

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0187
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Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot 13 DP 801798, 62 May Road NARRAWEENA NSW 2099 Lot 14 DP 801798, 60 May Road NARRAWEENA NSW 2099 Lot 15 DP 801798, 58 May Road NARRAWEENA NSW 2099 Lot 16 DP 801798, 56 - 56 May Road NARRAWEENA NSW 2099 Lot 17 DP 801798, 54 - 54 May Road NARRAWEENA NSW 2099
Proposed Development:	Modification of Development Consent DA2020/0739 granted for "Demolition works and construction of a shop top housing development with basement car parking"
Zoning:	Warringah LEP2011 - Land zoned B1 Neighbourhood Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Ji Hui Pty Ltd
Applicant:	Jvurban Pty Ltd

Application Lodged:	13/05/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	25/05/2022 to 08/06/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: Building 20.35 Lift overrun 40.35%
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The applicant has provided drawings which detail the following changes to the approved development:

- Relocation of lift core to the centre of the site.
- The addition of air-conditioning and condenser units on balconies.
- Inclusion/relocation of mechanical exhaust risers.
- Additional storage capacity and plant room.
- Reconfiguration of carpark layout.
- Removal of service lift.
- Moving the fire stairs to the north.
- Amendments to the carpark layout.
- Relocation of storage spaces.
- Carpark exhaust relocated adjacent to the new position of the lift core.
- Removal of the mechanical plant screening.

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

SITE DESCRIPTION

Property Description:	Lot 13 DP 801798 , 62 May Road NARRAWEENA NSW 2099 Lot 14 DP 801798 , 60 May Road NARRAWEENA NSW 2099 Lot 15 DP 801798 , 58 May Road NARRAWEENA NSW 2099 Lot 16 DP 801798 , 56 - 56 May Road NARRAWEENA NSW 2099 Lot 17 DP 801798 , 54 - 54 May Road NARRAWEENA NSW 2099

Detailed Site Description:

The subject site comprises 5 individual allotments and is located within the May Road neighbourhood shopping centre. The combined allotments have an area of approximately 1,417.34m². The lot has a development site area of 1,417.34sqm with front boundary to an open at grade car park, which fronts Warringah Road, of 44.285m, rear boundary fronting Poplar Lane of 44.485m, eastern boundary, fronting the May Road park of 32.005m and western boundary, adjoining No. 64 May Road, of 32.005m.

The May Road shops are unique as they read as an island site, which is currently occupied by a traditional strip retail building containing a range of mostly local shops and businesses. Existing buildings are single storey with pitch tile roofs over. None of the existing properties within the centre provide off-street customer car parking. The centre benefits from 28 at public at grade car parking spaces within the adjoining May Road Reserve.

The property is zoned B1 Neighbourhood Centre under the Warringah Local Environmental Plan 2011 (LEP), and is adjacent to a 580m² pocket park and playground to the east.

The surrounding development consists of new townhouse development undertaken by NSW Department of Housing and low density residential dwellings, with vehicle access onto Poplar Lane, which is located to the north west of the subject site.

The western side is occupied by No.s 64 – 72 May Road, being single storey shops that comprise the remainder of the neighbourhood centre. The car park of the May Road Neighbourhood Centre and the Warringah Road corridor is immediately south of the development site.

Map:



SITE HISTORY

The subject site has been used for neighbourhood shops for a significant period of time.

Pre-Lodgement Meeting

On 20 August 2019, a pre-lodgement meeting, **PLM2019/0153** for the demolition works and construction of a shop-top housing development was held between the applicant and Council.

Development Application

On 11 March 2021, **DA2020/0739** approved demolition works and construction of a shop-top housing development with basement car parking.

Modification Application

On 6 April 2022, the subject MOD2022/0187 was received by Council.

On 4 July 2022, amended plans were received responding to concerns from Council's Urban Designer about the removal of the service lift core, and the visual impact of the roof rises and air conditioning units.

