanical ventilation</td><td>YES</td></tr> <tr> <td>Have you Consider impact of noise, hours of operation, location to nearest residential, location of equipment, times of deliveries, noise management plans, acoustic reports etc.</td><td>YES</td></tr> <tr> <td>If the proposal is a scheduled premises have you recommended that the DAO refer the proposal to OEH?</td><td>N/A</td></tr> </table> <p>General Comments</p> <p>Noise - <i>an acoustic report has not been submitted to determine if the noise generated from the property (specifically the condenser units located on the roof) will not create offensive noise.</i></p> <p><i>The SoEE states that the mechanical plant has not been selected at this stage. Environmental Health recommends that prior to issuing the CC an acoustic report is to be submitted and recommendations detailed in the report shall be implemented to ensure that the selected plant does not exceed the regulations.</i></p> <p>Contamination - <i>A stage 1 Preliminary report was submitted and it was stated that potential contamination was identified.</i></p>	Is the proposal for an industrial use?	YES	Was sufficient documentation provided appropriate for referral?	YES	Are the reports undertaken by a suitably qualified consultant?	YES	Have you reviewed the Statement of Environmental Effects, and consider ongoing use, such as: - Processes with emphasis on potential pollution (air, noise, water and land) - Hazardous Materials, liquids stored on site - Waste storage, disposal. - Mechanical ventilation	YES	Have you Consider impact of noise, hours of operation, location to nearest residential, location of equipment, times of deliveries, noise management plans, acoustic reports etc.	YES	If the proposal is a scheduled premises have you recommended that the DAO refer the proposal to OEH?	N/A
Is the proposal for an industrial use?	YES												
Was sufficient documentation provided appropriate for referral?	YES												
Are the reports undertaken by a suitably qualified consultant?	YES												
Have you reviewed the Statement of Environmental Effects, and consider ongoing use, such as: - Processes with emphasis on potential pollution (air, noise, water and land) - Hazardous Materials, liquids stored on site - Waste storage, disposal. - Mechanical ventilation	YES												
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If the proposal is a scheduled premises have you recommended that the DAO refer the proposal to OEH?	N/A												

Internal Referral Body	Comments		
	<p><i>Environmental health has recommends a condition for additional investigation to be undertaken.</i></p> <p><i>Electromagnetic Field</i> - A electromagnetic survey was submitted, the results of the survey determined that there was no significant electric or magnetic field measured, and all fields comply with Australian and International Standards. However the survey has only addressed short term exposure. Advice provided by John Lincoln - Electromagnetic fields expert confirmed that there is no studies available at this stage to determine the effects of long term low-exposure effects.</p> <p><i>Environmental Health does not have any ground to refuse this application, the report that was provided and any current short term exposure studies indicate that there is no risk to public health. Until there are long term studies Environmental Health is unable to make comments with regards to long term public health risk.</i></p> <table border="1" data-bbox="520 920 1428 1032"> <tr> <td data-bbox="520 920 1155 1032">Recommendation</td><td data-bbox="1155 920 1428 1032">Approval - Subject to conditions</td></tr> </table> <p>Comments completed by: Mary Shimon Date: 22 May 2018</p>	Recommendation	Approval - Subject to conditions
Recommendation	Approval - Subject to conditions		
Landscape Officer	<i>Landscape Assessment has raised no objections to the proposed development, subject to conditions as recommended.</i>		
NECC (Development Engineering)	<p><u>Revised Development Engineering Referral - 15 May 2018</u></p> <p><i>Development Engineers have reviewed the proposal and raise no objections subject to conditions.</i></p> <p><u>Superseded Development Engineering Referral - 14 March 2018</u> <i>Development Engineers have reviewed the proposal and cannot support the proposal due to the following reasons:</i></p> <p><i>1. Insufficient details are provided to demonstrate the development site is not impacted by the 1 in 100 year ARI storm event overland flow path. In order for Development Engineers to adequately check the design of the OSD system and analysis of the 1 in 100 yr ARI upstream catchment flows, when the DRAINS program is used, the input data and summary information including a copy of the model on computer disc must be provided. This information has not been submitted to Development Engineers for assessment to date.</i></p> <p><i>2. Where the development site is deemed to be impacted by the 1 in 100 year ARI overland flow path, all requirements of Section 9.3, Overland Flow of Council's "Stormwater Drainage : From Low Level Properties" Policy, PDS-PL 136. The extents of the existing and proposed overland flow path are to clearly shown on the architectural and stormwater drainage plans and modelled using the HECRAS computer program. The HECRAS computer model is to be submitted</i></p>		

Internal Referral Body	Comments
	<p><i>to Development Engineers for assessment. Runoff from the developed site must not cause a detrimental effect on any property. This may require the retention (and possible expansion) of existing surface flow paths.</i></p> <p><i>3. No written concurrence of the proposal was issued by Council's Traffic Engineers with respect to the location and dimension of the vehicle access fronting Lawrence Street. The proposed vehicle crossing conflicts with the existing kerb blister of the wombat crossing in Lawrence Street. In order for the vehicle crossing to be constructed, the kerb blister will need to be modified. In this regard Development Engineers are unable to finalise the assessment of the proposal without comments/concurrence from Council's Traffic Engineers.</i></p> <p><i>4. The proposed vehicle crossing conflicts with the existing kerb blister of the wombat crossing in Lawrence Street. In order for the vehicle crossing to be constructed, the kerb blister will need to be modified. No written concurrence of the proposal was issued by Council's Manager, Transport & Civil Infrastructure Assets for the modification of the above kerb blister. A referral request for comments should be issued to Council's Manager, Transport & Civil Infrastructure Assets to respond to the above issue.</i></p> <p><i>5. The proposed vehicle crossing conflicts with the existing stormwater kerb inlet in Lawrence Street. In order for the vehicle crossing to be constructed, the stormwater kerb inlet pit will need to be modified or relocated. No written concurrence of the proposal was issued by Council's Stormwater Assets Engineer for the modification of this pit.</i></p> <p><i>6. No written concurrence of the proposal was issued by Council's Stormwater Assets Engineer with respect to Section 6, Building Over or Adjacent to Council Drainage Systems and Easements Policy of Council's "Stormwater Drainage : From Low Level Properties" Policy, PDS-PL 136.</i></p> <p><i>Not supported for approval due to lack of information to address:</i></p> <ul style="list-style-type: none"> <i>• Stormwater drainage for the development in accordance with clause C4 Stormwater of the DCP;</i> <i>• Council's Stormwater pipeline clearance for the development in accordance with clause C6 Building over or adjacent to Constructed Council Drainage Easements; and</i> <i>• Vehicle access for the development and impact of Council's road infrastructure in accordance with clause C2 Traffic, Access and Safety.</i>
NECC (Water Management)	<p><i>No objection to approval subject to conditions as recommended, on the basis that the Development Engineers are satisfied with the proposed dual use of the bioretention/onsite detention basin. Should the design change, these referral comments may no longer be valid and as such a new referral required.</i></p>

Internal Referral Body	Comments
	<p><u>Planner comment</u></p> <p>Council's Development Engineers have reviewed the proposed development and raise no objection, subject to conditions.</p>
Traffic Engineer	<p><i>Council Traffic Engineers have raised no objection to the proposed development on terms of traffic safety, internal car parking or impacts on the road network, subject to conditions as recommended.</i></p>
Waste Officer	<p><i>Waste Services raises no objection to the proposed development, subject to conditions.</i></p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p><i>I refer to Northern Beaches Council development application DA2017/1294.</i></p> <p><i>This letter is Ausgrid's response under clause 45(2) of the State Environmental planning Policy (Infrastructure) 2007.</i></p> <p><i>The assessment and evaluation of environmental impacts for a new development consent (or where a development consent is modified) is undertaken in accordance with requirements of Section 79C of the Environmental Planning and Assessment Act 1979 (now known as Section 4.15). One of the obligations upon consent authorities, such as local councils, is to consider the suitability of the site for the development which can include a consideration of whether the proposal is compatible with the surrounding land uses and the existing environment.</i></p> <p><i>In this regard, Ausgrid requires that due consideration be given to the compatibility of proposed development with existing Ausgrid infrastructure, particularly in relation to risks of electrocution, fire risks, Electric & Magnetic Fields (EMFs), noise, visual amenity and other matters that may impact on Ausgrid or the development.</i></p> <p><u>Planner comment</u></p> <p>Ausgrid's assessment of the application dated 22 January 2018 finds that the development is satisfactory, subject to conditions as imposed in the recommendation of this report.</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.

In response to the above requirements of the SEPP, the applicant has submitted a Preliminary Environmental Site Investigation (ref: E30969Krpt) dated 16 November 2017 and prepared by EIS (Environmental Investigation Services). In its conclusion, the investigation states:

Based on the scope of work undertaken for the assessment, EIS are of the opinion that the historical land uses and potential sources of contamination identified would not preclude the proposed development. However, the following is recommended to better assess the risks associated with the CoPC:

- *An intrusive investigation should be undertaken to make an assessment of the potential soil and groundwater contamination conditions and to address the data gaps associated with the limited sub-surface information available; and*
- *A hazardous building materials survey should be undertaken prior to demolition of the buildings. Following demolition of the buildings (and preferably prior to removal of the hardstand), an asbestos clearance certificate should be provided.*

EIS also recommend that a waste classification is undertaken to classify material to be excavated for the proposed development. Fill and contaminated soil disposal costs are significant and may affect project viability. These costs should be assessed at an early stage of the project development to avoid significant future unexpected additional costs.

Considering the findings of the assessment, EIS are of the opinion that the site can be made suitable for the proposed development subject to the appropriate implementation of the recommendations. The investigation report should confirm the conclusion in relation to site suitability based on the additional data obtained. (Part 6.3 Conclusions and Recommendations in E30969Krpt dated 16/11/17).

Therefore, as the Investigation indicates that there is a potential for contaminants to exist on the site, Clauses 7(1)(b) and 7(1)(c) of the SEPP must be considered.

Clause 7(1)(b) stipulates that "*if the land is contaminated, it [Council] is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out*".

Council's Environmental Health Officer has reviewed the Preliminary Environmental Site Investigation and accompanying documentation for this application. No objections are raised on the grounds of contamination or remediation subject to the endorsement of the recommendations in the report as well as the requirement to produce a Contamination Management Plan (CMP) prior to the issue of any Construction Certificate.

