



NSLPP MEETING HELD ON 05/07/2023

Attachments:

1. Site Plan
2. Architectural Plans
3. Clause 4.6 Statement (Building Height)

ADDRESS/WARD: 451-455 Miller Street, Cammeray (T)

APPLICATION No: DA248/22

PROPOSAL: Demolition of existing buildings, and construction of a new mixed-use development of 11 apartments, one (1) retail and associated basement, landscaping and development works.

PLANS REF:

Plan No.	Rev No.	Description	Prepared by	Dated
101	B	Site Plan	PA Studio	05.12.2022
102	B	Lower Basement & Basement Floor Plan	PA Studio	05.12.2022
103	B	Ground Floor & First Floor Plans	PA Studio	05.12.2022
104	B	Second Floor & Third Floor Plans	PA Studio	05.12.2022
105	B	Roof Plan	PA Studio	05.12.2022
201	B	Sections S-01 & S-02	PA Studio	05.12.2022
202	B	Sections S-03 & S-04	PA Studio	05.12.2022
301	B	Elevations West and North	PA Studio	05.12.2022
302	B	Elevations East and South	PA Studio	05.12.2022
401	B	Schedule of Finishes	PA Studio	05.12.2022
402	A	Demolition & Excavation Plan	PA Studio	28.07.2022
403	A	Adaptable Unit Plans (U105 & 204)	PA Studio	28.07.2022
501	B	Landscape Plan	PA Studio	05.12.2022
36305-02/10	A	Basement Plan	ING Consulting Engineers Pty Ltd	27 June 2022
36305-03/10	A	Lower Basement Plan	ING Consulting Engineers Pty Ltd	27 June 2022
36305-04/10	A	Ground Floor Plan	ING Consulting Engineers Pty Ltd	27 June 2022
36305-05/10	A	Floors and Roof Plan	ING Consulting Engineers Pty Ltd	27 June 2022
36305-06/10	A	Site Plan	ING Consulting Engineers Pty Ltd	27 June 2022
36305-07/10	A	Pipe Longitudinal Section	ING Consulting Engineers Pty Ltd	27 June 2022
36305-08/10	A	Notes & Details	ING Consulting Engineers Pty Ltd	27 June 2022
36305-09/10	A	Notes & Details 2	ING Consulting Engineers Pty Ltd	27 June 2022
36305-10/10	A	Notes & Details 3	ING Consulting Engineers Pty Ltd	27 June 2022

OWNER: March Onwards Pty Ltd

APPLICANT: Mr Andrew Berwick T/A Platino Properties Pty Ltd

AUTHOR: Damon Kenny, Executive Planner

DATE OF REPORT: 19 June 2023

DATE LODGED: 19 August 2022

RECOMMENDATION: Approval

EXECUTIVE SUMMARY

This development application seeks approval for the demolition of existing structures and construction of shop top housing containing 11 apartments, commercial space and basement parking.

The application is reported to the North Sydney Local Planning Panel for determination as the applicant is a sensitive development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies and makes a request to contravene the building height development standard of 13m, prescribed by cl. 4.3 North Sydney Local Environmental Plan 2013 (the LEP) by more than 10%.

The request to breach the prescribed height maximum is examined by this report. According to the request to contravene the standard, the maximum height breach is mainly caused by the topographical constraints of the site and is generally limited to the roof form, lift over run and solar panels. The maximum height standard is 13m and the greatest degree of the breach 15m is satisfactory, having satisfied the requirements of cl. 4.6 of the LEP. The applicant's request demonstrates that compliance is unreasonable in the circumstances of the case, and that there are environmental planning grounds to justify the non-compliance. The breach is also in the public interest, as it results in a development outcome which is consistent with objectives of the development standard and the B1 Neighbourhood Centre zone affecting the subject land.

The written request demonstrates that the proposed development would have an appropriate scale and density, having regard to the character of the surrounding area. The 13m height control anticipates a four storey building. The proposed development, including the non-complying elements is four storeys and the variation is generally limited to the roof form, lift over run and solar panels, and a portion of the overall built form where the land falls away to the east.

The proposed development is considered satisfactory when evaluated against the Design Quality Principles in Schedule 1 to SEPP 65 – Design Quality of Residential Apartment Development and is generally consistent with the objectives of the Apartment Design Guide and NSDCP 2013.

The application was notified in accordance with the Community Engagement Protocol. Council received twenty-six (26) submissions objecting to issues including height, bulk and scale, streetscape appearance (front façade), design and character, Traffic, noise, and safety, overshadowing, impact of demolition, excavation and construction, block outlook, overdevelopment and privacy.

The development application has been assessed against the North Sydney Local Environmental Plan 2013, North Sydney Development Control Plan 2013 and the relevant State Planning Policies and generally found to be satisfactory in consideration of the site constraints, context and circumstances.

The assessment of the proposal has considered the concerns raised in the submissions as well as the performance of the application against Council's planning requirements. Following this assessment and having regard to the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended), the application is recommended for **approval**.

DESCRIPTION OF PROPOSAL

The application seeks consent for the following:

- Demolition of existing structures on the site;
- Excavation of the site, for basement levels for vehicle parking;
- Lower Basement Level
The Lower Basement Level (RL79.35) accommodates seven (7) off-street car parking spaces and six (6) bicycle spaces. Storage areas are proposed adjacent to the bicycle spaces and the eastern wall.
- Basement Level
The Basement Level (RL81.00) accommodates three (3) off-street car parking spaces and eleven (11) bicycle spaces. Further, a series of storage areas in the north-western corner, and a services room is located adjacent to the lift.
- Ground Floor Level
The Ground Floor Level (RL82.90/84.00) accommodates 317m² of retail floor space extending between Miller Street and Miller Lane. The Ground Floor Level accommodates separate bin storage rooms for the retail and residential components, an OSD tank, a bin storage area adjacent to the Miller Lane frontage, two (2) bicycle spaces, and the main entry lobby to the residential apartments.
- First Floor Level
The First Floor Level (RL87.50) accommodates 3 x studio apartments with floor areas ranging from 41m² to 48m², and 2 x 3-bedroom apartments with floor areas of 128m².
The 3-bedroom apartments have access to centralised courtyards of 17m² and 23m², and east facing balconies of 14m² and 15m².
- Second Floor Level
The Second Floor Level (RL90.65) accommodates 2 x 1-bedroom apartments with floor areas ranging from 50m² to 52m², and 2 x 3-bedroom apartments with floor areas of 128m².and 129m².
The 1-bedroom apartments have access to west facing balconies of 15m², and the 3-bedroom apartments have access to east facing balconies of 14m² and 15m².
- Third Floor Level
The Third Floor Level (RL93.80) accommodates 2x 3-bedroom apartments with floor areas of 140m² and 203m² with access to a west facing balcony of 38m² and north east facing balcony 14m².

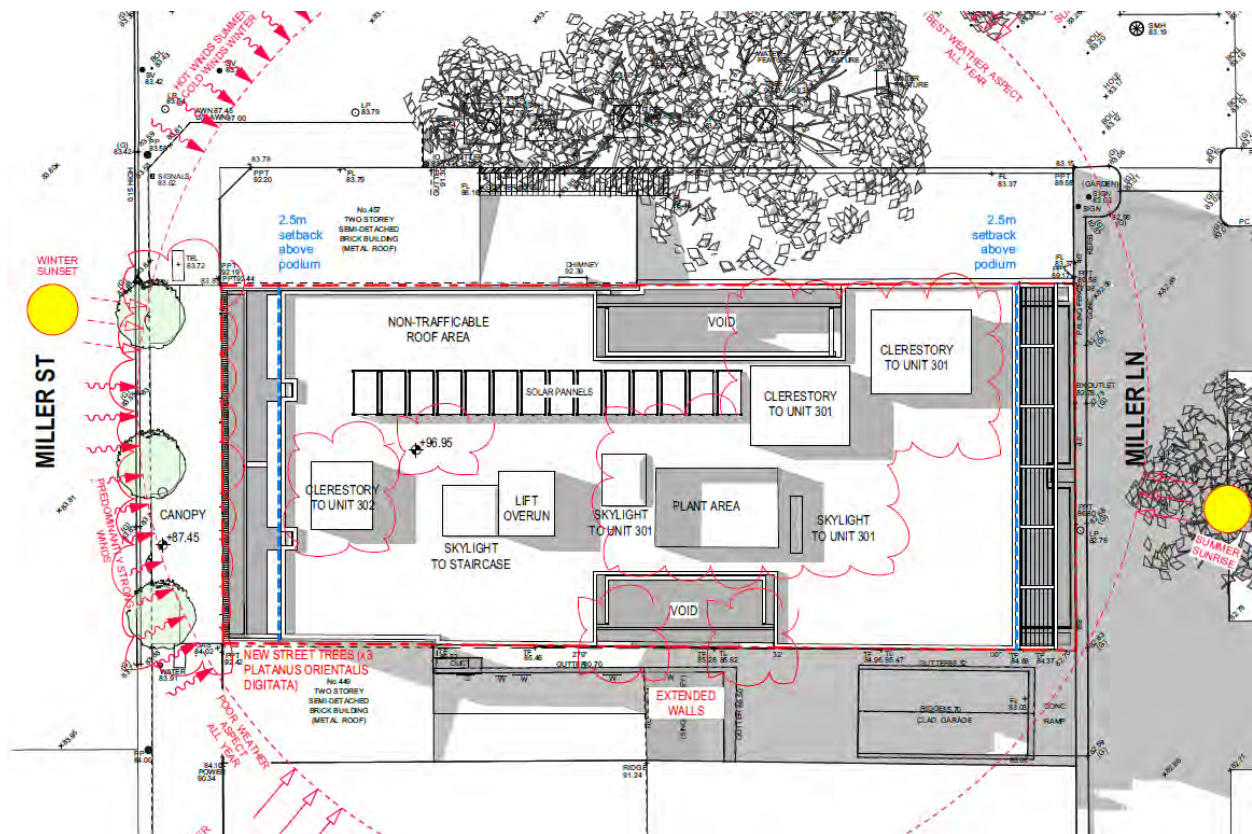


Figure 1: Site Plan (PA Studio)

STATUTORY CONTROLS

North Sydney LEP 2013 (the LEP)

- Zoning – B1 Neighbourhood Centre
- Item of Heritage - No
- In Vicinity of Item of Heritage - No
- Conservation Area – No
- SEPP (Biodiversity and Conservation) 2021 Chapter 6 Water catchments
- SEPP (Resilience and Hazards) Chapter 4 Remediation of Land
- SEPP (Transport and Infrastructure) 2021
- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP 65 – Design Quality Of Residential Flat Buildings

POLICY CONTROLS

- North Sydney Development Control Plan (the DCP)
- North Sydney Local Infrastructure Contributions Plan 2020

DESCRIPTION OF SITE & LOCALITY

The subject site 451-455 Miller Street (lot 3 in DP 224811 and lots B and C in DP 437004.) is located on the western side of Miller Street, Cammeray. The site comprises three (3) adjoining allotments with a combined area of approximately 565.5m². The site has a frontage to Miller Street of 15.35m, an average depth of 36.63m and 15.75m rear land frontage with a fall of 1m from the west (Miller Street) to the east (Miller Lane).

The site is currently occupied by a series of mixed-use buildings presenting to Miller Street in a 2-storey form with extended parapets. The rear portion of the site accommodates a series of interconnected outbuildings and associated off-street car parking facilities.

The site is located within an established mixed-use precinct characterised by a mix of retail, commercial and residential related land uses. The existing buildings extend across multiple development eras, contributing to a wide diversity of building forms and architectural styles.

The recent development in the locality comprises a series of 4-storey “shop top housing” developments, extending along both sides of Miller Street. The recent development provides retail/commercial floor space at the ground floor level, and residential accommodation in the three (3) levels above.

The site is adjoined to the north by a 2-storey mixed use building (No. 457 Miller Street) accommodating retail uses at the ground floor level. The retail uses include outdoor dining areas within Cammeray Place.

The surrounding development further to the north comprises a series of mixed-use buildings accommodating retail floor space at the ground floor level and residential apartments in the levels above. The retail uses include outdoor dining areas within Cammeray Place.

The surrounding development to the east (on the opposite side of Miller Lane) comprises a ground level public car park extending between Raleigh Street to the north and Amherst Street to the south.