The amended plans provide details of the roof rises and screening. In addition, the applicant provides justification for the deletion of the goods lift. Please refer to discussion under SEPP 65.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;

- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2020/0739, in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons: The proposed modification results in a development which is substantially the same as the original approval granted by Council under DA2020/0739. The minor changes will not alter the approved building height, footprint or setbacks. With the exception of a relocation of the lift core, the carpark exhaust and mechanical risers and the addition of A/C units to the balconies all other changes relate to internal modifications and will have no unreasonable visual impacts on the streetscape, subject to conditions. The proposal amends the carpark layout and Council's Transport Engineer raise no issues with respect of road safety or parking. The proposal will not result in an unreasonable impacts on neighboring amenity in terms of visual and acoustic privacy, solar access. In summary, Council is satisfied that the modification will not result in any unreasonable environmental impacts.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2020/0739 for the following reasons: As discussed above, the proposed modification results in a development which is substantially the same as the original approval granted by Council under DA2020/0739. The minor changes will not change the approved building height, footprint or setbacks.
(c) it has notified the application in	The application has been publicly exhibited in accordance

Section 4.55(1A) - Other Modifications	Comments
accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the

Section 4.15 'Matters for Consideration'	Comments
	original application. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to roof risers and screening and the reasons for the deletion of the goods lift. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter has been addressed via a condition in the original consent.
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	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 'Matters for Consideration'	Comments
EPA Regs	
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 25/05/2022 to 08/06/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	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 subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
Environmental Health (Contaminated Lands)	General Comments Environmental Health has been requested to consider this proposal being "Modification of Development Consent DA2020/0739 granted for "Demolition works and construction of a shop top housing development with basement car parking" The proposal relates to what is, for the majority, changes to the internal building fabric and would not affect previous referral responses from Environmental Health. Accordingly, the proposal is supported. Recommendation

Internal Referral Body	Comments
	SUPPORTED
Environmental Health (Industrial)	General Comments Environmental Health has been requested to consider this proposal being "Modification of Development Consent DA2020/0739 granted for "Demolition works and construction of a shop top housing development with basement car parking" The proposal relates to what is, for the majority, changes to the internal building fabric and would not affect previous referral responses from Environmental Health. Accordingly, the proposal is supported. Recommendation SUPPORTED
Landscape Officer	The modification indicates that the requirement for two additional car parking spaces requires reconfiguration of elements on the northern side of the site. This results in the deletion of planters at ground level on the northern side, facing Poplar Lane Other upper level planters are retained. Given that is is the frontage to the lane, deletion of the planters is not considered fatal to the application. Landscape and Architectural Plans have been amended to address the requirements of Condition 15 a), b) and c): 15. Amendments to the approved plans <i>The following amendments are to be made to the approved plans:</i> (a) <i>Plans are to be amended to delete the stairs and landing located on the eastern boundary of the site adjoining the public reserve.</i> (b) <i>The planter to the north of the stairs is to be extended across the area of the deleted stairs and landing.</i> (c) <i>Tree, shrub and groundcovers indicated on the Landscape Plan in the plater to the north are to be extended across the new planter.</i> No objections are raised to deletion of 15 a), b) and c) subject to Architectural and Landscape Plan numbers being updated on the consent if the Modification is approved.
NECC (Development Engineering)	Applicant seeks to modify internal lift and car parking arrangements. No development Engineering objection with no new conditions.
Parks, reserves, beaches, foreshore	No objections are raised to the Modification which has addressed access to reserve from the development concerns previously

Internal Referral Body	Comments
	conditioned.
Road Reserve	The modification does not affect any existing road infrastructure assets. Previous conditions remain current.
Strategic and Place Planning (Urban Design)	This advice is provided as an internal referral from the Urban Design Unit to the development assessment officer for consideration and coordination with the overall assessment. The application (Mod2022/0187) seeks consent for modifications to the approved development consent (DA2020/0739) construction of a shop-top housing development comprising ground floor commercial premises and sixteen (16) residential apartments above, over a basement level. The applicant has provided additional drawings noting several modifications in response to Urban Designs previous comments. Urban Design raise no objection to the proposed modification application subject to the attached conditions. Please note: Regarding any view impacts and any impacts on solar amenity and overshadowing these matters will be dealt with under the evaluation of Councils Planning Officer. Any impacts of non-compliances regarding heritage will be dealt with under the evaluation of Councils Heritage Officers, and any Landscape non-compliances will be dealt with under the evaluation of Councils Landscape Officers.
Traffic Engineer	Basic Details DA2020/0739 was approved for the demolition of an existing strip retail development and the construction of a mixed-use development at 52 – 62 May Road, Narrabeena. It comprises the following: 6 retail tenancies - total floor area = 425.5m² - adjacent to the southern boundary at ground floor level, providing direct pedestrian access to the existing footpath separating the site and the adjoining Council car park to the south. 3 commercial tenancies - total floor area = 182.1m² - adjacent to the northern boundary at ground floor level, providing direct pedestrian access to the southern Poplar Lane footway.