Based on the findings of the report and the requirements of the report, Council is satisfied that the land can be made suitable for the purpose of a shop top housing development.

Clause 7(1)(c) stipulates that "*if the land requires remediation to be made suitable for the purpose for*

which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose".

Council is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation are included as conditions in the recommendation of this report.

SEPP 65 - Design Quality of Residential Apartment Development

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

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

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

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

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

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

As previously outlined, the proposed development is for the erection of a three storey shop top housing development plus basement car parking for the provision of 23 self-contained dwellings.

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 from Nettleton Tribe Architects.

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

Northern Beaches Council does not have an appointed 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:

In consideration of this development proposal, the contextual appropriateness with the neighbourhood character has been a primary focus to ensure that the scale and design of development does not impact upon the village atmosphere of Freshwater.

It must be reasonably expected that the site would be developed in a way envisaged by the current planning controls (which permit development for the purposes of shop top housing) to maximise the development potential of the land in such a prime location.

The architecture of the proposal is of a scale and height that is not dissimilar to that of other recent surrounding developments but still maintains a human-scale streetscape facade to integrate with the existing relationship of shopfronts in Lawrence Street to protect the village atmosphere. The building proposed is well designed and will provide a high-level of amenity for occupants without unreasonably impacting on the amenity of the surrounding community. The proposed additional retail premises fronting onto Lawrence Street will provide for opportunities to enhance the social and economic development of the community in a beneficial way.

Overall, it is found that the development is contextually appropriate for the attributes of the site and will be of good neighbourhood character in accordance with Principle 1.

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 proposed development is for a three storey shop top housing development that, for the most part, complies with the relevant built form standards pertaining to the site. The architecture of the proposal is considered to be of a high quality that incorporates a visually interesting Lawrence Street facade that is not only consistent with the desired future character of the area in terms of design, but will significantly contribute to enhancing the overall streetscape.

The bulk, scale and height of the building when viewed from the public domain is consistent with the planning controls that apply to the site and are consistent with recent surrounding developments and developments that could be reasonably expected in the future on surrounding sites.

The built form and scale is considered to be acceptable in the context of the site and is supported given its high quality of design and the contribution it will have to the Lawrence Street streetscape and atmosphere - thereby satisfying Principle 2.

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:

Given the context of the development and other recent developments within the area, it is anticipated that the apartments within the complex will sell for a premium price and accordingly, the proposal has ensured that each apartment has a high level of amenity by virtue of size, layout and privacy. This high level of amenity and the high quality of design has reduced the density of what the site could accommodate if the apartments were much smaller in size.

The density that is proposed on the site is considered to be appropriate to the site and the Freshwater Village locale which, by virtue of permitted development, allows for medium density developments such as this. The scale of this development will contribute to sustainably housing the growing population of the Northern Beaches of Sydney at a quantum that is appropriate for the context of Lawrence Street by virtue of infrastructure, public transport, access to jobs, community facilities and the green environment. Accordingly it is found that the development as proposed satisfies Principle 3.

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 development is considered to satisfy Principle 4 pertaining to sustainability both in-and-of-itself and within a wider context.

As above, the additional housing the development will provide is appropriate for the context of the site and commensurate to anticipated population growth without becoming an 'over-development' of the site.

With regards to the ecologically sustainable development elements of the building (ESD):

- the building achieves a high level of solar access;
- the building achieves a high level of cross ventilation;
- the building will be a 6-Star Green Star building;
- the development will provide opportunities for a diverse landscape setting to provide habitat for a variety of wildlife.

With regards to social and economic sustainability, the development is considered to be appropriate for the context of the site and not of a magnitude that would have any significant nor detrimental discernible impacts upon the social or financial economy of the area.

Accordingly, the development is found to satisfy Principle 4.

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:

The proposed development will result in a reduction in the amount of landscaped open space presently available on the site, however the site is within a B2 Local Centre zone which does not envisage a ground level landscaped area due to the type of development allowed within the centre and the desired future character. Nevertheless, it is found that the quality, intensity and diversity of landscaping proposed adequately integrates the building into the streetscape and contributes to the amenity of the neighbourhood.

At present, the site is relatively barren and is sparsely vegetated by several mature trees. The diversity of landscaping proposed in this application consists of ground-cover plantings, shrubbery and medium-scale trees which can all contribute to an enhanced amenity, streetscape and habitat availability. The provision of landscaping proposed is considered to be acceptable for the site and satisfactory when tested against Principle 5.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

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

Comment:

As discussed earlier, the market value of the land demands that the proposed apartments be of a high quality, high amenity and reasonable in scale. The scale and layout of each apartment and the building as a whole is considered to be acceptable for a diverse range of persons and will enable a positive living environment and resident wellbeing and importantly, satisfies the requirements of the ADG in terms of light, privacy and functionality.

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 development is found to provide an adequate provision of safety by virtue of systems and passive/casual surveillance of the streetscape and the Oliver Street carpark.

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 development provides a mix of one, two and three bedrooms apartments of varying configurations and sizes that will provide housing diversity options for potential purchasers. Whilst not having a dedicated communal space beyond the communal walkways and adjoining outdoor seating area, the development is designed in such a manner that resident interaction in communal spaces is envisaged to be frequent and opportunities for further social interaction are available in the commercial areas of Lawrence Street of surrounding public open spaces.

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:

The architectural form of the development is modulated with deep landscaped recesses on the first floor addressing Lawrence Street. The material palette is one that is consistent with the streetscape and will be appealing and durable in longevity. As detailed throughout this report, the quality of the architecture proposed is considered to be of a high standard that will positively contribute to the streetscape and the surrounding Freshwater area, thereby satisfying Principle 9 of the ADG.

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 and is it sited appropriately?	Consistent The proposed development is sited appropriately on land that has been identified for (inter alia) shop top housing development. The scale, architecture and density of the building

		is commensurate to the overall Freshwater Village atmosphere and is considered to be contextually appropriate for the land as demonstrated through this ADG assessment.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	<p>Consistent</p> <p>The proposed development is physically orientated towards Lawrence Street with the retail premises visible and accessible from the streetscape, with other service infrastructure and carparking being hidden out of sight.</p> <p>The modulated built form proposed is separated and orientated in such a manner that provides an appropriate level of sunlight both in and surrounding the site and reasonably protects the amenity of surrounding lands.</p> <p>Therefore it is found that the development as proposed is appropriately orientated for the context of the site.</p>
Public Domain Interface	<p>Does the development transition well between the private and public domain without compromising safety and security?</p> <p>Is the amenity of the public domain retained and enhanced?</p>	<p>Consistent</p> <p>The southern facade to Lawrence Street is the only noteworthy public domain interface.</p> <p>This facade accommodates the residents entry, two retail outlets, a service infrastructure closet and the driveway into the development.</p> <p>The public retail premises and the residents entry</p>

		<p>into the development are clearly delineated and provide for a reasonable transition into the Lawrence Street footpath.</p> <p>The development does not impinge upon the existing public domain, but rather improves it through contemporary architecture and two new retail premises and accordingly, the development is found to satisfy this part of the ADG.</p>
Communal and Public Open Space	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> 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) 	<p>Not Consistent - (satisfactory on merit)</p> <p>The proposed development proposed does not incorporate any primary communal spaces such as gymnasiums, swimming pools or the like, but it does incorporate the podium walkway level and gardens at first floor level measuring a total of 410m². This area equates to 15.7% of the total site area and therefore does not meet the spatial requirement of the site, but it does receive an adequate provision of solar access.</p> <p>The variations sought to the requirement for communal open spaces is not considered to warrant the refusal of the application as each apartment is served by large private open spaces and by virtue of the location of the site - being central in a 'village' area and in proximity to the beach.</p>

		It is not considered that the amenity and lifestyles of occupants will be detrimentally impacted by virtue of the variation sought to this control.												
Deep Soil Zones	<p>Deep soil zones are to meet the following minimum requirements:</p> <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	<p>Not Consistent - (satisfactory on merit)</p> <p>The proposed development site is surveyed to be 2608.6m², thereby requiring that 7% of the site area of deep soil landscaping with minimum dimensions of 6m.</p> <p>In accordance with the calculations of the requirement, the site has 0% deep soil landscaping (given that the larger landscaped area towards the northern end of the site has an OSD tank beneath 50% of the landscapable area (note that the control has no minimum soil depth requirement - however it is reasonably assumed that approx. 1m soil depth would not quantify as deep soil zone).</p> <p>Despite varying this requirement it is found that the development has introduced adequate areas of landscaping both at grade and on higher levels of the building to afford residents opportunities to harness the benefits of landscaping. Therefore, the landscaped treatment proposed is considered to be appropriate and acceptable in this particular circumstance.</p>
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	Consistent												

buildings to the side and rear boundaries are as follows:

Building height	Habitable rooms and balconies	Non-habitable rooms
Up to 12m (4 storeys)	6m	3m
Up to 25m (5-8 storeys)	9m	4.5m
Over 25m (9+ storeys)	12m	6m

Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.

Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.

The architecture of the proposal has orientated only one of the three buildings (being Building B) to face towards a side boundary (to the east). The habitable rooms and balconies of this building are setback a minimum of 6m from the boundary and therefore comply with the recommended setbacks of the ADG.

There are numerous balconies and courtyards throughout the development itself that would not comply with this numerical spatial separation if the ADG setbacks were applied internal of the development site.

In the circumstances of this particular application, it is found that, internally, despite having courtyards and private open spaces in close proximity to one another (ie. in the case of Units 9, 10 and 11), the level of visual privacy afforded is acceptable given the opportunities for landscaping between each courtyard, the differing heights of each courtyard and the design of the balustrade surrounding each courtyard.