The surrounding development to the west (on the opposite side of Miller Street) comprises a series of 2 – 5 storey mixed-use buildings accommodating retail uses at the ground floor level, and commercial and/or residential land uses above.



Figure 2: Site location, site outlined in red (James Lovell and Associates).



Figure 3. NSLEP Site (outlined in red) is zoned B1 Neighbourhood Centre. (PA Studio Architects).

RELEVANT HISTORY

Current Application

Date	Action
19/08/22	Development Application lodged
25/08/22	DA notified, for 14 days (until 16/09/22)
11/10/22	DA considered by North Sydney Design Excellence Panel
16/02/23	Request for information sent to applicant
06/03/23	Applicant response to request for information
03/04/23	Revised BASIX certificate submitted

INTERNAL REFERRALS

TRAFFIC

The proposed development was referred to Council's Traffic Engineer who provided the following comments:

- “• The applicant is required to provide a swept path to show a vehicle can enter and exit the property without removing any on-street parking spaces.
- Council's DCP states that a minimum of one visitor space to be provided in the development. Applicant has not provided which space will be visitor space, it only states 11 residential parking.
- Applicant did not address the car wash bay. This has to be addressed, the car wash bay can be on visitor parking spot.

Should Council approve this development is recommended that the following conditions be imposed:

1. *That a Construction Management Plan be prepared and submitted to Council for approval by the **North Sydney Traffic Committee** prior to the issue of the Construction Certificate. Any use of Council property shall require appropriate separate permits/ approvals.*
2. *Proposed bicycle parking spaces should comply with the Council's DCP 2013*
3. *That all aspects of the car park comply with the Australian Standard AS2890.1 Off-Street Parking."*

Planner's comment

The applicant provided amended plans and a response as summarised below:

"We append swept paths to this letter, demonstrating there will be no disturbance to the existing on-street parking arrangements resulting from the proposed development. Additionally, we have made a minor change to the pedestrian ramp alongside the driveway on the Ground Floor. The change results in a 2m² reduction to the commercial area and provides better access pathways for the passing bay. Accordingly, an amended Ground Floor plan is provided.

As regards the lack of a Visitor and Carwash Bay, it is considered that on-site visitor parking and car wash bay are not warranted given the size of the proposed development (only 11 dwellings) and the context of the site. The site is positioned directly opposite the Miller Lane Council Carpark which provides 90 parking spaces, restricted to two (2) hour parking only, during the following hours:

- *8.00am – 6.00pm Monday, Tuesday, Wednesday & Friday*
- *8.00am – 10.00pm Thursday*
- *8.00am – 1.00pm Saturday*

Outside the above times, the carpark allows for long-stay parking. Given the immediate proximity and abundance of on-street car parking options, if visitor parking is provided within the basement of the proposed building, we consider it would have very limited legitimate use (as visitor parking) and would instead be illegitimately used by residents and/or the commercial/retail tenant - regardless of any by-law provisions.

Given that the building will have security access to the basement, the use of the off-street visitor parking by visitors would be cumbersome in comparison to parking in the car park and in reality, visitors would not seek to access the basement. As such, and given also that only one visitor space is required, we consider that in this instance it is justifiable that no dedicated visitor space is provided within the subject itself. The provision of a car wash bay within the basement of the building would require the installation of dedicated grease treatment infrastructure. Given the small scale of the development, the maintenance and ongoing costs of servicing this infrastructure would be costly and, in our experience, car wash facilities provided within smaller developments are rarely used. It is anticipated that this would likely be the case for the subject development, particularly given the proximity of commercial carwashes such as the Crystal Car Wash in Northbridge, and the carwash at the BP in Naremburn. As such, we do not consider it appropriate to provide a carwash bay for this development.

It is noted that North Sydney Council has approved several boutique shop top housing and residential flat building developments of a similar scale and located within similar urban contexts to that of the proposed development that do not provide visitor car parking or carwash bays. These include (but are not limited to):

- DA408/17 – 389-400 Military Road, Cremorne
- DA430/17 – 137-139 Alexander St, Crows Nest
- DA142/19 – 390-394 Military Road, Cremorne
- DA269/21 – 372 Military Rd, Cremorne

Accordingly, approval of the proposed parking arrangements would not create a precedent for Council that has not already been set.”

Councils carparking standards are set as a maximum requirement and less or different provisions maybe accepted having regard to site circumstances. The proposed variation is considered acceptable given the availability of on street carparking options and commercial carwash facilities in the area as the proposal demonstrates that the intent of the control and objectives have been met.

DEVELOPMENT ENGINEERING

No objection was raised by Council’s development engineers and conditions are recommended in the event the application is approved.

WASTE

The application was referred to Council’s Waste Officer who provided comments and recommended conditions in the event the application is approved.

LANDSCAPING

No objection was raised by Council’s landscape development officer and conditions are recommended in the event the application is approved.

DESIGN EXCELLENCE PANEL

Set out below are excerpts from the panel’s report, germane to this assessment. They are based on the originally submitted application, not the amendments received subsequent to the panel’s consideration of the proposal.

Principle 1: Context and local character

a) Current & future context

- The current context is typified by two storey shop-top housing being slowly replaced by three and four storey development to the north and south between Amherst St and Palmer St. This is leading to a gradual loss of the original heritage character of the Cammeray shopping strip along Miller Street.

b) Local character

- The proposed development sites, together with the immediate property to the north and additional properties to the south, form a distinct 2 storey street facade of nine individual lots composed of masonry with glazed shopfronts, arched windows at Level 1 and high parapets with a raised turrets at each lot boundary.

Principle 2: Built form, scale and public domain/ urban design response

a) Height, bulk and scale

- The slight encroachment of building height appears to present minimal impact however the roof level clearstory windows should be considered with regard to the need for communal space to the roof. The solar panels also would require some reconfiguration, which are supported.

b) Street, side and rear setbacks

- Whilst the setbacks of the courtyards to the side boundaries comply with the DCP they are not consistent with the ADG which would typically require a 6m setback in these cases to ensure adequate visual and acoustic privacy and daylight access to both properties.

Principle 5: Landscape Integration

a) Public domain

- We recommend discussing with council the ongoing street tree policy to determine if the awning needs a cut out to allow mature tree growth.

b) Communal open spaces

- Communal outdoor space could be provided to a portion of the rooftop (ensuring privacy to nearby residents) and would add a great deal of amenity to residents. We would support extending the stair and lift to provide access to the roof space to support this use.

Principle 6: Building configuration, planning, and amenity

a) Configuration and planning

- The retail addressing the front and rear of the property is supported. The proposal addresses the rear lane in a way that could form an attractive precedent. The level change within the retail space will need to be managed to provide equitable access and it may be that 2 tenancies addressing different frontages enables this to be resolved simply.

- While the courtyards provide initial cross ventilation and day lighting to the deep block, this amenity would be significantly impacted in the event of similarly scaled future development to the north and south. The design should therefore consider how this amenity will be preserved both within the proposal and without compromising the future development of adjacent properties. We draw attention to Objective 4A-2 of the ADG which provides guidance in relation to courtyards. The Panel recommends further investigations of the courtyards to improve the initial levels of amenity and better preserve future amenity. These may include the provision of a larger central courtyard in lieu of the proposed narrow courtyards to the side boundaries and/or the widening of the courtyards at the upper levels.

b) Private open space and balconies

- The level 1 studio apartments should be provided with a minimum 4m² balcony as per the ADG. This could be accommodated while preserving the existing arched facades which could then form a colonnade element. It appears that a slight reduction to the 2 and 3 bedroom plans would enable a small balcony space to each unit.

c) Visual Privacy

- The dwellings are reasonably well laid out however special attention should be provided to maintain acoustic and visual privacy between apartments. The bedrooms with windows facing neighbouring properties will need revision in this regard.
- The privacy louvres to levels 2 and 3 will likely compromise the quality of outlook and daylighting particularly to the south facing courtyard. These should be reconfigured.

Principle 8: Housing diversity and social interaction

a) Apartment Mix

- The mix of apartment types is highly supported contributing to diversity of housing for the community.

Principle 9: Architectural expression and materiality

a) Composition and scale

Our significant concerns relate to the Miller Street frontage where much greater respect to the existing street pattern should be adhered to for the following reasons.

- The western façade will receive significant afternoon heat loads to the large glass facades proposed (this is particularly problematic where no cross ventilation is possible).
- The disruption to the arched brick streetscape vernacular is too jarring and not supported.
- An opportunity exists to integrate a small balcony behind the existing façade improving amenity to the apartments. These should be sized to meet the ADG private open space requirements.

- Balconies encourage street life and passive surveillance with more animated edges with pot plants and deeper shading.
- Retaining the existing façade contributes to the street character.

b) Detailing/Buildability

- The proposed 3.1 m slab to slab heights to the upper levels of the building should be reviewed with respect to adequacy for insulation, drainage and NCC compliance. The Applicant should demonstrate a 2.7 m high ceiling can be achieved within all living spaces.

Planner's comment

Having considered the panel's advice, the applicant provided amended plans incorporating the following changes (as summarised by the applicant):

“Amended western facade

The key change proposed is to the architectural design of the western (Miller Street) façade. The amendments proposed have sought to address the DEP's comments and to reinforce and complement the existing street character and architectural pattern along the immediately adjacent portion of Miller Street. In particular, the proposed change includes the use of arches, to directly compliment the immediately adjoining buildings. Full details of the revised design are shown on the amended architectural drawings that are appended to this letter.

As part of the thinking behind the redesign of the western façade, we have also considered the DEP's suggestion that a small balcony be provided to the studio apartments behind the façade on Level 1 of the building. The opportunity to incorporate balconies has been fully considered and an alternative solution which will provide a higher level of amenity for these studios, is included in the revised drawings. The proposed amendment provides for a high level of amenity with the addition of substantial planter boxes to “green” the façade and maximise the internal area of the apartments while allowing the western frontage to be fully opened should this be desired.

Communal space

It is noted that the DEP supports the slight encroachment of building height that is predominantly associated with the rooftop plant and clerestory windows, and that they would be supportive of further encroachment created by extending the stair and lift to provide access to rooftop communal facilities.

We have carefully considered the option of providing common space for residents on the roof of the building and have decided that it is not desirable in this case. Any landscaped area on the roof would require substantial structure to provide shade / weather protection, as well as considerable redesign of the building's core and clerestory windows to accommodate a usable area on the roof.

Provision of structure and common space on the roof would also be classed as an additional floor under the BCA and would require further redesign to incorporate a fully fire- isolated stair throughout the building. This would be a detrimental design amendment in our view as it would mean fully enclosing what is currently designed as an open staircase providing access from the lobby to all levels of the building.

In our experience, when facilities and services are available in close proximity, as is the case with this site, purchasers overwhelmingly prefer private open space over common spaces within the building. Particularly given the location of this site on a reasonably busy road, communal space on the rooftop of the building is unlikely to be well-used.

On balance it has therefore been concluded that the provision of communal space on the roof of the building is not appropriate or desirable in this instance.

Design of courtyards/lightwells

The DEP has suggested that consideration should be given to the dimensions of the proposed courtyards to ensure adequate visual and acoustic privacy and daylight access, as well as ensuring that amenity provided by the proposed courtyards will be maintained in the future without compromising the future development of the adjacent sites.

Given the constrained nature of the subject site, the courtyards on the northern and southern sides of the site have been incorporated to maximise natural light and cross ventilation. The dimensions of the courtyards will ensure that daylight and cross ventilation is provided to the apartments and that visual and acoustic privacy is maintained.

Platino has used similar courtyard configurations on similarly constrained sites within the North Sydney LGA, including recent developments at 89 Parraween Street and 352-358 Military Road in Cremorne. In these cases, the use of courtyards adjacent to the side boundaries has been very successful in maximising amenity for apartments through the provision of natural light and cross ventilation.

The design and dimensions of the proposed courtyards result from considerable expert input regarding the analysis of natural light penetration and view lines. Reports that were prepared for previous Platino developments are relevant for the current proposal and have been appended to this letter for Council's consideration. Additionally, Plan 712 (Revision B) demonstrates the proposed design provides adequate privacy to each apartment.