Internal Referral Body	Comments
	· 16 residential apartments at first and second floor levels, containing: - 4 x one-bedroom dwellings; - 10 x two-bedroom dwellings; and - 2x three-bedroom dwellings. · The single basement level of parking contains 36 car spaces including 4 mechanical stackers. The basement level of parking contains the following: - 14 retail / commercial parking spaces; - 3 residential visitor parking spaces; - 19 resident passenger vehicle parking spaces; and - 23 bicycle parking spaces. Also, minor alterations were approved to the existing Council car parking area situated to the south of the site, including the provision of a dedicated loading bay. · Vehicular access - 6.1m wide combined ingress/egress driveway connecting with Poplar Lane within the north-western corner of the site. · Traffic Impact Assessment (dated June 2020) has been submitted. · Further, updated Site Access and Internal Circulation Assessment (dated August 2020) and a response addressing additional information requested by Council (dated October 2020) were submitted. Mod2022/0187 is lodged to seek consent the approved development be amended to incorporate, amongst other components, the following: · Amendments to the commercial floor space, resulting in the provision of four tenancies, including a minor reduction in the total floor space from 182.1m² to 179.71m²; and · Amendments to the basement parking area configuration, whereby the approved parking yield can be provided without the requirement for mechanical stackers.

Internal Referral Body	Comments
	Traffic: No additional traffic impact due to the modification. Parking: No additional parking requirements or changes due to the modification. Total parking requirements are retained without the requirement for mechanical stackers. Also, 23 bicycle parking spaces are retained. As stacked parking spaces are no longer proposed, conditions 28 & 57 are no longer applicable and can be deleted Access and swept paths: Vehicular access is not modified. Parking layout is slightly modified. Swept paths are submitted and satisfied. Pedestrian safety: No concerns due to the modification. Conclusion The proposed modification results in a development which is substantially the same as the original approval granted by Council under DA2020/0739. The proposed modification can be approved with deletion of conditions 28 and 57 from the consent. All other traffic engineering related conditions are to remain as per those previously approved DA2020/0739 with two additional new conditions added relating to the preparation and implementation of a demolition traffic management plan

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for retail/ commercial purposes for a significant period of time with no prior land uses.

The original DA was supported with a Preliminary Environmental Review dated December 2020 and prepared by Canopy Enterprises which was considered by Council's Environmental Health Unit as acceptable subject to the recommendations included in the investigation and additional conditions. The subject modification was referred to Council's Health Unit who raised no objections and the conditions imposed in respect of contamination are still valid and the site is assessed as suitable for the proposed development, as modified.

SEPP 65 - Design Quality of Residential Apartment Development

DESIGN QUALITY PRINCIPLES

Northern Beaches Council did not have an appointed Design Review Panel at the time of lodgment of the original development application. The subject modification seeks consent for minor changes to the approved scheme. The Design and Sustainability Advisory Panel (DSAP) has since been created, however, the changes proposed are minor and the subject application is not required to be presented to the DSAP for consideration.

As discussed elsewhere in this report there is no change to the height, footprint, setbacks or landscaping of the approved development. The density, bulk, form and scale and landscaping of the modified design remains unchanged and the development continues to relate to the context and neighbourhood character. In this regard the proposal is consistent with Principles 1 (Context and Character), 2 (Built Form and Scale), 3 (Density) and 5 (Landscape).

The site is located directly north of Warringah Road and is subject to road traffic noise and requires assessment under Clause 102 of the Infrastructure SEPP 2007 in terms of road noise, refer to detailed discussion below under the Infrastructure SEPP. It is noted Para 6.4 in the final approved Acoustic Report, prepared by JV Urban dated February 2021 confirms:

"An acoustically insulated building must be kept virtually air tight to exclude external noise. Therefore, the Rw ratings in Table 2 above, are only achieved when the glazing is closed. Hence there is a requirement for mechanical ventilation or air-conditioning to provide fresh air to control odours. Specific ventilation requirements are outside of our scope of expertise, however requirements for indoor-air quality are given in Australian Standard AS 1668.2 - 2012, "The use of ventilation and air-conditioning in buildings - Ventilation design for indoor air contaminant control".