The building may cause some degree of overlooking into the adjoining private open spaces (balconies) of the Kahana Development to the east. The magnitude of overlooking is considered to be

		<p>acceptable in the circumstances of the development given the spatial separation and the minimal number of apartments that overlook one another. Therefore, the provision of visual privacy is satisfactory. It is also understood that the Kahana development may have been required to erect some form of privacy screening on the western edges of several balconies which appear to not have been erected. Such screens would have negated any privacy concerns.</p> <p>Overall, the buildings are designed in a manner that respects the privacy of surrounding and nearby developments.</p> <p>Accordingly, the development is found to satisfy this guideline of the ADG.</p>
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>	<p>Consistent</p> <p>The proposed pedestrian entry points into the development are visually and physically accessible to the community.</p> <p>The site is not of a scale nor configuration that would require the provision of through-site links.</p>
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</p> <p>The issue of vehicle access has been a highly contentious issue during the assessment of this application with particular regard to public safety and alternative vehicular access through the Oliver</p>

		<p>Street carpark.</p> <p>As discussed elsewhere in this report, Council's Traffic Engineers have reviewed this issue and raised no objections subject to conditions on the location of the driveway crossing onto Lawrence Street and are satisfied that the proposal will not have adverse safety impacts on pedestrians.</p> <p>Similarly, in other parts of this report it is detailed that the site has a legal access right onto Lawrence Street.</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 modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p>Consistent</p> <p>The application provides a compliant provision of car parking for the residential, visitor and retail uses of the site, in accordance with Appendix H of the WDCP 2011.</p>
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> Living rooms and private open spaces of at 	<p>Consistent</p> <p>18 out of 23 apartments in the building (78.2%) achieve a compliant provision of solar and</p>

	<p>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.</p> <ul style="list-style-type: none">A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter	<p>daylight access in accordance with the guidelines.</p> <p>Given the orientation of the building, there are only 3 south-facing apartments (3%) that receive no direct sunlight in mid-winter.</p>												
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none">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.Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	<p>Consistent</p> <p>16 out of 23 apartments (69.5%) are naturally cross ventilated.</p> <p>2 out of 16 cross ventilated apartments have a depth of 18.2m, varying the guideline by 200mm.</p> <p>This level of variation is considered to be acceptable. In the event that the level of variation was not considered to be acceptable, this would reduce the number of cross ventilated units in the development to 14 out of 23, which still complies with the requirement of the guideline.</p>												
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>If located in mixed used</td><td>2.7m for main living area floor</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	If located in mixed used	2.7m for main living area floor	<p>Consistent</p> <p>Each apartment has a satisfactory floor-to-ceiling height.</p>
Minimum ceiling height														
Habitable rooms	2.7m													
Non-habitable	2.4m													
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
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areas	2.4m for second floor, where its area does not exceed 50% of the apartment area											
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> <p>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. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p> <p>Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space).</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</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 apartments• 4m for 2 and 3 bedroom apartments <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	Consistent Each apartment in the development is of a scale larger than both the minimum internal area permitted via the SEPP and the standard apartment size.
Apartment type	Minimum internal area											
Studio	35m ²											
1 bedroom	50m ²											
2 bedroom	70m ²											
3 bedroom	90m ²											
Private Open Space and Balconies	<p>All apartments are required to have primary balconies as follows:</p> <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></table>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	Consistent Each apartment has a satisfactory provision of private open space. The size of each balcony and courtyard proposed is				
Dwelling Type	Minimum Area	Minimum Depth										
Studio apartments	4m ²	-										

	<table><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> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.</p>	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	significantly larger than the minimum required area.	
1 bedroom apartments	8m ²	2m										
2 bedroom apartments	10m ²	2m										
3+ bedroom apartments	12m ²	2.4m										
Common Circulation and Spaces	<p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	Consistent No circulation core within the development services more than eight apartments on the same level.										
Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table><tr><td>Dwelling Type</td><td>Storage size volume</td></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> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²	Consistent Each apartment has a satisfactory provision of storage both in the form of kitchen, bathroom and robe storage, and in the form of a storage cage located in the ground floor carparking area.
Dwelling Type	Storage size volume											
Studio apartments	4m ²											
1 bedroom apartments	6m ²											
2 bedroom apartments	8m ²											
3+ bedroom apartments	10m ²											
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.	Consistent The building is designed in such a manner that the plant services and driveway accesses will not give rise to adverse or unreasonable acoustic intrusion to occupants of the subject development or adjoining sites.										
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Consistent The architecture of the building and the orientation of spaces and roof configuration is considered to be acceptable to provide security against unreasonable and adverse noise pollution and noise transmission.										
Configuration												
Apartment Mix	Ensure the development provides a range of	Consistent										

	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.	<p>The development comprises of two 1-bedroom apartments, fourteen-2 bedroom apartments and seven-3 bedroom apartments. The apartment mix proposed is considered to be appropriate within the context of Freshwater Village where dwelling sizes range from studios to large detached dwelling houses with 5+ bedrooms.</p> <p>The scale of the development proposed is considered appropriate in supporting the needs of the community both at present and into the future.</p>
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	<p>Consistent</p> <p>The proposed facade treatment of the building is appropriate for the context of the streetscape and will present as a highly modulated and well proportioned development that will create visual interest and contribute to the Lawrence Street character.</p>
Roof Design	<p>Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features.</p> <p>Test whether the roof space can be maximised for residential accomodation and open space.</p>	<p>Consistent</p> <p>The proposed roof design is satisfactory and cannot be maximised for residential accommodation and open space without significant amendment.</p> <p>The roof design is not dissimilar to the roofs of other surrounding developments.</p>
Landscape Design	Was a landscape plan submitted and does it respond well to the exisitng site conditions and context.	<p>Consistent</p> <p>The documentation accompanying the development application includes a comprehensive</p>

		landscape plan that responds well to the site and its context. The landscape plan is endorsed by recommended Condition No.1 of this consent.				
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes:				Consistent The predominant area of planting on structures is along the communal pathway on the podium of the building. The landscape plans accompanying the application detail that the raised planters surrounding the pathway will be 1100mm in height and at variable widths. Raised planters of this scale and the landscaped area to the rear of the site result in opportunities for landscaping of varying species, scale and densities that will contribute to enhancing the aesthetic of the site.	
	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
	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		
Universal Design	Developments are to achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features.				Consistent More than 20% of the total apartments proposed incorporate silver level universal design features identified in the Livable Housing Guideline.	
Adaptive Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.				Not Applicable The application does not seek to retain and adapt any existing parts of the existing buildings on site and thereby, adaptive reuse is not applicable to the assessment of this application.	

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</p> <p>The proposed development is for a shop top housing building which is a form of mixed use development. Given proximity to other amenities in the streetscape and to public transport, it is found that the development satisfies this requirement.</p> <p>The ground floor of the building is used for retail, infrastructure and car parking purposes only. There is no residential use on the ground floor.</p>
Awnings and Signage	<p>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.</p> <p>Signage must respond to the existing streetscape character and context.</p>	<p>Consistent</p> <p>The proposed awning design is considered to be acceptable for the context of the site and will contribute to providing cover to pedestrians along Lawrence Street.</p> <p>No signage is proposed as a part of this application.</p>
Performance		
Energy Efficiency	<p>Have the requirements in the BASIX certificate been shown in the submitted plans?</p>	<p>Consistent</p> <p>BASIX requirements have been addressed in the application documentation and in this report.</p>
Water Management and Conservation	<p>Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?</p>	<p>Consistent</p> <p>The application has been reviewed by Council's Water Management Officer whom has raised no objections to the proposed development, subject to conditions as recommended.</p>
Waste Management	<p>Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and recycling.</p>	<p>Consistent</p> <p>The waste management plans supplied are satisfactory.</p>
Building	<p>Incorporates a design and material selection that</p>	<p>Consistent</p>

Maintenance	ensures the longevity and sustainability of the building.	The material selection of the building facade is appropriate for the coastal climate of freshwater to ensure the longevous nature of its quality and negating the requirement for any frequent building maintenance.
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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 development application is not being refused on any grounds stipulated in Clause 30 of SEPP 65.

(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 4.15C (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.

Comment:

The assessment of this application has found that the proposed shop top housing development is consistent with the design quality principles and objectives of the Apartment Design Guide.

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 proposal was referred to Ausgrid. Ausgrid responded to the proposed development and provided a number of conditions which are included in the recommendations of this report.

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	Proposed	% Variation	Complies
Height of Buildings:	11m	Max. 13.4m	Max. 21.8%	No

Compliance Assessment

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

Detailed Assessment

Zone B2 Local Centre

The proposed development is for the construction of a *shop top housing* development which is

permitted with consent upon the land, but conversely development for the purpose of *residential accommodation* (i.e. a residential flat building) is a prohibited development.

The prevailing environmental planning instrument to define shop top housing is the Warringah Local Environmental Plan 2011, defined as follows:

Definition of Use

"Shop top housing" means one or more dwellings located above ground floor retail premises or business premises. Shop top housing is a type of residential accommodation - see the definition of that term in this Dictionary.

And residential accommodation is defined as:

"Residential accommodation" means a building or place used predominantly as a place of residence, and includes any of the following:

.....

(m) shop top housing,

but does not include tourist and visitor accommodation or caravan parks.

(note: for the purpose of this report, it is not necessary to extract the lengthy definition of residential accommodation beyond that of the above).

There is an evident conflict between the permissible and prohibited land uses, and it is therefore crucial to establish that the proposed development is in-fact *shop top housing*.

Relevant Caselaw

In consideration of the most suitable definition for the type of development that is proposed, reference is made to various caselaw established in the Land and Environment Court of NSW, particularly:

- *Hrsto v Canterbury City Council (No 2)* [2014] NSWLEC 121 - ***Hrsto***
- *Acro Iris Trading Pty Ltd v North Sydney Council* [2015] NSWLEC 1113 - ***Acro***
- *Luxcon Developments No 6 Pty Ltd v Woollahra Municipal Council* [2017] NSWLEC 1426 - ***Luxcon***
- *Chamwell Pty Limited v Strathfield Council* [2007] NSWLEC 114 - ***Chamwell***

In *Hrsto* his Honour Sheahan J held that in order for a building to be characterised as shop top housing it must satisfy the following tests (summarised):

- A dwelling must be in the same building as the ground floor retail premises or business premises;
- The floor of the residential dwelling needs to be at a level higher than the top most part of the ground floor retail or business premises;
- The residential dwellings need not be directly above the ground floor retail premises (lateral displacement); and
- The dominant use of the ground floor space needs to be classified as a retail or business premises.

For the purposes of this assessment, *Hrsto* can be summarised to find that for the purposes of shop top housing, the residential component must be of a level physically higher than the ground floor retail

premises, but need not be *directly* above it (i.e. within the same floorplate configuration).