Internal redesign of apartments on Level 3

The apartments on Level 3 of the proposed building have been reconfigured to amalgamate Apartments 302 and 303 and make amendments to the layout of Apartment 301. The Level 3 north and western facade is modified with larger wintergarden and amenity to apartment 3.1 that wraps the north-western corner. The Level 3 external facade metal cladding is extended the full length of the northern facade to provide a more sensitive urban response and scale to the neighbouring corner northern building.

Full details of the revised internal layout of Level 3 are provided on Drawing DA104 Issue B dated 05.12.2022.

As a result of the reconfiguration, the total number of apartments is reduced from 12 to 11."

The amendment to the proposal generally addresses the comments provided the Panel and found to be satisfactory for the reasons outlined within this report. Given the changes have addressed the majority of the Design Excellence review panel concerns no return to the panel is considered warranted.

EXTERNAL REFERRALS

AUSGRID

The proposed development was referred to Ausgrid. Ausgrid assessed the application and raised no objection to the proposal, and provided the following comments:

"Ausgrid Overhead Powerlines are in the vicinity of the development

Ausgrid Overhead Powerlines are in the vicinity of the development The developer should refer to SafeWork NSW Document – Work Near Overhead Powerlines: Code of Practice. This document outlines the minimum separation requirements between electrical mains (overhead wires) and structures within the development site throughout the construction process. It is a statutory requirement that these distances be maintained throughout the construction phase.

Consideration should be given to the positioning and operating of cranes, scaffolding, and sufficient clearances from all types of vehicles that are expected be entering and leaving the site.

The "as constructed" minimum clearances to the mains must also be maintained. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid's website at www.ausgrid.com.au.

It is the responsibility of the developer to verify and maintain minimum clearances onsite. In the event where minimum safe clearances are not able to be met due to the design of the development, the Ausgrid mains may need to be relocated in this instance. Any Ausgrid asset relocation works will be at the developer's cost.

Additional information can be found in the Ausgrid Quick Reference Guide for Safety Clearances "Working Near Ausgrid Assets - Clearances". This document can be found by visiting the following Ausgrid website: www.ausgrid.com.au/Your-safety/Working-Safe/Clearance-enquiries"

Planner's comment

The above advice is noted and considered.

SYDNEY WATER CORPORATION

The proposed development was referred to Sydney Water who provided the following comments:

“Sydney Water has reviewed the application based on the information supplied and provides the following comments to assist in planning the servicing needs of the proposed development.

Water Servicing

- *Potable water servicing should be available via a DN150 CICL watermain (laid in 1927) on Miller Street.*
- *Amplifications, adjustments, and/or minor extensions may be required.*

Wastewater Servicing

- *Wastewater servicing should be available via a DN225 VC wastewater main (laid in 1901) on Miller Lane*
- *Amplifications, adjustments, and/or minor extensions may be required.”*

Planner’s comment

The above commentary is noted. Standard conditions for water and wastewater connections requiring a s73 certificate are to be imposed should consent be granted.

TRANSPORT FOR NSW

The proposed development was referred Transport for NSW who provided the following comments:

“TfNSW has reviewed the submitted application and provides the following suggested conditions for inclusion in any development consent:

1. *All buildings and structures (other than pedestrian footpath awnings), together with any improvements integral to the future use of the site are to be wholly within the freehold property (unlimited height or depth), along the Miller Street boundary.*
2. *The developer is to submit design drawings and documents relating to the excavation of the site and support structures to TfNSW for assessment, in accordance with Technical Direction GTD2020/001.*

The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by TfNSW. Please send all documentation to development.sydney@transport.nsw.gov.au.

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) day notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

3. Any public utility adjustment/relocation works on the state road network will require detailed civil design plans for road opening /under boring to be submitted to TfNSW for review and acceptance prior to the commencement of any works.

The developer must also obtain necessary approvals from the various public utility authorities and/or their agents. Please send all documentation to development.sydney@transport.nsw.gov.au

A plan checking fee will be payable and a performance bond may be required before TfNSW approval is issued.

4. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system along the Miller Street frontage are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to development.sydney@transport.nsw.gov.au.

A plan checking fee will be payable and a performance bond may be required before TfNSW approval is issued.

5. A Construction Pedestrian Traffic Management Plan (CPTMP) detailing construction vehicle routes, number of trucks, hours of operation, access arrangements, traffic control and pedestrian movements should be submitted to Council for review prior to the issue of a construction certificate.
6. A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre (TMC) for any works that may impact on traffic flows on Miller Street and operation of the existing mid-block pedestrian crossing at Miller Street/ Cammeray Place. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>.

Planner's comment

The above commentary is noted and considered. The recommended conditions will be imposed should consent be granted.

SUBMISSIONS

Original proposal

On 25 August 2022, Council notified adjoining properties and the Plateau/Bridgeview Precinct of the proposed development seeking comment between 2 September 2022 and 16 September 2022. Council received twenty six (26) submissions. The matters raised in the submissions are listed below:

The issues have been addressed elsewhere in this report. Original submissions may be viewed by way of DA tracking on Council's website https://www.northsydney.nsw.gov.au/Building_Development/Current_DAs and are available for review by NSLPP members.

Basis of Submissions

- Height, Bulk and Scale
- Streetscape appearance (front façade)
- Design and character
- Traffic, noise, and safety

- Overshadowing
- Impact of demolition, excavation and construction
- Block outlook
- Overdevelopment
- Privacy

Amended Proposal

Being of a similar scope and smaller scale to the original proposal, with no new impacts being introduced, renotification was considered unnecessary in accordance with the provisions of Council's Community Engagement Protocol.

CONSIDERATION

Relevant matters of Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended) are considered below.

SEPP (Biodiversity and Conservation) 2021

Chapter 6 Water catchments

Part 6.2 Development in regulated catchments

The SEPP defines the Sydney Harbour Catchment as a "regulated catchment", meaning relevant provisions of Chapter 6 apply to land and development in the catchment.

Water quality and quantity

The proposed development will have acceptable impacts on water quality and quantity in the catchment, provided suitable regimes are adopted for water management during construction and operation of the development, as proposed and required by recommended conditions.

SEPP (Resilience and Hazards) 2021

The provisions of this policy require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site. The site is currently used for retail and residential related purposes, and evidently has not been zoned or used for industrial, agricultural or defense purposes at any times in the lands recent history.

In the circumstances, there is no evidence to suggest that the land is likely to be contaminated to the extent that would render it unsuitable for continued retail and residential use. Council can be satisfied the policy can be complied with subject to conditions and consent accordingly granted.

SEPP (Transport and Infrastructure) 2021

Clause 2.118 of SEPP (Transport and Infrastructure) 2021 relates to development on land with a frontage to a classified road and requires the consent authority to consider whether access is provided by a road other than the classified road, and whether the safety, efficiency and ongoing operation of the classified road will be adversely affected by the proposed development.

The site has a frontage to Miller Street, however no vehicular access is proposed to/from Miller Street, with vehicular access to/from the site via Miller Lane.

SEPP (Building Sustainability Index: BASIX) 2004

A valid BASIX Certificate has been submitted with the application to satisfy the aims of this SEPP.

SEPP 65 – DESIGN QUALITY OF RESIDENTIAL FLAT BUILDINGS

State Environmental Planning Policy No. 65 aims to improve the design quality of residential flat buildings in New South Wales by recognising that the design quality of residential flat development is of significance for the environment within NSW due to the economic, environmental, cultural and social benefits of high quality design. The SEPP aims to:

- (a) *to ensure that it contributes to the sustainable development of New South Wales:*
 - (i) *by providing sustainable housing in social and environmental terms, and*
 - (ii) *by being a long-term asset to its neighbourhood, and*
 - (iii) *by achieving the urban planning policies for its regional and local contexts, and*
- (b) *to achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define, and*
- (c) *to better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities, and*
- (d) *to maximise amenity, safety and security for the benefit of its occupants and the wider community, and*
- (e) *to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions.*

The design quality principles are discussed as follows:

Principle 1: Context and neighbourhood character

The site is located within an established mixed-use precinct characterised by an eclectic mix of retail, commercial and residential related land uses. The existing buildings extend across multiple development eras, contributing to a wide diversity of building forms and architectural styles. The recent development in the locality comprises a series of 4-storey “shop top housing” developments, extending along both sides of Miller Street. The recent development provides retail/commercial floor space at the ground floor level, and residential accommodation in the three (3) levels above.

The proposed development is consistent with the Desired Future Character of the Cammeray Village Centre in terms of providing active retail uses at the ground floor level and three (3) levels of residential apartments above. Further, the proposed development incorporates a 2-storey podium element at the Miller Street frontage and a setback of 2.5 metres above the podium, and the façade is divided into a series of vertical bays to reflect the finer-grain form of traditional development.

It is considered that the proposed development is consistent with the general context of the area, and the desired future character, as defined in the Character Statement within the NSDCP. The

development responds appropriately to the adjoining buildings and surrounding area, and incorporates appropriate design elements to achieve a reasonable architectural merit.

Principle 2: Built form and scale

The building form has been designed to reflect the emergence of 4-storey “shop top housing” developments, extending along both sides of Miller Street. The recent development provides retail/commercial floor space at the ground floor level, and residential accommodation in the three (3) levels above. The proposed development is consistent with the Desired Future Character of the Cammeray Village Centre in terms of providing active retail uses at the ground floor level and three (3) levels of residential apartments above. Further, the proposed development incorporates a 2-storey podium element at the Miller Street frontage and a setback of 2.5 metres above the podium, and the façade is divided into a series of vertical bays to reflect the finer-grain form of traditional development.

The proposal achieves an appropriate built form for the site and the building’s purpose, in terms of building alignments, proportions, building type and the manipulation of building elements. The building form defines the public domain, contributes to the character of streetscape and provides internal amenity and outlook.

Principle 3: Density

The proposed development will provide a mix of non-residential floor space and residential apartments, intended to capitalise on the sites proximity to public transport facilities connecting the site to North Sydney, the Sydney CBD and beyond. The proposed development has a density appropriate for its site and context in terms of the bulk, height, spatial separation, and the type and mix of accommodation. Further, the building form provides a very good level of internal amenity for future occupants while minimising the impacts on the amenity of surrounding land.

Principle 4: Sustainability

The proposed development makes efficient use of natural resources, and the building also provides for the use of energy efficient building materials and achieves a compliant BASIX Score. Further, the proposed development achieves solar access to 75% of the apartments to the private open space and main living areas for a minimum of 2-hour in mid-winter, and none of the apartments receive no solar access. Further, 58% of the apartments will be naturally cross-ventilated.

Principle 5: Landscape

The site does not currently provide any landscaping, and the established pattern of development includes an intended dominance of built form over landscaping, with the character statement for the Cammeray Village Centre which notes that “buildings built to street and laneway frontages”. Irrespective, proposed development makes provision for new landscaping within planter beds along Miller Lane, within the centralised courtyards at the first floor level, and within planter beds along the edges of the balconies. The proposed landscaping is compatible with the established landscaped character of the locality, including the recent shop top housing developments extending along both sides of Miller Street.

Principle 6: Amenity

Amenity is optimised through appropriate room dimensions/shapes, sunlight access, natural ventilation, visual and acoustic privacy, storage, indoor/outdoor space, efficient layouts/service areas, outlook and access. Further, the proposed development achieves solar access to 75% of the apartments to the private open space and main living areas for a minimum of 2-hour in mid-winter, and none of the apartments receive no solar access. Further, 58% of the apartments will be naturally cross-ventilated. In summary, the proposed development provides appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook, and ease of access for all age groups and degrees of mobility.

Principle 7: Safety

The proposed development will substantially improve casual surveillance of the public domain, with retail floor space extending along the frontages to Miller Street and Miller Lane. Further, the residential apartments include windows, doors and private open space with opportunities for casual surveillance of the public domain. Finally, the proposed development provides defined points of entry, and separate pedestrian and vehicular access points. The entry lobby and access to the car parking facilities will be security controlled.

Principle 8: Housing diversity and social interaction

The proposed development will provide a mix of non-residential floor space and residential apartments, intended to capitalise on the sites proximity to public transport facilities connecting the site to North Sydney, the Sydney CBD and beyond. The residential component provides a mix of apartments sizes and types, intended to attract a mix of residents seeking convenient access to the services and facilities available within the vibrant Cammeray Village Centre.