In order to address this issue the modification includes the installation of A/C units to the residential units. The requirement to have the building kept air tight of noise, particularly to the street frontage, will compromise the ability of the development to achieve natural cross ventilation as required under Principle 4 Sustainability and Principle 6 Amenity. Unfortunately, as the layout of the building has been approved in the original DA there is no nexus under the modification application to seek an alternative layout to improve access to natural cross ventilation. As such, the proposed A/C units are assessed as acceptable subject to a condition requiring the screening of the units to minimise any visual impact.

Council's Urban Designer raised some concerns regarding the security within and around the development and has suggested the imposition of additional conditions to require additional security around the perimeter of the building, including the installation of a garage door and security measures to the elevator and entry points. The modification application does not seek to change the vehicular access to the basement or entry to the building, and it is therefore unreasonable to impose new security conditions. The proposed modification does not change the ability of the development to meet Principle 7 Safety and the principles of Crime Prevention Through Environmental Design (CPTED).

In response to issues relating to security relating to the deletion of the service lift the applicant notes:

A prospective tenant requested to have a separate goods lift to provide access to the store room. It was provided at the applicants volition and was not a Council requirement. This is no longer required.

It is important to note the following as to why a goods lift is not required:

- *The loading facility has been approved on the May road frontage and not within the basement hence there is no access to the carpark or lift for deliveries;*
- *Customer parking is provided in the public parking area on May Road. There is no customer parking within the development with commercial spaces solely for use by staff.*
- *There is therefore no security concerns as only authorised residents and staff with keycard can access the carpark.*
- *There was never any intention to restrict the main lift to only residents and there was no condition to this effect.*

There is therefore no impact on amenity of residents by the limited use of the lift by commercial staff.

The applicants justification for the deletion of the service lift is acceptable. The deletion of the goods lift will not compromise the amenity of the development and a condition is recommended requiring no commercial goods or refuge to be transported via the elevator in order to protect the amenity of the shop top housing.

There is no change to the housing mix therefore there the modification continues to comply with Principle 8 (Housing Diversity and Social Interaction).

In summary, the proposal continues to be compliant with the Design Quality Principles of SEPP 65.

APARTMENT DESIGN GUIDE

The proposed modification does not alter the following criteria:

- **Part 3 Siting the development - Public domain interface** - The transitional space between the public ground floor and the private first and second floor remains accessible via stairways and a lift which has been relocated to a central position which provides a more central circulation path and improved solar access to retail 1 and 2.

There is no change to the safety and security of the approved building and the open central courtyard will continue to allow for passive surveillance of the ground floor public realm. There is no change proposed to the approved pedestrian and vehicular access. As discussed above, it is therefore it is unreasonable to require extra security and safety measures to these access points.

- **Part 4 Designing the Building - Amenity** - There is no change to the layout of the approved units and there will be no unreasonable impacts on amenity in terms of solar and daylight access.

As discussed above, the Acoustic Report approved with the original DA identified that the building needs to be kept virtually air tight in order to address the acoustic issues associated with noise from the classified road. The subject application seeks consent for the installation of A/C units to the balconies of the residential unit in order to ensure to allow for ventilation while ensure acoustic impacts from the classified road are minimised. It is acknowledged that this has implication on the ability to achieve cross ventilation to the units, particularly to the units facing the main road. Despite this, the application does not seek to change the layout of the units, which are noted to achieve 75% natural cross ventilation, and it is not within the scope of the modification to require the redesign of the units.

There is minimal change to the external treatment / facades of the building and subject to conditions requiring screens to the A/C units there will be no visual impact on the streetscape.

In summary, subject to conditions, the modified development continues to comply with the design quality principles and meets the objectives and criteria/guidelines specified within the ADG.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted was approved with the original DA (see Certificate No. 1087818M dated 30 March 2020) which remains relevant.