Acro elaborates on the findings of Sheahan J in *Hrsto* as follows (extract par21):

That matter was dealt with by Sheahan J in Hrsto v Canterbury City Council (No 2) [2014] NSWLEC 121. His Honour held that it was necessary for the purpose of the definition of shop top housing for the lowest point of any dwelling that was proposed to be regarded as shop top housing to be entirely above ground floor retail premises or business premises, that is there have to be a vertical surmounting of the shop top housing from the underlying qualifying premises. However, importantly for these proceedings, his Honour also made it clear that it was possible for there to be a lateral displacement in such circumstances, in that there did not need to be a true directly vertical correlation between the shop top housing and the qualifying premises at the lower level. (emphasis added)

Importantly, in *Acro* reference is made to *Blackmore Design Group Pty Ltd v Manly Council [2014] NSWLEC 164* whereby it is found that for the definition of a dwelling, that the parking spaces do not form a part of the dwelling. In *Acro* it was held that (summarised):

- *Parking spaces do not form part of the definition of a dwelling and therefore residential car spaces are permissible on the ground floor of a shop top housing development, where the dominant use of the level is for retail or business premises;*
- *It is possible for a single building to have two ground levels; provided that each ground level relevantly addresses a street frontage; and*
- *Commercial car parking spaces which form part of the strata lot for retail or business premises could be said to be part of the retail or business premises of the purposes of the definition of shop top housing.*

The findings in *Luxcon* and *Chamwell* provide clarity of the above caselaw but for the purposes of this report and consideration need not be summarised.

Conclusion on meeting the Shop-top Housing Definition

In furtherance of the definitions, caselaw and the legal opinions submitted by the Applicant to accompany the development application, it is considered that the development is suitably defined as shop top housing as intended by the WLEP 2011 as:

1. The ground floor of the development addresses the Lawrence Street frontage and can therefore, for the purposes of *shop top housing*, be defined as the "ground floor";
2. The dominant use of the ground floor of the proposed development is for retail. The ground floor includes the retail premises, car parking, storage, loading dock and waste facilities which are all for the purpose of retail in accordance with the findings in *Chamwell*. Therefore the dominant use of the ground floor is for "ground floor retail" in accordance with the definition of *shop top housing*;
3. All of the proposed dwellings are located above "ground floor retail" premises and are in the same building;
4. The residential levels are at a floor level higher than that of the "ground floor retail" premises;
5. All of the proposed dwellings are located directly or immediately above the "ground floor retail" premises, albeit there being a lateral displacement in some locations.
6. The residential car parking spaces on the ground floor level do not form part of the definition of "dwelling" and are therefore permissible on the ground floor level.

Accordingly, it is surmised that the development as proposed can be suitably defined as a *shop top housing* development for the purposes of the WLEP 2011 definition.

4.6 Exceptions to development standards

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

Requirement:	11.0m
Proposed:	Maximum building height: 12.7m
	Maximum plant height: 13.4m
Is the planning control in question a development standard?	Yes
Is the non-compliance with Clause 4.3 - Height of Buildings a Numerical and / or Performance based variation?	Numerical
What is the percentage variation:	Up to 21.8%

Description of non-complying elements of the development

The built form of the proposed shop top housing development has been separated into three two storey pavilions atop of a one single storey podium level. Atop of each pavilion is its own plant equipment and lift overrun. Given the topography of the land and the varying floor levels/building heights across the development, there is no consistent level of non-compliance; rather the quantum of building height that breaches the Height of Buildings standard varies across the site and differs in magnitude for buildings A, B and C. Generally, the area of non-compliance is restricted to the eastern edges of the building.

Building A

Building A fronts Lawrence Street and breaches the development standard by 1.3m in the north eastern corner and 0.8m in the south eastern corner, equating to a maximum contravention to the control of 11.8%. Additional to the building height variation, the plant equipment on the roof of Building A breaches the height by up to 2.3m, equating to a contravention of 20.9%.

Therefore, it can be said that the highest portion of Building A is the plant equipment at a maximum height of 13.3m equating to a 20.9% variation.

Building B

Building B is the centre building of the development and breaches the development standard by 1.7m in the north-eastern corner and 0.5m in the north-western corner, equating to a maximum contravention of 15.5%. Similarly to Building A, the plant equipment on the roof is of a greater height than the building height, seeking a contravention of 2.0m equating to an 18.2% variation.

Therefore, it can also be said that the highest portion of Building B is the plant equipment at a maximum height of 13.0m equating to a maximum 18.2% variation.

Building C

Building C is the northernmost building at the rear of the site. The building exceeds the maximum height by up to 1.3m in the north-eastern corner and up to 0.9m in the south-eastern corner, equating to a

maximum contravention of 11.8%. The plant equipment atop of Building C breaches the standard by 2.4m equating to a variation of 21.8%.

Therefore, it can be said that throughout the development as a whole, the plant equipment on the roof of each pavilion is the highest element of the proposal, with the most significant breach being present on the north-eastern corner of Building B. The breaches for the development as a whole are shown on the diagrammatic height plan drawing below:



Figure 1 - Proposed development overlaid with 11m height plane. *Source: Nettletontribe*

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

Is the planning control in question a development standard?

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

What are the underlying objectives of the development standard?

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

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

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

Comment:

The proposed development is considered to be of a scale, form and height that is compatible with surrounding and nearby developments. The building is predominantly beneath the maximum permissible height as evident in the above diagram and achieves a total height that is not

inconsistent with other recent shop top housing and residential flat building developments within the Freshwater Village locality. The scale and massing of the proposed building is broken into three modular forms which both enhances the internal amenity for occupants but also improves the aesthetic and form when viewed from other surrounding properties. The scale of the modulated forms is similar to those in the adjoining development to the east.

Accordingly, it is found that the proposed development is compatible with the height and scale of other surrounding developments. The predominant compliance achieved by the building demonstrates a built form that is also likely to be compatible with any future development on surrounding lands.

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

Comment:

The proposed development is not found to have any unreasonable nor detrimental amenity impacts upon adjoining lands by virtue of visual impact, disruption of views, loss of privacy and loss of solar access.

The visual impact of the proposal is found to be acceptable in the context of the site and the high quality architecture will be consistent with the desired future character of Lawrence Street.

No significant or noteworthy views are present from the immediate surrounds and therefore, with consideration to the Planning Principles established in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140 (Tenacity)* the building will not give rise to any unreasonable view loss from surrounding public or private land.

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

Comment:

The development site is located in a highly urbanised area. The Freshwater Village locality is characterised by its coastal environment, and it is found that the development as proposed will not have any negative impact upon this character. Conversely, it is found that the quality of the architecture will enhance the streetscape and the character.

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

Comment:

Throughout this report, it has been established that the southern facade of the development will be complementary and enhancing to the Lawrence Street streetscape, however consideration must also be given to the buildings facade to Council's Oliver Street carpark to the north-west.

The site has an 18m long shared boundary with the carpark (the width of the carpark) and a wall obtaining a height of 9.3m for the entirety of the width. The wall is setback 2.4m from the property boundary. Despite the scale of the wall it is found that the visual impact is acceptable given the use of the adjoining land as a carpark and (then further) an electrical substation and telecommunications building. The comprehensive landscaping plan accompanying the application demonstrates an ability to 'plant out' this area in a manner that will substantially reduce the visual impact of the building, and will enhance the Oliver Street carpark through the additional of formalised landscaping.

Accordingly, it is found that the development as proposed will be of acceptable visual impact

when viewed from public places.

What are the underlying objectives of the zone?

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

The underlying objectives of the B2 Local Centre zone

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

Comment:

Within the B2 Local Centre zone, development for the purposes of shop top housing is permitted with consent, and is relatively consistent with the predominant streetscape character of Lawrence Street. This proposed development provides two retail premises addressing Lawrence Street (185m²) and residential uses above. Whilst it is acknowledged that the retail premises in the development could be enlarged by adding additional retail floorspace inwards of the site, the amenity of these premises would be highly undesirable as they would have zero natural solar access and views outwards into the carpark.

Accordingly, it is found that the level of retail premises provided in the development are sufficient to contribute to serving the needs of people who live in, work in and visit the local area.

- *To encourage employment opportunities in accessible locations.*

Comment:

The location of the site is highly desirable and benefits from surrounding amenities and accessibility to public transport. This application does not stipulate the specific uses of the retail premises as these will be the subject of future development applications. Accordingly, in so far as this consent can permit, the provision of employment opportunities is acceptable.

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

Comment:

The site is within a location that is well serviced by public transport, and Lawrence Street specifically is dominated by pedestrians and cyclists. This development itself will not impact on the public transport patronage nor will it discourage walking and cycling.

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

Comment:

The frontage of the proposed development is considered to be appropriate and commensurate to the scale of pedestrians to ensure that the development is safe, comfortable and interesting. It is noted that concern has been raised in submissions regarding the provision of a driveway crossing onto Lawrence Street, however this crossing has been found as necessary, acceptable and Council's Traffic Engineers have imposed conditions in the recommendations of the report to ensure a high level of pedestrian safety.

- *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 scale of the proposed development is compatible with surrounding developments and with what is reasonably envisaged by the current planning controls. The quality of the architecture will create an urban form that will enhance the streetscape and overall appearance of the site. The proposed landscaped treatment of the site will create a diverse and interesting aesthetic when contrasted against the white walls of the building and will satisfy this objective.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*

Comment:

The proposed variation sought to the Height of Buildings development standard is not considered to give rise to conflict between adjoining sites both within the same and different zones. The development does not give rise to any unreasonable amenity or environmental impacts, nor does it impinge upon the development potential of adjoining lands. Accordingly the development is found to satisfy this objective.

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

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

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

Comment:

In consideration of whether an appropriate degree of flexibility to a development standard is warranted in the circumstances of the application reference must be made to the Planning Principle established in *Veloshin v Randwick Council* [2007] NSWLEC 428 (**Veloshin**) where Senior Commissioner Roseth establishes a framework of questions regarding the assessment of the height and bulk of a development.