Principle 9: Aesthetics

The building form properly address the street frontages through the change of materials, colour and creates visual interest through appropriately scaled massing and varying setbacks. The proposed development incorporates varied building elements, textures, materials and finishes which all contribute to an overall quality and balanced building. The overall appearance of the building is in keeping with the desired future character of the area.

Apartment Design Guide (ADG)

The proposed development has also been considered against the Apartment Design Guide and as detailed in the table below:

Amenity	Design Criteria	Compliance	Comments
2F - Building Separation	<p><i>Minimum separation distances for buildings (up to four storeys):</i></p> <ul style="list-style-type: none"> • <i>6m setbacks for habitable rooms and balconies.</i> • <i>3m setbacks for non-habitable rooms.</i> • <i>No separation distance is required between blank walls.</i> 	No – Demonstrates merit	<p>Whilst the setbacks of the courtyards to the side boundaries comply with the DCP they are not consistent with the ADG which would typically require a 6m setback in these cases to ensure adequate visual and acoustic privacy and daylight access to both properties.</p> <p>Additional information demonstrating the ability to provide adequate visual and daylight access was provided by the applicant.</p> <p>The blank walls on the northern southern side of the building will not result in any adverse privacy impacts and are sufficiently articulated and modulated to achieve appropriate visual bulk and break-up of the built form.</p>
3D - Communal Open Space	<p><i>Communal open space has a minimum area equal to 25% of the site.</i></p> <p><i>Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two hours between 9.00 am and 3.00 pm on 21 June (mid-winter)</i></p> <p><i>Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting</i></p> <p><i>Communal open space is designed to maximise safety</i></p>	No – demonstrates merit	<p>The size and scale of the building, and the generous provision of private open space, mitigates the need to provide on-site communal open space.</p>
3E - Deep Soil Zones	<p><i>Deep soil zones are to meet the following minimum requirements:</i></p> <ul style="list-style-type: none"> • <i>3m minimum width</i> • <i>Criteria: minimum 7% of the site area</i> • <i>Guidance: minimum 10% of the site area (650-1000m²)</i> • <i>Guidance: minimum 15% of site area (>1500m²)</i> 	No – demonstrates merit	<p>The site does not currently provide any landscaping and the established pattern of development includes and intended dominance of built form over landscaping. Irrespective, the proposed development makes provision for new landscaping within planter beds along Miller Lane, within the centralised courtyards at the first-floor level, and within planter beds along the edges of the balconies.</p>
3F - Visual privacy	<p><i>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</i></p>	Yes	<p>The proposed development provides adequate building separation and design measures to achieve reasonable levels of external and internal visual privacy.</p> <p>The site orientation and building design provide adequate levels of privacy without compromising access to light and air, and</p>

Amenity	Design Criteria	Compliance	Comments
	<p>6m (between habitable rooms and balconies to boundaries) 3m (between non-habit-able rooms)</p>		<p>maintain a good outlook from the habitable rooms and private open space.</p>
<p>3G - Pedestrian Access and Entries</p>	<p><i>Building entries and pedestrian access connects to and addresses the public domain</i></p> <p><i>Access, entries and pathways are accessible and easy to identify</i></p>	<p>Yes</p>	<p>The building entrances connect to and address the public domain. The access, entries and pathways are clearly defined, accessible and easy to identify.</p> <p>Vehicular access is clearly segregated and distinguished and there is sufficient space to allow for waste services to occur.</p>
<p>3H - Vehicle Access</p>	<p><i>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes</i></p>	<p>Yes</p>	<p>The vehicular access point achieves safety for vehicles, and separate pedestrian access points are provided to minimise conflicts.</p>
<p>3J - Bicycle and Car parking</p>	<p><i>For development in the following locations:</i></p> <ul style="list-style-type: none"> • <i>on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or</i> • <i>on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre the mini-mum 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</i> <p><i>The car parking needs for a development must be provided off street</i></p> <p><i>Parking and facilities are provided for other modes of transport</i></p>	<p>Yes</p>	<p>The final scheme features 12 car spaces, 17 bicycle spaces and a motorcycle space within the basement. As such, compliance with the maximum and minimum parking rates is demonstrated.</p>
<p>4A - Solar and daylight access</p>	<p><i>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas</i></p>	<p>Yes</p>	<p>The units comply with the solar access criteria with living rooms and private open spaces orientated to the east and west.</p>

Amenity	Design Criteria	Compliance	Comments
	<p><i>A maximum of 15% of apartments receive no direct sunlight between 9am and 3pm at mid-winter.</i></p>		
<p>4B - Natural ventilation</p>	<p><i>All habitable rooms are naturally ventilated.</i></p> <p><i>The layout and design of single aspect apartments maximises natural ventilation.</i></p> <p><i>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents - At least 60% of apartments are naturally cross ventilated</i></p>	<p>Yes</p>	<p>The proposed development features openings for all habitable rooms - ensuring these are naturally ventilated.</p>
<p>4C - Ceiling Heights</p>	<p><i>Ceiling height achieves sufficient natural ventilation and daylight access - Minimum 2.7 m (habitable rooms)</i></p>	<p>Yes</p>	<p>The proposed ceiling heights comply with a minimum floor to floor height of 3.1m.</p>

Amenity	Design Criteria	Compliance	Comments
4D 1 - Apartment size and layout	<p><i>Apartments are required to have the following minimum internal areas:</i> 50m² (1-bedroom) 70m² (2-bedroom), 90m² (3-bedroom)</p> <p><i>Additional bathrooms increase the minimum internal area by 5m² each</i></p> <p><i>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each</i></p> <p><i>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</i></p>	<p>Yes</p>	<p>All units comply with the minimum internal areas specified.</p> <p>All habitable rooms have external walls with windows that provide daylight and ventilation.</p>
4D 2 - Apartment size and layout	<ol style="list-style-type: none"> 1. <i>Habitable room depths are limited to a maximum of 2.5 x the ceiling height</i> 2. <i>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</i> 	<p>Yes</p> <p>Yes</p>	<p>Complies with the maximum depths for habitable rooms and open plan layouts.</p>
4D 3- Apartment size and layout	<ol style="list-style-type: none"> 1. <i>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space)</i> 2. <i>Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</i> 3. <i>Living rooms or combined living/dining rooms have a minimum width of:</i> <ul style="list-style-type: none"> • <i>4m for 2-bedroom and 3-bedroom apartments</i> 	<p>Yes</p> <p>Yes</p> <p>Yes</p>	<p>Master bedrooms have a minimum area of 13m². Other bedrooms have a minimum area of 10m².</p> <p>All bedrooms have a minimum width of 3m.</p> <p>Living rooms achieve the minimum width requirements.</p>

Amenity	Design Criteria	Compliance	Comments
4E - Private open space and balconies	<p><i>All apartments are required to have primary balconies as follows:</i></p> <p><i>3+ bedroom apartments 12m² and minimum depth 2.4m</i></p> <p><i>The minimum balcony depth to be counted as contributing to the balcony area is 1m</i></p> <p><i>2. 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.</i></p> <p><i>Primary private open space and balconies are appropriately located to enhance liveability for residents.</i></p> <p><i>Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.</i></p> <p><i>Private open space and balcony design maximises safety.</i></p>	No – Demonstrated merit	<p>Level 1 studio apartment areas are not provided with external balconies due to the proximity to Miller Street and subsequent potential for road noise. The amended design provides for an operable window across the front of the unit overlooking an introduced planter box. A minimum of 4m² space has been added to each minimum 35m² studio area.</p> <p>Primary balconies and terraces or the remaining apartments comply with the required minimum area and minimum depth.</p>
4F - Common circulation and spaces	<p><i>1. The maximum number of apartments off a circulation core on a single level is eight</i></p>	Yes	<p>Maximum of four (4) apartments per level and circulation core.</p>
4G -Storage	<p><i>Studio apartments- 4m³</i> <i>1-bedroom apartments - 6m³</i> <i>2-bedroom apartments - 8m³</i> <i>3+ bedroom apartments - 10m³</i></p>	Yes	<p>The proposed storage areas comply with the minimum storage requirements for each unit.</p>

NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)

1. Permissibility

The proposed development is for the purposes of “shop top housing” as defined by the LEP, which are a permissible use in the zone, with development consent.

2. Objectives of the zone

Clause 2.3 of NSLEP 2013 specifies that the consent authority must have regard to the objectives for the development in a zone when determining a development application.

The objectives of the B1 Neighbourhood Centre zone are:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- *To encourage active street life while maintaining high levels of residential amenity.*
- *To encourage development for the purpose of shop top housing.*

The proposed shop top housing development is generally consistent with the objectives of the B1 Neighbourhood Centre zone. The proposed development provides a mix of compatible non-residential and residential land uses; the site is well serviced by public transport which provide convenient access to the North Sydney Central Business District (CBD), St Leonards, Chatswood and beyond; the proposed development will contribute to a safe and vibrant urban environment offering a good level of residential amenity; and the proposed development provides non-residential floor space at the lower level, with the residential apartments occupying the floor levels above.

Consistency with these objectives is also considered below, regarding the applicant’s request to breach to building height control.

Part 4 – Principal Development Standards

Principal Development Standards – North Sydney Local Environmental Plan 2013			
Site Area - #m ²	Proposed	Control	Complies
Clause 4.3 – Heights of Building	15m	13m	NO – A request to contravene the standard was submitted
Clause 4.4a – Non-residential FSR	0.57:1	0.5:1	Yes

3. Height of Building

Objectives for the development standard are quoted from clause 4.3 in NSLP 2013 below:

- to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- to promote the retention and, if appropriate, sharing of existing views,*
- to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- to ensure compatibility between development, particularly at zone boundaries,*
- to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.*
- to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.*

The proposed works would have a height of 15m that fails to comply with the permissible height limit of 13m in accordance with clause 4.3 in NSLEP 2013.



Figure 4: Height Plane Diagram (James Lovell and Associates)

Request to vary development standard

The applicant has submitted a written request pursuant to Clause 4.6 of NSLEP 2013 (Attachment 3). It is noted the written request refers to the original plans, however the request remains relevant as the overall building height has not been amended. The written request has adequately addressed cl 4.6(3), for these reasons:

- The written request adequately demonstrates that compliance is unreasonable and that there are sufficient environmental planning grounds to breach the standard,
- The proposal is in the public interest because it is consistent with the relevant objectives of the development standard and of the applicable zone.
- Departure from the standard does not raise matters of regional or state planning significance.
- There is no public benefit in maintaining compliance with the development standard.

Compliance is unnecessary or unreasonable

The applicant submits:

1. *The proposed development is generally consistent with the objectives of the building height control, notwithstanding the numerical variation.*
2. *The objectives and purpose of the building height control remain relevant, and the proposed development is generally consistent with the objectives of the building height control, notwithstanding the numerical variation.*
3. *The proposed development is generally consistent with the objectives of the building height control, notwithstanding the numerical variation.*

Further, strict compliance with the building height control would effectively require the removal of the rooftop clerestory windows, plant and lift overrun in circumstances where the proposed development is compatible with the desired future character of the locality, and will not impose any significant or unreasonable impacts on the visual character of the public domain, or the amenity of surrounding properties.

Further, the portions of the building that extend above the building height control are recessed from the perimeter of the building, and will have limited visibility from any proximate locations.

- 4. The building height control has not specifically been abandoned or destroyed by the Council's actions. Irrespective, the Council has consistently adopted an orderly but flexible approach to the implementation of development standards (including the building height control) in appropriate circumstances, including when the objectives of the standard are achieved, notwithstanding numerical variations.*

In that regard, the Council has approved approximately 98 DA's involving variations to the building height control for the most recent reporting period of January 2019 to June 2022.

Further, the objectives of Clause 4.6 of the LEP includes to provide "an appropriate degree of flexibility in applying certain development standards to particular development".

- 5. The zoning of the land remains relevant and appropriate. Irrespective, strict compliance with the building height control would effectively require the removal of the rooftop clerestory windows, plant and lift overrun in circumstances where the proposed development is compatible with the desired future character of the locality, and will not impose any significant or unreasonable impacts on the visual character of the public domain, or the amenity of surrounding properties.*

Further, the portions of the building that extend above the building height control are recessed from the perimeter of the building, and will not be visible from any proximate locations.