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	45

The condition requiring compliance with the commitments indicated in the BASIX Certificate remains relevant.

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 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 who raised no objections, subject to conditions which have been included in the original recommendation and are still valid.

Roads and Maritime Service (RMS)

Section 2.119 - Impact of road noise or vibration on non-road development states:

(2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.

(3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—

- (a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,*
- (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

Comment:

The site is located adjacent to Warringah Road which has volume in order of 47,000 vehicles per day. The approved acoustic report provided recommendations to ensure that the development complies with the clause including wall, roof and ceiling construction, and glazing details / specs.

In terms of ventilation, para 6.4 of the approved acoustic report states:

An acoustically insulated building must be kept virtually air tight to exclude external noise. Therefore, the Rw ratings in Table 2 above, are only achieved when the glazing is closed. Hence there is a requirement for mechanical ventilation or air-conditioning to provide fresh air to control odours. Specific ventilation requirements are outside of our scope of expertise, however requirements for indoor-air quality are given in Australian Standard AS 1668.2 - 2012, "The use of ventilation and air-conditioning in buildings - Ventilation design for indoor air contaminant control".

Internal noise levels from mechanical ventilation or air-conditioning should not exceed 35 dBA for bedroom areas and 40 dBA for all other habitable areas. External noise levels from mechanical

ventilation or air-conditioning should not exceed 5 dB over the lowest existing background noise level (LAF90) when in day time use and when measured at the neighbouring boundary. Night time noise levels must meet the requirements of the Protection of the Environment Operations (Noise Control) Regulation 2017.

In accordance with the recommendations of the approved acoustic report the subject modification includes the installation of A/C units to the apartment balconies. The AC units are assessed as acceptable, subject to conditions, as it there is no alternative method of achieving compliance with the Infrastructure requirements in respect of noise without a redesign of the apartments which is not within the scope of the subject modification application.

Section 2.121 and Schedule 3 of this Policy requires that the following development(s) are referred to the RMS as Traffic Generating Development:

Purpose of Development	Size or Capacity (Site with access to any road)	Size of Capacity (Site with access to classified road or to a road that connects to classified road if access is within 90m of connection, measured along alignment of connecting road)
Shops	2,000m ²	500m ²

Note: Under Section 2.121(2) of Chapter 2, 'relevant size of capacity' is defined as meaning:

"(2) (a) in relation to development on a site that has direct vehicular or pedestrian access to any road - the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3, or

(b) in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection - the size or capacity specified opposite that development in Column 3 of the Table to Schedule 3."

Comment:

The modification application was referred to Transport for NSW (TfNSW) for comment as Traffic Generating Development under Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007, as the proposed development is located within 90m of a Classified Road and proposes retail and commercial tenancies of 607.6m²

TfNSW has provided their response which raises no objection, as the proposed modifications will not have a significant transport impact on the adjacent regional road network. The conditions imposed by TfNSW in the original consent remain valid.

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
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Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings (HOB):	8.5m	Building 10.23m Lift overrun 11.93m (RL91.250)	Building 10.23m Lit overrun 11.93 (RL91.250)	20.35% 40.35%	No No change

Note: There is no change to the approved height and no requirement for the submission of a Clause 4.6 Variation to the HOB Development Standard.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B5 Side Boundary Setbacks	<u>West</u> Merit assessment	Ground Floor: 0m First Floor: 0m Second Floor: 0m	No change	Yes
	<u>East</u> Merit Assessment	Ground Floor: 0.5m First Floor: 0m Second Floor: 0m	No change	Yes
B7 Front Boundary Setbacks - May Road	Merit Assessment	Ground Floor: 0m First Floor: 0m Second Floor: 0m	No change	Yes
B7 Secondary Frontage - Poplar Lane	Merit Assessment	Ground Floor: 0.6m First Floor: 0m Second Floor: 0m	No change	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B6 Merit Assessment of Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B10 Merit assessment of rear boundary setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes
F1 Local and Neighbourhood Centres	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- 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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2022/0187 for Modification of Development Consent DA2020/0739 granted for "Demolition works and construction of a shop top housing development with basement car parking" on land at Lot 13 DP 801798,62 May Road, NARRAWEENA, Lot 14 DP 801798,60 May Road, NARRAWEENA, Lot 15 DP 801798,58 May Road, NARRAWEENA, Lot 16 DP 801798,56 - 56 May Road, NARRAWEENA, Lot 17 DP 801798,54 - 54 May Road, NARRAWEENA, subject to the conditions printed below:

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

The development must be carried out in compliance (except as amended by any other condition of

consent) with the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A-0006 Rev 11 Sie Masterplan	29.06.2022	Benson McCormack Architecture
A-0007 Rev 11 Site Plan	29.06.2022	Benson McCormack Architecture
A-0009 Rev 11 Demolition Plan	29.06.2022	Benson McCormack Architecture
A-0010 Rev 11 Excavation & Fill Plan	29.06.2022	Benson McCormack Architecture
A-0101 Rev 11 Basement 1 Plan	29.06.2022	Benson McCormack Architecture
A-0102 Rev 11 Ground Floor Plan	29.06.2022	Benson McCormack Architecture
A-0103 Rev 11 First Floor Plan	29.06.2022	Benson McCormack Architecture
A-0104 Rev 11 Second Floor Plan	29.06.2022	Benson McCormack Architecture
A-0201 Rev 11 South Elevation	29.06.2022	Benson McCormack Architecture
A-0202 Rev 11 East Elevation	29.06.2022	Benson McCormack Architecture
A-203 Rev 11 North Elevation	29.06.2022	Benson McCormack Architecture
A-2051 Rev 11 Section	29.06.2022	Benson McCormack Architecture
A-2052 Rev 11 Section	29.06.2022	Benson McCormack Architecture
A-1301 Rev 11 Details and Finishes	29.06.2022	Benson McCormack Architecture
A-1304 Rev 11 Unit Storage Schedule	29.06.2022	Benson McCormack Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Accessibility Report Rev A	17.03.2022	Accessible Building Solutions
Parking and Traffic Impact letter	04.04.2022	Stanbury Traffic Planning

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

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Plan Level 01 Rev C	05.04.2022	Matthew Higginson
Landscape Plan Level 02 Rev C	05.04.2022	Matthew Higginson
Landscape Plan Level 03 Rev C	05.04.2022	Matthew Higginson
Elevation and Schedule	05.04.2022	Matthew Higginson

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

B. Amend Condition 15 Amendments to the approved plans to read as follows (new part (h) condition shown in bold):

- (a) Plans are to be amended to delete the stairs and landing located on the eastern boundary of the site adjoining the public reserve.
- (b) The planter to the north of the stairs is to be extended across the area of the deleted stairs and landing.
- (c) Tree, shrub and groundcovers indicated on the Landscape Plan in the planter to the north are to be extended across the new planter.
- (d) The Air-conditioning units are to be located within an appropriate screen structures (such as a seating box) to ensure the units are internal part of the balconies.
- (e) The carpark and kitchen exhausts are to be concealed by suitable screening to minimise the visual impact from public domain and adjoining properties. The colour and material of the screen is to blend it with the building.
- (f) The kitchen exhausts shall not exceed 1200mm in height.
- (h) All air conditioning condenser units are to be fully enclosed and hidden from view in a louvered screen enclosure to maintain visual amenity. The housing is to be finished in colours sympathetic to the context.**

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 and to ensure public safety

C. Add Condition 16A Building Code of Australia Report to read as follows:

Access and facilities to and within the building are to be provided for Persons with a Disability. In this regard the recommendations contained in the Statement of Compliance – BCA Access Provisions prepared by Accessible Building Solutions dated 17/3/2022, Job No. 220033 is to be taken into consideration as part of the assessment of the Construction Certificate.

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

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

D. Add Condition 87 Elevator - Operation and Management to read as follows:

The following shall be an on-going operational condition of approval:

- No commercial goods or refuse are to be transported in the elevator and this condition is to be included in all leases with commercial tenants.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate, and proof of the condition's inclusion shall be submitted to Councils Environmental Compliance Unit within 28 days of entering any new commercial tenancy lease.

Reason: To achieve development outcomes with high standard, quality urban design that responds to the existing or desired future character of areas. To maintain and improve the amenity of public and

private land. To ensure commercial uses do not detract from the amenity of residents.

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

Signed



Anne-Marie Young, Planner

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



Steven Findlay, Manager Development Assessments