- 1. *Are the impacts consistent with impacts that may be reasonably expected under the controls?*
- 2. *Does the area have a predominant existing character and are the planning controls likely to maintain it? Does the proposal fit into the character of the area?*
- 3. *Is the proposal consistent with the bulk and character intended by the planning controls?*
- 4. *Does the proposal look appropriate in its context?*

1. Are the impacts consistent with impacts that may be reasonably expected under the controls?

Firstly, it must be established if the impacts of the development are consistent with the impacts that may be reasonably expected under the planning controls. In this particular circumstance, it is found that the scale of the building is compatible with surrounding developments and is of a height that could reasonably be expected under the planning controls (i.e. three storeys). It has not been found that the impact of the variation to the building height is of such a magnitude that would be of detriment to the amenity of residents or the environment of the area, and it could be similarly assumed that a building that were to comply with the height control could have an equal (if not greater) level of amenity impact. Therefore, given that the impacts of the development are consistent with the impacts that should be expected by development on the site, even if the

building were to fully comply with the height standard, the development is found to satisfy the first step.

2. Does the area have a predominant existing character and are the planning controls likely to maintain it? Does the proposal fit into the character of the area?

Secondly, the predominant existing character of the area must be considered and whether:

- (a) the development is compatible with the character of the area; and
- (b) the current planning controls are likely to maintain this established character.

The Lawrence Street streetscape has been undergoing significant evolution in recent years; predominantly from 2016 onwards (refer to Site History). Previously, the area had been characterised by an eclectic and somewhat haphazard arrangement of buildings of varying age, size and construction with varying architectural merit. At best, this character could be described as small scale mixed use developments that address the street. Inevitably, many of these sites are under-developed with regards to their potential under current planning controls, hence this subject development application.

Of recent years there has been an emerging trend for the construction of largeshop top housing and residential flat building developments within the immediate vicinity of the subject site. These developments are predominantly 2 to 3 storeys in height and accommodate a substantial portion of the land they sit upon. These developments are found to be generally compatible with the current planning controls pertaining to the land.

The building proposed is a three storey shop top housing development that is substantially separated into pavilion style elements to reduce the visual massing of the overall development. Despite varying the height control, it is found that the development is of a form that is consistent with the current planning controls of the area and compatible with the scale of surrounding developments.

Insofar as the architectural treatment of the building is concerned, it is considered that the development will significantly enhance the streetscape and will appropriately contribute to the planning of surrounding under-developed sites.

Accordingly, it is found that the development is compatible with the current prevailing character of the area in accordance with the current planning controls.

3. Is the proposal consistent with the bulk and character intended by the planning controls?

The third question is somewhat answered by the consideration of question two, whereby the existing older character is outdated by virtue of the development potential of the land under current controls, thereby creating a new prevailing character. For the purposes of this assessment, it is not necessary to answer question 3.

4. Does the proposal look appropriate in its context?

Finally,, it must be considered as to whether the proposal looks appropriate in its context. The assessment of this proposal has found that the development is a well designed and attractive development that will enhance the Lawrence Street streetscape compared to the existing outdated development on the site. The scale, architecture and form of the development is not inconsistent with other developments on surrounding land and thereby it can be surmised that the development, as proposed, looks appropriate in its context.

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

circumstances.

Comment:

Within the scope of the current design scheme, the only opportunities available to achieve a development beneath the 11m height plane would be to:

- (a) eliminate the second storey of the building in its entirety; or
- (b) sink the building into the ground.

Both of these options would likely result in other issues beyond the scope of consideration in this current application. In any regard, enforcing strict compliance with the development standard could significantly compromise the architectural integrity of the proposal and the benefits that this design poses compared to other design alternatives (such as the substantial setbacks proposed between buildings and the appropriate positioning of the podium elements).

The development is found to satisfy the zoning objectives of the B2 Local Centre zone and is considered to significantly contribute to the enhancement and modernisation of Lawrence Street.

Accordingly, it is found that the scheme as proposed warrant flexibility to the planning controls.

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

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

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

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

Comment:

In *Wehbe v Pittwater Council* [2007] NSWLEC 827 (**Wehbe**) CJ Preston formulated five methods in which a development standard can be shown to be unreasonable or unnecessary in the circumstances of particular cases.

The methods in *Wehbe* can be summarised as:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (Method 1).
2. The underlying objective of purpose of the standard is not relevant to the development, and therefore compliance is unnecessary (Method 2).
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Method 3).
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Method 4).
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable or unnecessary as it applies to the land

and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Method 5).

In the applicant's Clause 4.6 submission they summarise the recent judgement of *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386 (**Micaul**) whereby it is expressly noted that *the consent authority did not have to be directly satisfied that compliance with the development standard was unreasonable or unnecessary but that the applicant's written request adequately addresses the matters in Clause 4.6(3)(a)*. Therefore the assessment of Clause 4.6(3)(a) of the WLEP 2011 is derived from the applicant's submitted Clause 4.6 Variation by Ethos Urban dated 19 December 2017.

The applicant's written request comprehensively addresses the objectives of the clause, the zone and the methods of *Wehbe* and concludes with the following statements that the Clause 4.6 variation demonstrates that:

- *"Compliance with the Height of Buildings development standard is unreasonable and unnecessary in the circumstances of the case, given that the objectives of the maximum height development standard are achieved notwithstanding the variation to the numerical control;*
- *There are sufficient environmental planning grounds to justify contravention of the standard, as the proposed variation:*
 - *Is consistent with the first objective of Clause 4.6 of WLEP 2011, the degree of flexibility required by the consent authority to support the minor variations to the maximum building height in this instance is considered both appropriate, and particular to the circumstances of the development;*
 - *Is consistent with the second objective of Clause 4.6 of WLEP 2011, in achieving better outcomes for and from the proposed development, notwithstanding the minor increase in building height;*
- *It is in the public interest as the proposal remains consistent with the objectives of the B2 Local Centre zone and Height of Building development standard;*
- *The proposal is compatible with the envisioned scale and character of the area and will not have adverse amenity impacts on surrounding land;*
- *There is no public benefit in maintaining the building height development standard adopted by the environmental planning instrument for this site; and*
- *The Secretary's concurrence can be obtained, as contravention of the development standard does not raise any matter of significance for State and regional planning."*

Accordingly, with regard to *Micaul*, it is considered that the development as proposed with accompanying documentation satisfies Clause 4.6(3).

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

(a) *the consent authority is satisfied that:*

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

Comment:

It is found that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) as above.

(ii) *the proposed development will be in the public interest because it is consistent with the*

objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Comment:

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

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

Comment: Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation to a numerical standard is not greater than 10%. Following the release of PS 18-003, Council received correspondence from a delegate of the Secretary which granted Council staff, for 12 months from 1 March 2018, the ability to assume the Secretary's concurrence for Class 1 buildings which seek to vary the building height standard by more than 10%.

As this development is not for a Class 1 building and varies the development standard by up to 21.8% (inter alia other reasons) the application is to be determined by the Northern Beaches Local Planning Panel (NBLPP).

Warringah Development Control Plan

Built Form Controls

Part B *Built Form Controls* of the DCP does not apply to land described in Part G *Special Area Controls*. Controls pertaining to the desired built form can be found later in this report under Part G5.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	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
D4 Electromagnetic Radiation	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes
F1 Local and Neighbourhood Centres	Yes	Yes
G5 Freshwater Village	Yes	Yes
1. Built form in Freshwater	Yes	Yes
2. Number of storeys	Yes	Yes
3. Street activation	Yes	Yes
4. Street facades and shopfront design	Yes	Yes
5. Access and loading	Yes	Yes
6. Lighting	Yes	Yes
7. Safety and security	Yes	Yes
8. Signage	N/A	N/A
9. Awnings	Yes	Yes
10. Front setback	Yes	Yes
11. Side and rear setbacks	Yes	Yes
13. Roofs and building form	Yes	Yes
14. Building massing	Yes	Yes
15. Building sustainability	Yes	Yes
16. Materials and colours	Yes	Yes
17. Active travel links	Yes	Yes

Detailed Assessment

C2 Traffic, Access and Safety

The proposed vehicular access point into the site from Lawrence Street has been assessed by Council's Traffic Engineers.

Council's Traffic Engineers note that whilst it is preferable to have no access points onto Lawrence

Street, the proposed driveway location is acceptable.

The issue of driveway access onto Lawrence Street and the potential traffic and safety issues this may give rise to were raised by respondents to the public notification of the application. The majority of submissions suggested that Council refuse vehicular access in its entirety, whilst a minority suggested allowing vehicular access via the Oliver Street carpark to the north west.

Several other submissions noted that the driveways for this development and the adjoining development at 21 Lawrence Street (DA2017/1284 which is currently under consideration by Council) should be integrated. The two applicants have chosen not to combine the driveway crossings of the two developments that are side by side; thereby negating the possibility for a shared driveway arrangement in this scheme. In any event, it is unlikely that this solution could have been feasible as it would result in one development being reliant upon the other and mutually consistent construction and occupancy schedule. Additionally, a driveway crossing of this scale would have likely been 8m wide or so which would be unsuitable for the streetscape.

There are two primary factors that must be considered with regards to vehicular access:

- The site has a legal vehicular access right to a public road (Lawrence Street) - Section 6 *Right of access to public road by owners of adjoining land* in the Roads Act 1993; and
- At present the Oliver Street carpark is Community Land and not Operational Land and accordingly, the developer of the site cannot obtain vehicular access through the carpark for the proposed development.

Therefore, the only means of vehicular access available to the site is via Lawrence Street, and the developer is entitled to utilise this access for their development.

It is acknowledged that having some or all vehicular access via the Oliver Street carpark may reduce the impact on Lawrence Street (however it is yet to be analysed as to whether the Oliver Street carpark could reasonably cope with the additional traffic load). Council has requested that the applicant future-proof the development by providing a portion of the wall adjoining the carpark as able to be 'knocked-through' so that in future, if and when the Oliver Street carpark is to be reclassified and vehicular access is permitted across it, the developer may lodge a new development application for this access and for the potential construction of a new retail premises in place of the existing driveway access from Lawrence Street.

Accordingly, the proposed provision of vehicular access is supported at present and it is considered that the site is reasonably future-proofed to provide alternative vehicular access if and when the Oliver Street carpark is reclassified.

C3 Parking Facilities

- To provide adequate off street carparking.

Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Shop (retail)	1 space / 16.4m ² GLFA	81m ² +98m ² = 179m ² , therefore	11 spaces + 1 loading dock	nil

		10.9 spaces required		
1, 2 and 3 bedroom dwelling (apartment)	- 1 space per 1 bedroom dwelling; - 1.2 spaces per 2 bedroom dwelling; - 1.5 spaces per 3 bedroom dwelling; - 1 visitor space per 5 units.	2x1 bedroom; 14x2 bedroom; 7x3 bedrooms, therefore 30 residential spaces and 5 visitor spaces required	35 spaces	nil
Total		46	46	nil

The proposed provision and configuration of car parking complies with the requirements of Part C3 and Appendix H of the WDCP 2011.

D2 Private Open Space

The provision of private open space is governed by the prevailing SEPP 65 and accompanying ADG. Notwithstanding the applicability of this clause, the application still meets the objectives of this Part D2.

D3 Noise

In the assessment of the application it was found that there is insufficient detail pertaining to the acoustic treatment of the ground level carpark to ensure that the openings on the northern and southern end (particularly northern) do not give rise to adverse acoustic intrusion to surrounding properties. This matter can reasonably be resolved by way of condition and has been addressed by Council's Environmental Health Officer.

D4 Electromagnetic Radiation

The assessment of this application has taken into consideration the EMF survey accompanying the application and the comments made by Council's Environmental Health Officer. Based on the advice received, it is considered that an appropriate level of safety will be afforded by the development to residents of the development and the community in general from electromagnetic radiation.

D7 Views

Given the topography of the subject site and surrounding land and the lack of any *iconic* views as defined in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* it is found that the proposed development will not give rise to any unreasonable nor adverse view loss impacts from surrounding public and private properties.

E7 Development on land adjoining public open space

The development site adjoins the Oliver Street carpark to the west which is zoned RE1 Public Recreation pursuant to the WLEP 2011. Whilst not strictly being parkland, bushland reserve or "public open spaces," the land is nonetheless zoned for public purposes, and thereby an assessment of the development against the control objects follows:

- *To protect and preserve bushland adjoining parks, bushland reserves and other public open spaces.*

Comment: The development will not result in the carpark being unreasonably or adversely impacted upon by virtue of its current and future potential, thereby satisfying this objective.

- *To ensure that development responds to its adjacent surroundings to preserve and enhance the natural qualities of the environment.*

Comment: Land surrounding the subject site consists of shop top housing developments, residential flat buildings and carparks. Therefore, the development of this site for the purposes of a shop top housing development responds to its surrounding environment and is consistent with what the current planning controls envision the use of the site to be.

- *Development on land adjoining open space is to complement the landscape character and public use and enjoyment of the adjoining parks, bushland reserves and other public open spaces.*

Comment: This clause is not applicable as the adjoining public land is a carpark.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP 2011 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

F1 Local and Neighbourhood Centres

An assessment against the objectives of Part F1 Local and Neighbourhood Retail Centres of the WDCP 2011 follows:

- *To encourage good design and innovative architecture.*

Comment:

With consideration to the objectives of this part, it is found that the southern facade of the building to Lawrence Street requires the most attention.

This particular facade has been designed in a manner that incorporates vertical and horizontal stepping, human proportions, podium landscaping, varying materials and a dynamic appearance in that the first floor elements can move and, at times, it is possible that persons could be on all three levels and visible from the streetscape.

These elements cumulatively result in the proposal and the Lawrence Street facade being of a good design and innovative architecture.

- *To provide a safe and comfortable environment for pedestrians*

Comment:

The development includes an awning structure elevated some 3.5m above the footpath level

that provides weather shelter for pedestrians at a comfortable scale. It is not found that there are elements of the proposal that are overly dominating or imposing to such a magnitude that would be contrary to providing a safe and comfortable environment for pedestrians.

The vehicle crossing and driveway proposed has been assessed as satisfactory by Council's Traffic Engineers, subject to conditions.

- *To provide a range of small-scale shops and business uses at street level with offices or low-rise shop-top housing to create places with a village-like atmosphere.*

Comment:

The development provides for two new retail premises located at ground level and fronting onto Lawrence Street. These shops are reasonable in scale (one at 72m² and the other at 113m²) to cater for various types of businesses within the vicinity whilst being commensurately proportionate to that of other surrounding retail premises.

From Lawrence Street, the ground and first floor elements have a nil front setback to the Lawrence Street boundary, and the second floor is stepped back 5m from the same boundary to reduce the scale of the building from the public domain and to enhance the village-like atmosphere of the area.

- *To enhance the established scale and pattern of development and the continuity of existing streetscapes.*

Comment:

The proposed development is compatible by virtue of its scale in comparison with other surrounding recent developments in Freshwater Village and the wider vicinity, and is generally consistent with the current planning controls pertaining specifically to Freshwater Village, but also to shop top housing development throughout the state (pursuant to SEPP 65).

It is found that the building will contribute to the modernisation and urban renewal of Lawrence Street and will enhance the future planning by virtue of the proposed scale and pattern of development.

- *To enhance the public domain.*

Comment:

For the reasons above, it is found that the proposal will provide a well designed building with an attractive facade to Lawrence Street that provides retail opportunities for the community. Overall, the development is found to enhance the public domain and the requirements and intents of Part F1 Local and Neighbourhood Retail Centres.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP 2011 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

1. Built form in Freshwater

Part B Built Form Controls of the WDCP 2011 does not apply to this development site, and the controls in Part G5 (1) prevail. The assessment of this application has found that the development complies with the numerical requirements of this clause and satisfies the accompanying objectives (1 - 5) as demonstrated throughout this report.

Accordingly, no further assessment on Part G5 (1) is required. Assessment has been undertaken for each component of Part G5 of the WDCP 2011, and commentary has been supplied where relevant.

3. Street activation

The southern facade of the development fronting Lawrence Street is predominantly composed of retail frontage that will reinforce and enhance the main street character of Lawrence Street. The non-active elements of the frontage include the driveway access, residential entry and an infrastructure closet. These non-active elements are essential to the development but, given the overall architecture of the proposal, do not detract from the street frontage and activation.

It is considered that overall, the development achieves an active, interesting and welcoming street frontage which will contribute to the enhancement of the Lawrence Street and Freshwater Village atmosphere in longevity.

5. Access and loading

This Clause includes a requirement which reads:

R3. No additional vehicle or loading access is to be provided from Lawrence or Albert Streets.

In the public exhibition period of this application many objectors noted that the development did not comply with this requirement.

Strictly speaking, the development is not providing any *additional* vehicle access onto Lawrence Street as it is relocating the existing crossing; however it is understood that this literal interpretation may not be the intent of the requirement.

In any event, it has already been established that the site has a legal access right to Lawrence Street as there is no other possible access point available at this time to the site, and therefore the development is found to be acceptable with regards to the consistency with this clause.

8. Signage

No signage is proposed as an element of this development application.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

Warringah Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$ 8,201,888		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 77,918
Section 94A Planning and Administration	0.05%	\$ 4,101
Total	1%	\$ 82,019

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

The development of this site is inevitable with regards to the potential afforded to the land by virtue of the current planning controls. The development scheme proposed is for a shop top housing development with 2 retail premises and 23 residential apartments with associated parking and landscaping. The architecture of the building is of a high-quality and will be compatible the streetscape of Lawrence Street and the wider Freshwater Village.

The development is constrained by virtue of its limited vehicular access opportunities which require the buildings driveway to be located off Lawrence Street, which is inconsistent with the outcomes envisaged under the Freshwater Village DCP. This is the only access option, and whilst it is not preferable, it is satisfactory from a traffic and safety perspective. The issue of vehicle access is evidently crucial in the submissions received, and therefore it is found that the most suitable way for this development to progress in any magnitude is to ensure that, as early as at DA stage, the engineering and construction planning of the building incorporates the potential for a future access point to be

created from the northern end of the building into the Oliver Street carpark to the west. This then, in theory, could negate the necessity for the Lawrence Street crossing and provide the opportunity for an additional retail outlet (subject to future development application approvals). The issue of vehicle access is found to be satisfactorily addressed by the recommendations of this report.

The variations to Clause 4.3 Height of Buildings of the Warringah LEP 2011 has equally been the source of objection from the community. The site is subject to an 11m height limit and a maximum 3 storey control. The development breaches the 11m control in certain elements of the building, generally consequent of the sloping topography of the land. This assessment has found that the breach does not give rise to any unreasonable or adverse amenity impacts upon adjoining land and is generally of a scale and massing that is consistent with surrounding developments and the desired future character as established by the zone objectives.

The long history of this site and the years of designing the building and waiting for the reclassification of the Oliver Street carpark have left this site in an undeveloped state for an extended period of time. The scheme proposed is a suitable form of development for the lot and for Freshwater Village, and this assessment finds that the development application is worthy of approval by the Northern Beaches Local Planning Panel.

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 Development Consent to DA2017/1294 for Demolition works and the construction of a shop top housing development on land at Lot A DP 356986, 9 Lawrence Street, FRESHWATER, Lot CP SP 1172, 15 Lawrence Street, FRESHWATER, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **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

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
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 C	26 April 2018	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	18 December 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-202 Issue C	26 April 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-203 Issue B	18 December 2017	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
2417 LP-03 Issue B	5 December 2017	John Lock & Associates Landscape Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment and Tree Management Plan (ref:2911)	3 November 2017 (amended)	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	18 December 2017	Wall to Wall Design and Consulting Pty Ltd
Electromagnetic Field Survey	27 November 2017	EMR Surveys Pty Ltd
Stage 1 Preliminary Environmental Site Assessment (Ref:E30969Krpt)	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) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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

Waste Management Plan		
Report Title	Dated	Prepared By
Operational Waste Management Plan Revision C	5 December 2017	Elephants Foot Recycling Solutions

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

2. **Amendments to the approved plans**

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

- The street awning along Lawrence Street (southern boundary) is to extend for the width of the site.

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

3. **Compliance with Other Department, Authority or Service Requirements**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	22 January 2018

(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 Department, Authority or Body's.

4. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

5. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable

cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

6. **Temporary dewatering**

Discharge from the sediment basin must achieve the following water quality targets in addition to any conditions/documentation of this consent and legislation including *Protection of The Environment Operations Act 1997*.