Comment:

The written request has demonstrated that the proposed development conforms to and reflects the existing slope of the land as far as practical. The site falls by approximately 1m from the western side (front boundary) to the eastern side (rear boundary). The building has been designed to respond to the topographical conditions of the site with the level change has been accommodated by providing internal stairs at the ground floor level to ensure the retail floor space is at footpath level along both street frontages.

The shadows cast by the proposed building will predominately fall within the shadows cast by the existing and surrounding buildings to the south, and will otherwise fall over the road carriageways to the east and west, and/or the roof surfaces and rear portions of the surrounding sites to the south that typically accommodate secondary buildings, service areas and car parking facilities.

The written request has demonstrated that reasonable levels of privacy would be maintained for existing residents of the surrounding buildings. The non-complying elements generally relate to the roof form, lift over run and solar panels, and would not have any associated privacy impacts.

The written request demonstrates that the proposed development would be compatible with the surrounding development as the proposed building would fit comfortably within its context. The proposed development is consistent with the desired future character of the Cammeray Town Centre described in the character statement in Part C of NSDCP 2013.

The proposed development also considers the surrounding mixed development context which includes a variety of building typologies. The proposed development is compatible with the streetscape and has an appropriate relationship with the surrounding development notwithstanding the proposed variation.

The written request demonstrates that the proposed development would have an appropriate scale and density, having regard to the character of the surrounding area. The 13m height control anticipates a four storey building. The proposed development, including the non-complying elements is four storeys and the variation is generally limited to the roof form, lift over run and solar panels, and a portion of the overall built form where the land falls away to the east.

The scale and density of the proposed development also would not exceed that anticipated outcome arising from the relevant development controls as the proposed development generally complies with the built form provisions and provides a 4 storey form, and generally complies with the 13 metre building height control.

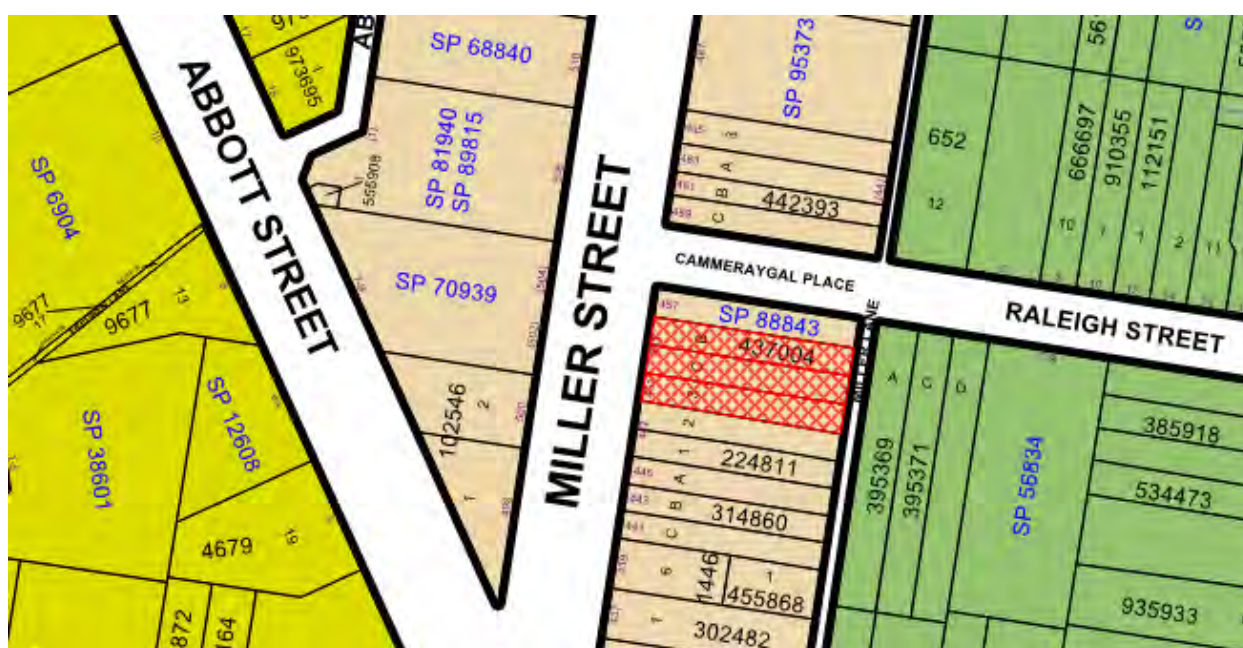


Figure 5: Excerpt of LEP Height Map, site hatched in red. (IFM SISmap)

Sufficient environmental planning grounds

The applicant submits the following to justify the breach:

1. *the proposed building complies with the building height control along the primary elevation to Miller Street;*
2. *the variation to the building height control along the rear elevation to Miller Street is a consequence of the topographical fall of approximately 1 metre, and the need to maintain the retail floor space at the footpath level;*
3. *the variation to the building height control is otherwise limited to rooftop elements that are setback from the perimeter of the building, and will have limited visibility from any proximate locations;*

4. *the proposed development has been carefully designed to provide a high quality mixed-use building, respecting the form of surrounding development, and continuing the emergence of 4- storey “shop top housing” developments in the vicinity of the site, along both sides of Miller Street;*
5. *the proposed development is consistent with the Desired Future Character of the Cammeray Village Centre in terms of providing active retail uses at the ground floor level and three (3) levels of residential apartments above;*
6. *the proposed development will have no significant or adverse impact on any existing public or private views;*
7. *the shadows cast by the proposed building will predominately fall within the shadows cast by the existing and surrounding buildings to the south, and will otherwise fall over the road carriageways to the east and west, and/or the roof surfaces and rear portions of the surrounding sites to the south that typically accommodate secondary buildings, service areas and car parking facilities;*
8. *the residential apartments are orientated towards the east and west, and the side (north and south) facing window openings are limited to bedrooms, studies and amenities, circumstances in which the proposed development will have no significant privacy impacts;*
9. *strict compliance with the building height control would effectively require the removal of the rooftop clerestory windows, plant and lift overrun in circumstances where the proposed development is compatible with the desired future character of the locality, and will not impose any significant or unreasonable impacts on the visual character of the public domain, or the amenity of surrounding properties;*
10. *the portions of the building that extend above the building height control are recessed from the perimeter of the building, and will not be visible from any proximate locations;*
11. *the building form provides horizontal and vertical articulation, and the architectural expression of the building provides a 2-storey podium element at the Miller Street frontage, a setback of 2.5 metres above the podium, and the façade is divided into a series of vertical bays to reflect the finer-grain form of traditional development;*
12. *the proposed development has been carefully designed to achieve a very high standard of architectural presentation to the public domain, with the building designed to address the street frontages, with active uses at the ground floor level, and a refined palette of external materials and finishes;*
13. *the proposed development will promote good design and the amenity of the built environment which is a recently incorporated object of the Act: “(g) to promote good design and amenity of the built environment”;*
14. *the Council has consistently adopted an orderly but flexible approach to the implementation of development standards (including the building height control) in appropriate circumstances, including when the objectives of the standard are achieved, notwithstanding numerical variations;*

15. *the proposed development is consistent with, or not antipathetic to, the relevant objectives of the B1 – Neighbourhood Centre zone; and*

16. *the proposed development is generally consistent with, or not antipathetic to, the objectives of the building height control, notwithstanding the numerical variation.*

Comment:

The environmental planning grounds advanced in the written request are considered to be sufficient to justify the contravention of the development standard in the circumstances of the case. The written request identifies the fall of the land across the site towards the east which is a site specific constraint. the proposed development generally complies with the 13 metre building height control measured to the top of the parapet at the Miller Street frontage of the site.

The bulk and scale of the building when viewed from Miller Street is generally consistent with the building height control, and compatible with the existing and likely future development along both sides of Miller Street.

The development must be in the public interest, by being consistent with the aims of the development standard and the zoning of the site

Objectives of the development standard

As discussed above the proposal is consistent with applicable objectives of the building height standard, despite the breach proposed.

Objectives of the zoning of the land

As quoted from the applicant's submission, the development is consistent with relevant B1 zone objectives:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- *To encourage active street life while maintaining high levels of residential amenity.*
- *To encourage development for the purpose of shop top housing.*

Applicant: *The proposed development is generally consistent with (or not antipathetic to) the objectives of the B1 – Neighbourhood Centre zone on the basis that:*

- *the retail component will serve the needs of people who live or work in the surrounding neighbourhood;*
- *the retail component will active the street frontages and maintain high levels of amenity; and*
- *the proposed development will continue the emergence of “shop top housing” in the locality.*

Further, the proposed development will serve the public interest in terms of contributing to a diverse range of residential and non-residential activities within an established mixed-use precinct.

Comment: The proposed variation is considered to be in the public interest as it has been demonstrated that the proposed development is consistent with the objectives of the zone and the objectives of the development standard as discussed above.

Concluding remarks

The written request to vary the development standard provided by the applicant is considered well founded. The written request demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of the case and that there are sufficient planning grounds to justify the variation. The proposed development is considered to be in the public interest. It is recommended that the variation be supported in these circumstances.

Part 6 – Additional local Provisions

4. Earthworks

A geotechnical report has been submitted which indicates the proposed either complies with or is capable of complying with relevant provisions of cl 6.10 (3) of the LEP:

- (a) *the likely disruption of, or any detrimental effect on—
 - (i) drainage patterns and soil stability in the locality of the development, and
 - (ii) natural features of, and vegetation on, the site and adjoining land,*
- (b) *the effect of the development on the likely future use or redevelopment of the land,*
- (c) *the quality of the fill or the soil to be excavated, or both,*
- (d) *the effect of the development on the existing and likely amenity of adjoining properties,*
- (e) *the source of any fill material and the destination of any excavated material,*
- (f) *the likelihood of disturbing Aboriginal objects or relics,*
- (g) *the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- (h) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

This report's recommendation includes conditions to ensure the recommendations of the submitted geotechnical report are complied with.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

The proposal has been assessment in accordance with requirements of the DCP relevant to the Cammeray Town Centre, including section 4.1 – of Part C – Area Character Statements – Cammeray Planning Area.

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 2- Commercial and Mixed-Use Development		
	<i>complies</i>	<i>Comments</i>
2.2 Function		
Diversity of Activities	Yes	The proposal would ensure diversity of activities within the zone with retail on the ground floor and residential uses on the upper levels.

Maximise Use of Public Transport	Yes	The site is close to public transport facilities with regular bus services along Miller Street. The total number of car parking spaces does not exceed the requirements of Section 10 of NSDCP 2013.
Mixed Residential Population	Yes	The dwelling mix is consistent with the DCP controls as it provides three dwelling types. This development provides apartments within walking distance of shops, employment, public transport, recreational, educational and health services. Two (2) units have been designed to be adaptable dwellings, which satisfies the requirements of the North Sydney DCP.
2.3 Environmental Criteria		
Noise	Yes	The proposed development is unlikely to generate excessive noise.
Reflectivity	Yes	The external facades provide an appropriate balance between solid and glazed elements, and non-reflective materials will be used throughout.
Awnings	yes	A continuous awning is proposed along the retail frontage to Miller Street, consistent with the character statement for the Cammeray Village Centre.
Solar Access	Yes	Solar and sunlight access performance of the building is satisfactory.
Views	Yes	The proposal would not cause significant view loss from nearby properties.
Acoustic Privacy	Yes	There being adjacent residential development, conditions are recommended to manage potentially unacceptable sounds levels being emitted from the development.
Visual Privacy	Yes	No significant impacts are anticipated, The siting and design of openings and balconies is satisfactory in terms of visual privacy within the development also externally.
2.4 Quality built form		
Context	Yes	The design of the proposed mixed-use building is generally in context with surrounding development.
Site Consolidation	Yes	The Cammeray Village Centre character statement does not specify a minimum lot frontage.
Setbacks – Side & Rear	yes	The Cammeray Village Centre character statement specifies 2-storey podiums at the street frontage with a setback of 2.5 metres above the podium, and the proposed development complies with the setback requirements. Further, the proposed development extends to the side boundaries to reflect the existing and desired future character of the locality.
Building Design	Yes	Floor to floor heights are consistent with DCP requirements.
Skyline	Yes	Satisfactory.
Streetscape	Yes	The design of the building and the treatment of the building façades are considered to be acceptable and would make a positive contribution to the streetscape. The proposal provides ground level uses that activate Miller Street and residential access is provided from the Miller Street frontage. The residential units will provide additional surveillance to the area, including the rear laneway.