Parameter	Criterion	Method	Time Prior to Discharge
Oil and grease	None visible	Visual inspection	<1 hour
pH	6.5- 8.5	Probe/meter	<1 hour
Total Suspended Solids (TSS)	<50mg/L	Meter/grab sample measured as NTU	<1 hour

Note: The correlation between NTU and TSS must be established by a NATA accredited laboratory prior to the commencement of dewatering activities.

Dewatering must not occur until the above water quality parameters are met.

All records of water discharges and monitoring results are to be documented and kept on site. Copies of all records shall be provided to the appropriate regulatory authority, including Council, upon request.

Tailwater must be discharged to a stormwater pit and not spread over any road, footpath and the like.

Reason: Protection of the receiving environment

FEES / CHARGES / CONTRIBUTIONS

7. Policy Controls

Northern Beaches Council Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

Northern Beaches Council Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$ 8,201,888.41		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 77,917.94
Section 94A Planning and Administration	0.05%	\$ 4,100.94
Total	1%	\$ 82,018.88

The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with Northern Beaches Council's Development Contributions Plan.

8. Security Bond

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

9. **Works Bonds**

(a) Construction, Excavation and Associated Works Bond (Drainage)

A Bond of \$10,000 as security against any damage to Council's stormwater drainage system at the rear of the property and failure to complete the construction of stormwater drainage works as part of this consent.

(b) Construction, Excavation and Associated Works Bond (Crossing/Kerb)

A Bond of \$10,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter and any footpath works required as part of this consent.

(c) Construction, Excavation and Associated Works Bond (Pollution)

A Bond of \$3,000 as security to ensure that there is no transmission of material, soil etc off the site and onto the public road and/or drainage systems.

(d) Construction, Excavation and Associated Works Bond (Failure to Remove Waste)

A bond of \$5,000 as security against damage to Council's road(s) fronting the site caused by the transport and disposal of materials and equipment to and from the site.

(e) Construction, Excavation and Associated Works Bond (Maintenance for civil works)

The developer/applicant must lodge with Council a Maintenance Bond of \$5,000 for the construction of the vehicle crossing, modification and extension of Council's stormwater drainage system in Lawrence Street, extension of Council kerb blister and associated streetscape works. The Maintenance Bond will only be refunded on completion of the Maintenance Period, if work has been completed in accordance with the approved plans to the satisfaction of Council.

(Note: This bond may be refunded and replaced by the Maintenance Bond upon submission to Council of the final Compliance Certificate or Subdivision Certificate).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate protection of Council's infrastructure.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

10. **On-site Stormwater Detention Compliance Certification**

Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Northern Beaches Council's "On-site Stormwater Detention Technical Specification" and the concept drawing by AJ Whipps Consulting Group, drawing number 20170228, drawings C00 to C10, dated 7 December 2017 are to be submitted to the Certifying Authority.

The drainage plans must also incorporate open style fences along the property boundaries to facilitate conveyance of any overland flows across the drainage easement. The open style fences are to be installed/built for the full width of the drainage easement. Existing ground surface levels within the drainage easement must be retained. Landscaping within the drainage easement is to consist of grass or turfing only.

Certification by a suitably qualified Civil Engineer, who has membership to the Institution of

Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering stating the stormwater drainage design and plans are in accordance with Council's "On-site Stormwater Detention Technical Specification" and all requirements of this condition.

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

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development. (DACENC03)

11. Submission of Engineering Plans for Infrastructure Works on Council Roadway

Engineering plans are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The submission is to include four (4) copies of Civil Engineering plans for the design vehicle crossing, modification and extension of Council's stormwater drainage system in Lawrence Street, extension of Council kerb blister and associated streetscape works are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The above are to be designed and constructed in accordance with Council's specification for engineering works - AUS-SPEC #1 and Warringah Public Spaces Design Guidelines, policy no. STR-PR350.

The developer/applicant must lodge with Council a Maintenance Bond for the construction of \$5,000. The Maintenance Bond will only be refunded on completion of the Maintenance Period, if work has been completed in accordance with the approved plans and to the satisfaction of Council.

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

Reason: To ensure compliance with Council's specification for engineering works.

12. Vehicle Driveway Gradients

Driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in Council's Minor Works Policy.

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

Reason: To ensure suitable vehicular access to private property

13. Structures Located Adjacent to Council Pipeline or Council Easement

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Water Management Policy; in particular Section 6 - Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specification. Any proposed landscaping

within a Council easement or over a drainage system is to consist of ground cover or turf only (no trees are permitted).

Structural details prepared by a suitably qualified Civil Engineer demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: Protection of Council's Infrastructure (DACENC21)

14. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required.

All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: Safety. (DACENC19)

15. **Detailed Design of Stormwater Quality System**

A certificate from a Civil Engineer, stating that the stormwater quality management system has been designed in accordance with the Civil & Stormwater Service Plans prepared by AJ Whipps Consulting Group dated December 2017 and the Council's Water Management Policy.

The certificate shall be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment.

16. **Contaminated Land Requirements**

Prior to the issue of any Construction Certificate a Contamination Management Plan is to be prepared by an appropriately qualified Environmental Consultant and provided to the satisfaction of the Certifying Authority. The plan shall detail:

- a) How all the requirements and / or recommendations contained within the Contamination Reports titled STAGE 1 PRELIMINARY ENVIRONMENTAL SITE ASSESSMENT, REF: E30969Krp# prepared by Environmental Investigation Services and dated 16 November 2017 are to be implemented;
- b) A Remedial Action Plan (RAP) prepared by a suitably qualified Environmental Consultant in accordance with State Environmental Planning Policy No. 55 - Remediation of Land, and with any contaminated land planning guidelines under the Contaminated Land Management Act 1997;
- c) Stipulate reporting and processes associated with discovery of any new contamination that is revealed during excavation, demolition or development works. This process shall

include the ability to contact NSW Fire and Rescue for pollution incidents, have on call (24 hours a day), a suitably qualified Environmental Consultant to undertake immediate investigations and provide recommendations for containment and rectification of contaminants or toxins and a process for notification to Warringah Council and the Principal Certifying Authority;

d) A requirement to complete ongoing water and soils testing during excavation, demolition and development works as follows:

(a) During construction in order to monitor water and soil quality the following is to be implemented:

- i) Water testing is to be completed in accordance with Section 3 of the NSW RTA's Guideline for Construction Water Quality Monitoring
- ii) Soil Testing in order to detect contaminants is occur weekly with two (2) samples in accordance with the NSW EPA Contaminated Site Sampling Design Guidelines.

(b) The requirements of (i) and (ii) above are to be implemented from the commencement of works as follows:

- i) Fortnightly during excavation works
- ii) Monthly during building works;

e) To ensure water quality is maintained runoff must be drained to an adequately bunded central collection sump and treated, to meet NSW Department of Environment and Climate Change (formerly Environment Protection Authority) discharge criteria.

Note E: Other options for the disposal of excavation pump-out water include disposal to sewer with prior approval from Sydney Water, or off-site disposal by a liquid waste transported for treatment/disposal to an appropriate waste treatment/processing facility;

f) All stockpiles of potentially contaminated soil must be stored in a secure area on the site (no greater than 48 hours) so as not to cause pollution or public health risk until disposed of at a waste facility.

All contaminated soil removed from the site must be disposed of at a waste facility that can lawfully receive that waste and must be done in accordance with all relevant Acts, Regulations and Guidelines. Copies of all test results and disposal dockets must be retained for at least 3 years and be made available to authorised Council officers on request.

Note F: The following Acts and Guidelines applied at the time of determination:

- i) Protection of the Environment Operations Act 1997; and
- ii) Environment Protection Authority's Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes (1999);

g) Hazardous or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of WorkCover NSW and the Environment Protection Authority and the provisions of all relevant Acts, Regulations and Guidelines.

Note G: The following standards applied at the time of determination:

- i) Environment Protection Authority's Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes (1999);

h) Stipulate protocols for the importation of any landfill material onto the site the protocols shall include:

- o 'Chain of Custody' documentation shall be kept and submitted for the

transport of the validated fill material to and from the subject premises.

- Requirement that any landfill material being brought to the site shall be free of contaminants or toxins and shall be suitable for the use on the land.
- Any landfill material being brought to the site shall have a validation report prepared to the satisfaction of the Principal Certifying Authority (prepared in accordance with the Department of Environment & Climate Change's guidelines).

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

Reason: Protection of the environment, SEPP 55 compliance.

17. Noise from mechanical plant

Mechanical plant situated on the roof and in the carpark of the premises must be acoustically treated to ensure noise emissions are not audible at the nearest residential premises. Details are to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Council may require the owner or occupier of the premises to engage the services of a suitably qualified professional to undertake an acoustic assessment of the premises in the event concerns regarding the emission of 'offensive noise' are raised and/or justified by Council.

Reason: To protect the acoustic amenity of neighbouring properties.

18. Pre-Construction Dilapidation Survey

A pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at <https://www.northernbeaches.nsw.gov.au>

The pre-construction / demolition dilapidation report must be submitted to Council for approval and the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's Infrastructure

19. Compliance with Standards

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

20. External Finishes to Roof

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the

issue of the Construction Certificate.

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

21. Sewer / Water Quickcheck

The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre prior to works commencing to determine whether the development will affect any Sydney Water asset's sewer and water mains, stormwater drains and/or easement, and if further requirements need to be met. Plans will be appropriately stamped.

Please refer to the website www.sydneywater.com.au for:

- Quick Check agents details - see Building Developing and Plumbing then Quick Check; and
- Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating.
- Or telephone 13 20 92.

Reason: To ensure compliance with the statutory requirements of Sydney Water.

22. Construction Traffic Management Program

A Construction Management Program shall be submitted to the Council's Transport Network for approval prior to the issue of a Construction Certificate. The program shall detail:

- (a) The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
- (b) The proposed phases of construction works on the site, and the expected duration of each construction phase;
- (c) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- (d) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process.
- (e) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- (f) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- (g) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;

- (h) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent;
- (i) Proposed protection for Council and adjoining properties;
- (j) The location and operation of any on site crane;

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community.

23. Bicycle Parking and end of trip facilities

Under part C3(A) of the Warringah Development Control Plan 2011, the following end of trip facilities must be provided for the retail component including: bathroom/change area(s) containing at least one toilet, wash basin, mirror, clothing hooks, and power points, a minimum of one (1) shower cubicle, private changing area with a bench and minimum of two (2) clothing hooks. A suitably sized clothes locker is also to be provided.

At least two bicycle parking with a high-medium security level is to be provided within the site accessible from Lawrence Street.

This requirement is to be reflected on the Construction Certificate plans and any supporting documentation for the endorsement of the Principal Certifying Authority prior to the release of the Construction Certificate.

Reason: To ensure bicycle facilities are provided in accordance to Council's WDCP requirements.

24. Waste and Recycling Requirements

Details demonstrating compliance with Warringah Development Control Plan – Part C9 Waste Management, including the required Warringah Waste Management Plan, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with Warringah Development Control Plan – Part C9 Waste Management, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.
(DACWTC01)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

25. Public Liability Insurance - Works on Public Land

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$10 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Warringah Council, as an interested party and a copy of the Policy must

be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land. (DACEND01)

26. Tree protection

(a) Existing trees which must be retained

i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation

ii) Trees located on adjoining land

(b) Tree protection

i) No tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.

ii) All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by a qualified Arborist on site.

iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.

iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause

E1 Private Property Tree Management and AS 4373 Pruning of amenity trees

v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site. (DAKLAD01)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

27. Property Boundary Levels

The property boundary levels shall match the existing levels except where modified for the vehicular crossing. The applicant shall design and construct having regard for the existing levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To maintain the existing profile of the nature strip/road reserve

28. Progress Certification (Road & Subdivision)

Written certification is to be provided by a suitably qualified engineer upon completion and/or as and when requested by the Certifying Authority for the following stages of works.

(a) Silt and sediment control facilities

(b) Laying of stormwater pipes and construction of pits

(c) Sub-grade trimmed and compacted **

(d) Base-course laid and compacted **

(e) Kerb and gutter construction

(f) Pavement

(g) Landscaping and vegetation

(h) Clean-up of site, and of adjoining Council roadway and drainage system.

(**To be tested by a recognised N.A.T.A. approved laboratory).

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works (see www.warringah.nsw.gov.au). (DACENE02)

29. **Maintenance of Road Reserve**

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public Safety. (DACENE09)

30. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with Council's Minor Works Policy and to the satisfaction of the Principal Certifying Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works.

Reason: Public Safety. (DACENE11)

31. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifying Authority.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

32. **Trees Condition**

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

- (a) A general decline in health and vigour.
- (b) Damaged, crushed or dying roots due to poor pruning techniques.
- (c) More than 10% loss or dieback of roots, branches and foliage.
- (d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
- (e) Yellowing of foliage or a thinning of the canopy untypical of its species.
- (f) An increase in the amount of deadwood not associated with normal growth.
- (g) An increase in kino or gum exudation.
- (h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
- (i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of Trees. (DACLA03)

33. **Installation and Maintenance of Sediment Control**

Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Council's Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

34. **Works Zone**

The applicant shall lodge an application for a work zone for the frontage of the site to Council for consideration and approval. The provision of a work zone will require approval from Northern Beaches Local Traffic Committee. Application forms for work zones are available on Council's website or at the Customer Service section at Council's administration building. Applications shall be lodged at least 4 weeks prior to work commencing.

Reason: To ensure works vehicles do not impact on parking, traffic flows and pedestrian thoroughfares.

35. **Installation and Maintenance of Sediment and Erosion Control**

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prepared by Civil & Stormwater Service Plans prepared by AJ Whipps Consulting Group dated December 2017.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site

36. **Waste/Recycling Requirements (Waste Plan Submitted)**

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided. (DACWTE01)

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE**

37. **Authorisation of Legal Documentation Required for On-site Stormwater Detention**

An application for the authorisation of legal documents is to be lodged with Council and payment

of the associated fee. The application is to include the original completed request forms (Department of Lands standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and photographic evidence of the completed system.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard

38. **Registration of Encumbrances for On-site Stormwater Detention**

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To identify encumbrances on land. (DACENF02)

39. **Reinstatement of Kerb**

All redundant laybacks and vehicular crossings shall be reinstated to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To facilitate the preservation of on street parking spaces. (DACENF03)

40. **Restriction as to User for On-site Stormwater Detention**

A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements, (available from Northern Beaches Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure modification to the on-site stormwater detention structure is not carried without Council's approval. (DACENF04)

41. **On-Site Stormwater Detention Compliance Certification**

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council. Additionally a Compliance Certificate is to be issued by an Accredited Certifier in Civil Works registered with the Institute of Engineers Australia, stating that the works are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure stormwater disposal is constructed to Council's satisfaction. (DACENF10)

42. Certification of Structures Located Adjacent to Council Pipeline or Council Easement

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Water Management Policy; in particular Section 6 - Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specification.

<https://www.warringah.nsw.gov.au/sites/default/files/documents/policies-register/environment/water-management-policy/2016-011845-water-management-policy-current.pdf>

A statement of compliance is to be prepared by a suitably qualified Civil Engineer and submitted to the Certifying Authority for approval prior to the issue of the Occupation Certificate.

Reason: Protection of Council's Infrastructure (DACENF11)

43. Positive Covenant for On-site Stormwater Detention

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Warringah Council's delegate prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure ongoing maintenance of the on-site stormwater detention system. (DACENF12)

44. Creation of Positive Covenant and Restriction as a User

Where any conditions of this Consent require the creation of a positive covenant and/or restriction as a user, the original completed request forms, (Department of Lands standard forms 13PC and/or 13RPA), shall be submitted to Northern Beaches Council for authorisation.

A certified copy of the documents shall be provided to Northern Beaches Council after final approval and registration has been affected by the "Department of Lands".

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of a Interim / Final Occupation Certificate.

Reason: To identify encumbrances on land. (DACENF14)

45. Certification for the Installation of Stormwater Quality System

A certificate from a Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NER) shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate, stating that the stormwater quality management system has been installed in accordance with the (Insert Plans) and Council's Water Management Policy.

The certificate shall be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment

46. **Positive Covenant for Stormwater Quality System**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater quality system in accordance with the standard requirements of Council, the manufacturer and as required by the Stormwater Quality Operation and Maintenance Plan.

The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Council), at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands. The Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure ongoing maintenance of the on-site stormwater detention system

47. **Registration of Encumbrances for Stormwater Quality System**

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for stormwater quality system as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To identify encumbrances on land

48. **Restriction as to User for Stormwater Quality System**

A restriction as to user shall be created on the title over the stormwater quality system, restricting any alteration to system. The terms of such restriction are to be prepared to Council's standard requirements, (available from Northern Beaches Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure modification to the on-site stormwater detention structure is not carried without Council's approval

49. **Required Planting**

i) Trees, shrubs and ground covers shall be planted in accordance with the Landscape drawings, Dwg Nos. 2417 LP-10, -02 and -03 Rev B dated 05/12/2017 prepared by John Lock and Associates Landscape Architecture:

ii) Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To maintain environmental amenity. (DACLAF01)

50. **Post-Construction Dilapidation Survey**

A post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works.

The post construction dilapidation report must be submitted to the Council for review and the Certifying Authority prior to the issue of the Occupation Certificate. Any damaged to Council's stormwater infrastructure is to be rectified in accordance with Council's technical specifications prior to the release of the security bond.

Reason: Protection of Council's Infrastructure

51. **Certification of Drainage Works and Works as Executed Data**

A suitably qualified Civil Engineer shall certify that the completed works have been constructed in accordance with this consent and the approved Construction Certificate plans. Works as Executed data certified by a registered surveyor prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Stormwater Assets' shall be submitted to the Council for approval prior to the issue of the Occupation Certificate.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure compliance of drainage works with Council's specification for engineering works. (DACNEF12)

52. **Removal of All Temporary Structures/Material and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure bushland management. (DACPLF01)

53. **Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To prevent pollution of the environment and to protect the amenity of the area. (DACPLF03)

54. **Waste Management Confirmation**

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

55. Allocation of parking spaces

All carparking spaces are to be assigned to individual units, with stacked parking spaces to be allocated to the same residential or retail unit. All residential units and retail units must be assigned a minimum of one parking space. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure parking availability for residents.

56. Waste and Recycling Facilities Certificate of Compliance

The proposal shall be constructed in accordance with Warringah Development Control Plan – Part C9 Waste Management

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste and recycling facilities are provided. (DACWTF01)

57. Waste/Recycling Compliance Documentation

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled. (DACWTF02)

58. Positive Covenant for Waste Services

A positive covenant shall be created on the title of the land requiring the proprietor of the land to provide access to the waste storage facilities prior to the issue of an Interim/Final Occupation Certificate. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities (DACWTF03)

59. Authorisation of Legal Documentation Required for Waste Services

The original completed request form (Department of Lands standard form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance

with Council's Fees and Charges.

Reason: To create encumbrances on the land. (DACWTF04)

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

64. **Maintenance of Stormwater Quality System**

The stormwater quality system must be maintained at all times in accordance with the Stormwater Quality Operation and Maintenance Plan, manufacturers specifications and as necessary to achieve the required stormwater quality targets for the development.

Reason: Protection of the receiving environment

65. **Requirement to meet electromagnetic long-term studies**

Any new information or long-term studies undertaken that has the potential to alter previous conclusions about electromagnetic fields exposure shall be implemented to ensure the risk to public health is minimise.

Reason: To maintain public health risk (DACHPGOG5)

66. **Correspondence with substation services provider**

Correspondence with the services provided (at the time of this report being Ausgrid) shall be regularly maintained (i.e every 6 months/annually) to detail if any changes have been made to the substation that may have potential to alter previous conclusions about electromagnetic fields exposure. Appropriate measure must be implemented if required.

Reason: To maintain public health risk (DACHPGOG5)

67. **Landscape maintenance**

- i) Trees shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.
- ii) If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

Reason: To maintain local environmental amenity

68. **Commercial Waste and Recycling Storage**

Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins as shown on the approved plans.

Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed. (DACPLG19)

69. **Pedestrian Safety Measures at Driveway**

Safety measures at the vehicle access driveway and property boundary is to be installed prior to the issue of occupancy certificate, which include the following:

- a. STOP sign for egressing drivers
- b. Speed hump for egressing drivers

- c. Contrasting driveway paving
- d. Tactile paving along each side of the driveway
- e. Under awning light indicator activated by egress cars

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure that pedestrian safety is maintained.