Entrances and Exits	Yes	Entrances and exits to the building are directly visible and clearly identifiable from the public domain and have clear sight lines. They are unobscured by landscaping or other obstructions.
Nighttime appearance	Yes	The ground floor commercial/retail use and the building entrances would enhance the visual interest and night time appearance of the proposed development.
2.5 Quality Urban Environment		
Accessibility	Yes	The proposed development, including the ground floor commercial/retail tenancy and the apartment unit, are accessible. Furthermore, two apartment units are designed to be adaptable for people with disabilities.
Safety and Security Illumination	Yes	The design of the proposal has considered personal safety and security with secured access and lighting for the building entrance.
High Quality Residential Accommodation	Yes	The proposal ensures that 75% of the apartments will achieve a minimum of 2 hours sunlight to a portion of the private open space between 9am and 3pm in mid-winter.
Private Open Space	No – Demonstrates merit	Level 1 studio apartment areas are not provided with external balconies due to the proximity to Miller Street and subsequent potential for road noise. The amended design provides for an operable window across the front of the unit overlooking an introduced planter box. A minimum of 4m ² space has been added to each minimum 35m ² studio area. Primary balconies and terraces on the remaining apartments comply with the required minimum area and minimum depth.
Vehicular Access	Yes	Vehicle access to the site will be provided via Miller Lane. Conditions are recommended for compliance with relevant Australian Standards.
Car Parking	Yes	Subject to conditions of consent, the proposal complies with relevant DCP provisions for car and bicycle parking.
Waste Management	Yes	Communal on-site waste storage areas are provided, and waste will be transferred to/from the storage area for collection. Separate waste storage rooms are provided for the residential and non-residential components. The garbage facilities are designed and will be constructed in accordance with Council's Waste Facility Guide.
Site Facilities	Yes	Storage areas have been proposed within the basement to provide additional storage capacity for residents.
2.6 Efficient Use of Resources		
Energy Efficiency	Yes	The application is accompanied by a compliant BASIX Certificate.
Natural Ventilation	Yes	The proposal would achieve a reasonable level of natural ventilation.
Stormwater Management	Yes	Council's Development Engineer has raised no objection to the proposal subject to the imposition appropriate conditions for stormwater management.
Building Materials	Yes	The proposed finishes and materials as submitted with the plans are acceptable, from a sustainability perspective.

Cammeray Planning Area (Cammeray Village Centre)

The proposal is generally consistent with the desired character for Cammeray, as expressed by the DCP. The proposed shop top housing development is generally consistent with the desired character for development along Miller Street. The design of the proposed building is also consistent with the desired built form within the village centre in terms of bulk/scale, setbacks, height and car parking arrangements.

LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The proposed development would increase the number of residents within the locality and therefore a contribution levied under Section 7.11 the Act is required in accordance with Council's Infrastructure Contributions Plan 2020.

s7.11 contribution

Open space and recreation facilities:	\$74,826.20
Public domain:	\$39,385.12
Active transport:	\$2,247.98
Community facilities:	\$15,029.18
Plan administration and management:	\$1,965.46
Total:	\$133,453.94

The total contribution payable is \$133,453.94. A condition is recommended requiring payment prior to the issue of any Construction Certificate.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

All likely impacts of the proposed development have been considered within the context of this report.

ENVIRONMENTAL APPRAISAL	CONSIDERED
1. Statutory Controls	Yes
2. Policy Controls	Yes
3. Design in relation to existing building and natural environment	Yes
4. Landscaping/Open Space Provision	Yes
5. Traffic generation and Carparking provision	Yes
6. Loading and Servicing facilities	Yes
7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8. Site Management Issues	Yes

- | | | |
|----|---|-----|
| 9. | All relevant s. 4.15 (1) considerations of Environmental Planning and Assessment (Amendment) Act 1979 | Yes |
|----|---|-----|

SUBMITTERS CONCERNS

The application was notified to adjoining properties and the Plateau/Bridgeview Precinct seeking comment between 2 September 2022 and 16 September 2022. Council received twenty six (26) submissions.

Many of the issues raised have been considered in other parts of this report and where relevant are addressed below.

- *Impact of demolition, excavation, and construction*

Condition of consent are recommended to ensure there is no adverse impact during demolition, excavation, and construction.

- *Block outlook*

Concerns were raised from the adjoining development to the west of the subject site that the proposal will block the outlook to the east. There are no significant views obtained from these apartments. The proposal largely complies with the controls applicable to the site and where a variation is proposed it has been demonstrated that the development will not have an unreasonable impact.

- *Retention of existing facade and the building should be heritage listed*

The existing buildings have not been identified as having heritage significance, neither has any evidence be provided to substantiate this claim. The proposed development allows for re-development of the site to achieve a high standard of architectural presentation to the public domain, with the building designed to address the street frontages. Further the application proposed to reinstate the appearance of the front façade.

- *Traffic, noise, and safety*

The proposed development has 12 parking spaces and complies with the maximum permitted parking rates in Section 10.2 of Part B in NSDCP 2013. The additional dwellings on the site is unlikely to give rise to and significant additional congestion. Conditions are provided to address construction traffic safety and noise management. Council's Traffic Engineers raise no objection to the number of parking spaces or trip demand associated with the number of apartments.

- *Reduction in property prices*

No evidence was submitted to substantiate this claim.

SUITABILITY OF THE SITE

The site is in a B1 Neighbourhood Centre zone where shop top housing is a permissible form of development. Consequently, the proposal is considered to be suitable for the site having regard to the merits of the proposal as described in the above report.

PUBLIC INTEREST

There are no matters raised in which approval of the application would not be in the public interest.

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

The application was notified in accordance with Council Community Engagement Protocol from 2 September 2022 to 16 September 2022. The submissions received in part informed the amended plans which included the reconstruction of the front façade to match the existing streetscape character.

CONCLUSION + REASONS

The proposed development was considered under the relevant Environmental Planning Instruments and policies including NSLEP 2013 and NSDCP 2013 and generally found to be satisfactory, subject to the satisfaction of recommended conditions of consent.

The proposed development is considered satisfactory when evaluated in accordance with the design quality principles in SEPP 65 – Design Quality of Residential Apartment Development. The proposed development also performs well against the objectives of the ADG.

The written requests made pursuant to Clause 4.6 *Departure to development standards* in NSLEP 2013 demonstrates that compliance with the development standard is both unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the variation. Approval of the variation would be in the public interest.

Notification of the proposal has attracted twenty six (26) submissions and the assessment of the proposal has considered the performance of the application against Council's planning requirements. Any substantive points raised by the submissions have been addressed/clarified in the section above (refer to Submitters Concerns).

Subject to the satisfaction of conditions, it is considered that the proposal is acceptable as it will not result in any significant adverse impacts upon the locality or surrounding properties, and the quality of the streetscape are maintained. The proposed development will also not result in any unreasonable impacts to the amenity of adjoining properties including impacts to views, overshadowing or loss of privacy.

Having regard for the potential impacts upon the amenity of adjoining properties and the unique context of the site, subject to conditions, the development application is considered to be satisfactory and is recommended for approval.

The assessment of the proposed development has considered the concerns raised in the submissions as well as the performance of the application against Council's planning requirements. Following this assessment, and having regard to the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended), the application recommended for **approval** given the consistency to the objectives and controls within the North Sydney Local Environmental Plan and Development Control Plan 2013, and lack of material adverse impacts on the redevelopment of the adjoining properties.

RECOMMENDATION

THAT the North Sydney Local Planning Panel, exercising the functions of Council, assume the concurrence of the Secretary of The Department of Planning and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with Clause 4.3, and grant consent to Development Application No. 248/22 for the demolition of existing buildings, and construction of a new mixed-use development of 11 apartments, one (1) retail and associated basement, landscaping and development works on Land at 451-455 Miller Street, Cammeray, subject to the attached conditions.



DAMON KENNY
EXECUTIVE ASSESSMENT PLANNER

STEPHEN BEATTIE
MANAGER DEVELOPMENT SERVICES

NORTH SYDNEY COUNCIL
CONDITIONS OF DEVELOPMENT APPROVAL
451-455 MILLER STREET, CAMMERAY
DEVELOPMENT APPLICATION NO. 248/22

A. Conditions that Identify Approved Plans

Development in Accordance with Plans/Documentation

- A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

Plan No.	Rev No.	Description	Prepared by	Dated
101	B	Site Plan	PA Studio	05.12.2022
102	B	Lower Basement & Basement Floor Plan	PA Studio	05.12.2022
103	B	Ground Floor & First Floor Plans	PA Studio	05.12.2022
104	B	Second Floor & Third Floor Plans	PA Studio	05.12.2022
105	B	Roof Plan	PA Studio	05.12.2022
201	B	Sections S-01 & S-02	PA Studio	05.12.2022
202	B	Sections S-03 & S-04	PA Studio	05.12.2022
301	B	Elevations West and North	PA Studio	05.12.2022
302	B	Elevations East and South	PA Studio	05.12.2022
401	B	Schedule of Finishes	PA Studio	05.12.2022
402	A	Demolition & Excavation Plan	PA Studio	28.07.2022
403	A	Adaptable Unit Plans (U105 & 204)	PA Studio	28.07.2022
501	B	Landscape Plan	PA Studio	05.12.2022
36305-02/10	A	Basement Plan	ING Consulting Engineers Pty Ltd	27 June 2022
36305-03/10	A	Lower Basement Plan	ING Consulting Engineers Pty Ltd	27 June 2022
36305-04/10	A	Ground Floor Plan	ING Consulting Engineers Pty Ltd	27 June 2022
36305-05/10	A	Floors and Roof Plan	ING Consulting Engineers Pty Ltd	27 June 2022
36305-06/10	A	Site Plan	ING Consulting Engineers Pty Ltd	27 June 2022
36305-07/10	A	Pipe Longitudinal Section	ING Consulting Engineers Pty Ltd	27 June 2022
36305-08/10	A	Notes & Details	ING Consulting Engineers Pty Ltd	27 June 2022
36305-09/10	A	Notes & Details 2	ING Consulting Engineers Pty Ltd	27 June 2022
36305-10/10	A	Notes & Details 3	ING Consulting Engineers Pty Ltd	27 June 2022

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

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Plans on Site

- A2. A copy of all stamped approved plans, specifications and documents (including the plans, specifications and documents submitted and approved with the Construction Certificate) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

All documents kept on site in accordance with this condition must be provided to any officer of the Council or the certifying authority upon their request.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information and to ensure ongoing compliance)

B. *Matters to be Completed before the lodgement of an Application for a Construction Certificate***Construction Management Program – North Sydney Local Traffic & Transport Operations Approval**

- B1. A Construction Management Program prepared by a suitably qualified and experienced traffic consultant must be submitted for consideration by the North Sydney Traffic Committee and approved in writing by North Sydney Council's Traffic Division PRIOR TO THE ISSUE OF ANY Construction Certificate. Any use of Council property will require appropriate approvals prior to any work commencing. At a minimum, the Construction Management Program must specifically address the following matters:
- a) A plan view (min 1:100 scale) of the entire site and frontage roadways indicating:
 - i. Dedicated temporary construction site driveway entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways and footways;
 - ii. The proposed signage for pedestrian management to comply with the relevant Australian Standards, including pram ramps;
 - iii. Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site;
 - iv. The locations of any proposed Work Zones in the frontage roadways (to be approved by Council's Traffic Committee);
 - v. Locations of hoardings proposed;
 - vi. Location of any proposed crane standing areas;
 - vii. A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
 - viii. Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected; and
 - ix. The provision of an on-site parking area for employees, tradesperson and construction vehicles as far as possible.

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- b) A detailed heavy vehicle access route map through the Council area to Arterial Roads. Provision is to be made to ensure through traffic is maintained at all times.
- c) The proposed phases of works on the site, and the expected duration of each phase.
- d) How access to neighbouring properties will be maintained at all times and the proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of process.
- e) The road is not to be used as a waiting area for trucks delivering to or awaiting pick up of materials.
- f) 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 and must not involve any permanent or temporary encroachment onto Council's property.
- g) Proposed protection for Council and adjoining properties. Details are to include site fencing and the provision of "B" class hoardings over footpaths and laneways.
- h) A Waste Management Plan. The Waste Management Plan must include, but not be limited to, the estimated volume of waste and method of disposal for the construction and operation phases of the development, design of on-site waste storage and recycling area and administrative arrangements for waste and recycling management during the construction process.

All traffic control work and excavation, demolition and construction activities must be undertaken in accordance with the approved Construction Management Program and any conditions attached to the approved Program. A certificate of compliance with this condition must be obtained from Council's development engineers. The certificate and the approved Construction Management Program must be submitted as part of the documentation lodged with the application for approval of a construction certificate. A copy of the approved Construction Management Program and any conditions imposed on that Program, must be kept on the site at all times and made available to any officer of Council upon request.

Notes:

- 1) North Sydney Council's adopted fee for certification of compliance with this condition shall be payable on lodgement, or in any event, prior to the issue of the relevant approval.
- 2) Any use of Council property will require appropriate approvals and demonstration of liability insurances prior to such work commencing.
- 3) Failure to provide complete and detailed information may result in delays. It is recommended that your Construction Management Plan be lodged with Council as early as possible, as a **minimum six (6) weeks' assessment period** is required, including referral to the Traffic Committee.

- 4) Dependent on the circumstances of the site, Council may request additional information to that detailed above.

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

C. *Prior to the Issue of a Construction Certificate (and ongoing, where indicated)*

Dilapidation Report Damage to Public Infrastructure

- C1. A dilapidation survey and report (including photographic record) must be prepared by a suitably qualified consultant which details the pre-developed condition of the existing public infrastructure in the vicinity of the development site. Particular attention must be paid to accurately recording any pre-developed damaged areas so that Council is fully informed when assessing any damage to public infrastructure caused as a result of the development. A copy of the dilapidation survey and report is to be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The developer may be held liable for all damage to public infrastructure in the vicinity of the site, where such damage is not accurately recorded and demonstrated as pre-existing under the requirements of this condition.

The developer shall bear the cost of carrying out works to restore all public infrastructure damaged as a result of the carrying out of the development, and no occupation of the development shall occur until damage caused as a result of the carrying out of the development is rectified.

A copy of the dilapidation survey and report must be lodged with North Sydney Council by the Certifying Authority with submission of the Construction Certificate documentation.

(Reason: To record the condition of public infrastructure prior to the commencement of construction)

Dilapidation Report Private Property (Excavation)

- C2. A full dilapidation survey and report on the visible and structural condition of all neighbouring structures within the 'zone of influence' of the required excavations must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The zone of influence is to be defined as the horizontal distance from the edge of the excavation face to twice the excavation depth.

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The dilapidation report and survey are to be prepared by a consulting structural/geotechnical engineer agreed to by both the applicant and the owner of any affected adjoining property.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant **MUST DEMONSTRATE**, in writing, to the satisfaction of Council that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record keeping purposes only and may be used by the developer or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

(Reason: To record the condition of property/i.e., prior to the commencement of construction)

Dilapidation Survey Private Property (Neighbouring Buildings)

- C3. A photographic survey and dilapidation report of adjoining properties Nos. 447 Miller Street, 449 Miller Street and 457 Miller Street detailing the physical condition of those properties, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items, **SHALL BE** submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The survey and report are to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Certifying Authority, prior to the issue of any Construction Certificate.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the photographic survey and dilapidation report is denied by an adjoining owner, the applicant **MUST DEMONSTRATE**, in writing, to the satisfaction of Council that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written concurrence must be obtained from Council in such circumstances.

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Note: This documentation is for record keeping purposes only and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

(Reason: Proper management of records)

Shoring for Adjoining Property

- C4. Where any shoring for excavation is to be located on or is supporting Council's property, or any adjoining private property, engineering drawings certified as being adequate for their intended purpose by an appropriately qualified and practising structural engineer, showing all details, including the extent of encroachment and the method of removal and de-stressing of shoring elements, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. A copy of this documentation must be provided to the Council for record purposes.

Note: Approval of engineering drawings for shoring works to be located on adjoining property by the Certifying Authority does not authorise a trespass on private or public land. All relevant permissions/legal rights must be obtained to undertake any works on adjoining land.

(Reason: To ensure the protection of existing public infrastructure and adjoining properties)

Structural Adequacy of Adjoining Properties - Excavation Works

- C5. A report prepared by an appropriately qualified and practising structural engineer detailing the structural adequacy of adjoining property Nos. 447 Miller Street, 449 Miller Street and 457 Miller Street, which certifies their ability to withstand the proposed excavation and outlines any measures required to be implemented to ensure that no damage will occur to adjoining properties during the course of the works, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The measures outlined in the certified report must be complied with at all times.

(Reason: To ensure the protection and structural integrity of adjoining properties in close proximity during excavation works)

Structural Adequacy (Semi-detached and Terrace Buildings)

- C6. A report from an appropriately qualified and practising structural engineer, certifying the structural adequacy of the adjoining property Nos. 449 Miller Street and 457 Miller Street which certifies their ability to withstand the proposed works and outlines any measures required to be implemented to ensure that no damage will occur to adjoining premises during the course of the works, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The measures outlined in the certified report must be complied with at all times.

Under no circumstances shall the party or common wall be extended or altered without the prior written consent of the adjoining owner. Any such extension of the party wall shall be noted on title by way of appropriate easement or Section 88B instrument.

(Reason: To ensure the protection and structural integrity of adjoining properties, and that common law property rights are recognised)

Geotechnical Report

- C7. Prior to issue of any Construction Certificate a Geotechnical/Civil Engineering report must be prepared which addresses at a minimum (but is not limited to) the following:
- a) the type and extent of substrata formations by the provision of a minimum of four (4) representative bore hole logs which are to provide a full description of all material from ground surface to 1.0 m below the finished basement floor level and include the location and description of any anomalies encountered in the profile. The surface and depth of the bore hole logs must be related to Australian Height Datum;
 - b) the appropriate means of excavation/shoring in light of point (a) above and proximity to adjacent property and structures. Potential vibration caused by method of excavation and potential settlements affecting nearby footings/foundations must be discussed and mechanisms to ameliorate any such impacts recommended;
 - c) the proposed method to temporarily and permanently support the excavation for the basement adjacent to adjoining property, structures and road reserve if nearby (full support must be provided within the subject site);
 - d) the existing groundwater levels in relation to the basement structure, where influenced;

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- e) the drawdown effects on adjacent properties (including road reserve), if any, the basement excavation will have on groundwater together with the appropriate construction methods to be utilised in controlling groundwater. Where it is considered there is the potential for the development to create a “dam” for natural groundwater flows, a groundwater drainage system must be designed to transfer groundwater through or under the proposed development without a change in the range of the natural groundwater level fluctuations. Where an impediment to the natural flow path is constructed, artificial drains such as perimeter drains and through drainage may be utilised; and
- f) recommendations to allow the satisfactory implementation of the works. An implementation program is to be prepared along with a suitable monitoring program including control levels for vibration, shoring support, ground level and groundwater level movements during construction. The implementation program is to nominate suitable hold points at the various stages of the works for verification of the design intent before sign-off and before proceeding with subsequent stages.

The geotechnical report must be prepared by an appropriately qualified consulting geotechnical/hydrogeological engineer with previous experience in such investigations and reporting.

It is the responsibility of the consulting geotechnical/hydrological specialist to undertake the appropriate investigations, reporting and specialist recommendations to ensure a reasonable level of protection to adjacent property and structures both during and after construction. The report must contain site-specific geotechnical recommendations and shall specify the necessary hold/inspection points by relevant professionals as appropriate.

The design principles for the geotechnical report are as follows:

- a) no ground settlement or movement is to be induced which is sufficient enough to cause an adverse impact to adjoining property and/or infrastructure;
- b) no changes to the ground water level are to occur as a result of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;
- c) no changes to the ground water level are to occur during the construction of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;
- d) vibration is to be minimised or eliminated to ensure no adverse impact on the surrounding property and infrastructure occurs, as a result of the construction of the development;

- e) appropriate support and retention systems are to be recommended and suitable designs prepared to allow the proposed development to comply with these Design Principles; and
- f) an adverse impact can be assumed to be crack damage as identified within the relevant Australian Standard for determining such damage.

The report, satisfying the requirements of this condition, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The professional recommendations, implementation program, monitoring program, mitigation measures and the like contained in the report must be implemented in full during the relevant stages of excavation and construction.

(Reason: To ensure the structural integrity of the subject site and adjoining sites during the excavation process)

Sediment Control

- C8. Where construction or excavation activity requires the disturbance of the soil surface or existing vegetation, erosion and sediment control techniques, as a minimum, are to be in accordance with the publication *Managing Urban Stormwater: Soils and Construction* (4th edition, Landcom, 2004) commonly referred to as the "Blue Book" or a suitable and effective alternative method.

A Sediment Control Plan must be prepared and submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate and prior to any works commencing. The Sediment Control Plan must be consistent with the Blue Book and disclose:

- a) All details of drainage to protect and drain the site during the construction processes;
- b) All sediment control devices, barriers and the like;
- c) Sedimentation tanks, ponds or the like;
- d) Covering materials and methods; and
- e) A schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.
- f) Methods for the temporary and controlled disposal of stormwater during construction.

All works must be undertaken in accordance with the approved Sediment Control plan. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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

Waste Management Plan

C9. A Waste Management Plan is to be submitted for approval by the Certifying Authority prior to the issue of any Construction Certificate. The plan must include, but not be limited to:

- a) The estimated volume of waste and method of disposal for the construction and operation phases of the development;
- b) The design of the on-site waste storage and recycling area; and
- c) Administrative arrangements for waste and recycling management during the construction process.

The approved Waste Management Plan must be complied with at all times in the carrying out of the development.

(Reason: To encourage the minimisation of waste and recycling of building waste)

External Finishes and Materials

C10. The external colours and finishes must be in accordance with the approved schedule of finishes and materials. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure quality built form of development)

No External Service Ducts

C11. Service ducts must be provided within the building to keep external walls free of plumbing, drainage or any other utility installations. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure quality built form of the development)

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Work Zone

- C12. If a Work Zone is proposed, an application must be made to the North Sydney Local Traffic Committee to install the 'Work Zone'. A Work Zone permit is required to be issued by the Council prior to the issue of any Construction Certificate.

Work Zones are provided specifically for the set down and pick up of materials and not for the parking of private vehicles associated with the site. Work Zones will generally not be approved where there is sufficient space on-site for the setting down and picking up of goods being taken to or from a construction site. If the Work Zone is approved by the Committee, the Applicant must obtain a written copy of the related resolution from the North Sydney Local Traffic Committee and submit a copy of this to the Certifying Authority to enable issue of the Construction Certificate.

Where approval of the 'Work Zone' is given by the Committee, the requirements of the Committee, including installation of the necessary 'Work Zone' signage and payment of any fees, must occur prior to commencement of any works on the site. Further, at the expiration of the Work Zone approval, the developer is required to remove the Work Zone signs and reinstate any previous signs, all at the developer's cost. The requirements imposed by the Committee on the Work Zone permit (or permits) must be complied with at all times.

(Reason: Amenity and convenience during construction)

Maintain Property Boundary Alignment Levels

- C13. Except where otherwise approved by Council, the property boundary alignment levels must match the levels which existed prior to the commencement of works. Plans and specifications which document existing and proposed levels adjacent to the site boundaries and which comply with the requirements of this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure interface between property and public land remains uniform)

Basement Car Park to Comply with Relevant Standards

- C14. The basement layout must comply with all requirements of Australian Standard AS2890.1. Certification from a suitably qualified and practicing Civil Engineer that the basement design will comply with the requirements of the Australian Standard must be provided to the Certifying Authority for approval prior to issue of any Construction Certificate.

(Reason: To ensure the basement layout complies with relevant standards)

Required Infrastructure Works - Roads Act 1993

C15. Prior to issue of any Construction Certificate engineering design plans and specifications must be prepared by a qualified civil design engineer. An application must be made to Council on the "To Satisfy DA Consent condition" application form with payment of the adopted assessment/inspection fees. The plans and specifications must be to a detail suitable for construction issue purposes and must provide detail and specification for the following infrastructure works to be completed as part of the development:

Road Works

- a) construction of a fully new replacement pavers footpath is required across the entire site frontage in Miller Street as per the North Sydney Council Public Domain Style Manual.
- b) For Miller Lane, it expands from North Boundary to the existing pit along the proposed drainage line. A longitudinal section is required along the footpath property boundary at a scale of 1:50 extending 5m past the property boundary line. The footpath shall be designed (at a single straight grade of 3% falling to the top of the kerb) so that it is uniform without showing signs of dipping or rising particularly at entrances.
- c) Kerb and gutter in Miller Street are in satisfactory condition, no works are required until and unless damaged during development works.
- d) For Miller Lane, new Kerb and Gutter are to be constructed from North Boundary to the existing pit along the proposed drainage line except where new layback is to be built for vehicular access to the subject site and where there is vehicular access to existing properties. A longitudinal section is required along the gutter line (existing and proposed levels), at a scale of 1:50 extending 5m past the property boundary line.
- e) the works will require reconstruction of the carriageway shoulder extending out 600mm from the gutter lip in AC10 - 50mm thick, adjacent to all new gutter works, layback, kerb/gutter
- f) cross sections at a scale of 1:50 along the centreline of each access point to the building must be provided and are to show the calculated clearance to the underside of any overhead structure. All the entry points are to comply with the Building Code of Australia (BCA), including disability requirements. The Council-approved footpath levels must be accommodated at the building entry points.

Drainage Works

Connection of the site stormwater system must be made directly to a proposed new grated gully pit (with lintel), in front of the site on Miller Lane. To accommodate this requirement, the following drainage infrastructure works must be carried out on Council property at the Applicants expense: -

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- a) construction of a standard grated gully pit with extended kerb inlet (1.8m lintel) in the kerb fronting the subject site in Miller Lane. The pit must be constructed in accordance with Council's "Infrastructure Specification for Roadworks, Drainage and Miscellaneous Works".
- b) construction of a new in-ground drainage line under the kerb and gutter at standard depth. The line must connect the new gully pit to the existing Council pit located downstream of the site in Miller Lane. The pipes within the road reserve are to be reinforced concrete class 2 with a minimum 375mm diameter and have bedding in accordance with Australian Standard AS 3725 – (Loads on buried concrete pipes). The developer shall be responsible for carrying out any service investigations to allow a gravity connection.

Certifying Authorities must not issue a Construction Certificate without the formal written approval of the Council (as Roads Authority) under the Roads Act 1993.

The required plans and specifications are to be designed in accordance with North Sydney Council's current documents Infrastructure Specification for Road Works, Drainage and Miscellaneous Works and Performance Guide for Engineering Design and Construction. The drawings must detail existing utility services and trees affected by the works, erosion control requirements and traffic management requirements during the course of works. A detailed survey must be undertaken as required. Traffic management is to be certified on the drawings as being in accordance with the documents SAA HB81.1 – 1996 – Field Guide for Traffic Control at Works on Roads – Part 1 and RMS Traffic Control at Work Sites (1998). **Construction of the works must proceed only in accordance with any conditions attached to the Council Roads Act 1993 approval.**

Note: A minimum of 21 days will be required for Council to assess Roads Act submissions. Early submission is recommended to avoid any delays in obtaining a Construction Certificate. A fee to cover the cost of assessment (set out in the Council's adopted fees and charges) is payable and Council will withhold any consent and approved plans until full payment of the correct fees. Plans and specifications must be marked to the attention of the Council's Development Engineers. In addition, a copy of this condition must be provided, together with a covering letter stating the full address of the property and the accompanying DA number.

(Reason: To ensure infrastructure works are designed and constructed to appropriate standards and requirements of the Roads Act 1993)

Obtain Driveway Crossing Permit under S.138 Roads Act 1993 C32.

C16. A driveway crossing and road infrastructure works permit to suit the approved off-street parking facilities must be granted by the Council prior to the issue of any Construction Certificate. In order to obtain a permit under S.138 of the Roads Act 1993, an application must be made to Council on the 'Vehicular Access Application' form with payment of the adopted assessment/inspection fees. Council will require civil design construction drawings and certification from the applicant's Civil Engineer to verify design details and enable the issue of the permit. The requirements of the permit must be complied with at all times.

The civil design drawings must include the following at a minimum:

- a) the vehicular access way must comply with AS 2890.1 and Council's current Vehicular Access Application Guidelines and Specification (gutter bridges not permitted) to ensure that a B85 vehicle will not scrape/strike the surface of the carriageway, layback, vehicular crossing or parking floor,
- b) the redundant layback crossing must be reinstated as a kerb gutter and footpath,
- c) the width of the vehicular layback must be 6 metres (including the wings),
- d) the vehicular crossover must be set square to the kerb,
- e) the crossing (between the layback and the property boundary) must be placed on a single straight grade of approximately 4.5%, falling to the back of the layback,
- f) the gutter levels must match the existing levels and shall not be altered,
- g) the footpath, kerb gutter, and road shoulder must be transitioned 1m on both sides of the crossing to ensure uniformity in the road reserve,
- h) the works will require reconstruction of the carriageway shoulder extending out 600mm from the gutter lip in AC10 - 50mm thick, adjacent to all new gutter works, layback, kerb/gutter,
- i) any twisting of driveway access must occur entirely within the subject property,
- j) all inspection openings, and utility services must be adjusted to match the proposed driveway levels,
- k) sections along the centreline and extremities are required at a scale of 1:50 to be taken from the centreline of the roadway through to the parking area itself and must include all changes of grade and levels both existing and proposed,
- l) a longitudinal section along the gutter line at a scale of 1:50 showing how it is intended to blend the vehicular crossing with the existing kerb and gutter,

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- m) a longitudinal section along the footpath property boundary at a scale of 1:50 is required,
- n) the sections must show the calculated clearance to the underside of any overhead structure,
- o) all details of internal ramps between parking levels, and
- p) a swept path analysis is required to demonstrate that an 85th percentile vehicle can manoeuvre in and out of the garage spaces in accordance with AS 2890.1 2004 "Off Street Parking".

The permit must be granted by Council prior to the issue of any Construction Certificate.

All driveway and infrastructure work on the road reserve must be undertaken in accordance with the terms of the permit issued by the Council. Inspections by Council will be required as specified. The Certifying Authority issuing the Construction Certificate must ensure that the permit issued by Council is obtained and referenced on and accompanies the Construction Certificate issued.

(Reason: To facilitate appropriate vehicular access to private sites, without disruption to pedestrian and vehicular traffic)

Stormwater Management and Disposal Design Plan – Construction Issue Detail C37.

- C17. Prior to the issue of any Construction Certificate, a site drainage management plan must be prepared by a qualified drainage design engineer. The site drainage management plan must detail the following requirements of North Sydney Council:
- a) compliance with BCA drainage requirements, Councils Engineering Performance guide and current Australian Standards and guidelines, such as AS/NZ3500.3.2 1998, National Plumbing and Drainage Code,
 - b) stormwater runoff and subsoil drainage generated by the approved development must be conveyed in a controlled manner by gravity to an existing pit in Miller Lane.
 - c) the stormwater drainage system shall be designed for an average recurrence interval (A.R.I) of 1 in 20 years,
 - d) all redundant stormwater pipelines within the footpath area shall be removed and the footpath and kerb shall be reinstated,
 - e) pipelines within the footpath area shall be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0 millimetres and a section height of 100 millimetres,

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- f) the design and installation of the rainwater tank(s) must comply with BASIX and Sydney Water requirements. Overflow from the tank(s) shall be connected by gravity to the stormwater disposal system,
- g) any proposed fence/building structure is to be constructed so as not to impede the natural overland flow, and
- h) provision is to be made for the collection and disposal in an approved manner of any overland flow entering the subject property or concentrated as a result of the proposed works,
- i) surface inlet pits shall be located to catch surface flows and shall be provided at all pipe junctions, changes in pipe direction exceeding 45 degrees, prior to connection to the public drainage system and shall be of sufficient size to accept the flow,
- j) all sub-soil seepage drainage shall be discharged via a suitable silt arrester pit. Details of all plans certified as being adequate for their intended purpose and compliant with the provisions of AS3500.3.2 by an appropriately qualified and practising civil engineer shall be submitted with the application for a Construction Certificate,
- k) prevent any stormwater egress into adjacent properties by creating physical barriers and surface drainage interception,
- l) provide subsoil drainage to all necessary areas with pump-out facilities as required.

A site drainage management plan which complies with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure controlled stormwater management and disposal without nuisance)

On-site Stormwater Detention

- C18. On site detention must be provided to ensure that the maximum discharge of stormwater collected from the undeveloped site, which would occur during a one-in-five-year storm of one-hour duration is not exceeded. All other stormwater run-off from the site for all storms up to a one-in-twenty-year storm event is to be retained on the site for gradual release to the kerb and gutter or piped drainage system. Provision is to be made for satisfactory overland flow should a storm in excess of the above parameters occur.

For small areas up to 0.5 hectares, determination of the require cumulative storage may be calculated by the mass curve technique as detailed in Technical Note 1, Chapter 14 of the Australian Rainfall and Runoff Volume 1, 1987 Edition.

Engineering calculations, design and certification complying with this condition must be provided by an appropriately qualified and practising Civil Engineer and submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

(Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure that public infrastructure in Council's care and control is not overloaded)

Pump-out System Design for Stormwater Disposal

C19. The design of the pump-out system for stormwater disposal will be permitted for drainage of basement areas only, and must be designed in accordance with the following criteria:

- a) the pump system shall consist of two pumps, connected in parallel, with each pump being capable of emptying the holding tank at the rate equal to the rate of inflow for the one-hour duration storm. The holding tank shall be capable of holding one hour's runoff from a one-hour duration storm of the one-in-twenty-year storm;
- b) the pump system shall be regularly maintained and serviced, every six (6) months; and
- c) any drainage disposal to the street gutter from a pump system, must have a stilling sump provided at the property line, connected to the street gutter by a suitable gravity line.

Engineering details demonstrating compliance with these criteria and certified by an appropriately qualified and practising civil engineer shall be provided to the Certifying Authority for approval prior to the issue of any Construction Certificate.

(Reason: To ensure adequate provision is made for the discharge of sub-surface stormwater from the excavated parts of the site)

Bond for Damage and Completion of Infrastructure Works - Stormwater, Kerb and Gutter, Footpaths, Vehicular Crossing and Road Pavement

C20. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$70,000.00 to be held by Council for the payment of cost for any/all of the following:

- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates,

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- b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with this consent.
- c) remedying any defects in any such public work that arise within six months after the work is completed.

The security required by this condition and in the schedule contained later in these conditions must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

The security will be refundable following the expiration of six months from the issue of any final Occupation Certificate or completion of public work required to be completed (whichever is the latest) but only upon inspection and release by Council's Engineers.

Council shall have full authority to make use of the bond for such restoration works as deemed necessary by Council in circumstances including the following:

- where the damage constitutes a hazard in which case Council may make use of the security immediately;
- the applicant has not repaired or commenced repairing damage within 48 hours of the issue by Council in writing of instructions to undertake such repairs or works;
- works in the public road associated with the development are to an unacceptable quality; and
- the Certifying Authority must ensure that security is provided to North Sydney Council prior to issue of any Construction Certificate.

(Reason: To ensure appropriate security for works on public land and an appropriate quality for new public infrastructure)

Tree Bond for Public Trees

- C21. Prior to the issue of any construction certificate, security in the sum of \$26,000.00 must be provided to Council for the protection of trees in public places, including the making good of any damage caused to such trees. The security is to be provided in accordance with the Schedule below.

The security required by this condition and in the schedule contained later in these conditions must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

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The security will be refundable following the expiration of 6 months from the issue of any final Occupation Certificate but only upon inspection and release by Council's Landscape Development Officer.

If any tree is removed or damaged Council may deduct from this security the reasonable cost of replacement with a tree of the same species and to a similar stage of growth it would have attained at the completion of the work.

In the case of any tree, which cannot be replaced with a similar specimen, the security for that tree will be forfeited to Council and used to provide replacement street plantings.

SCHEDULE

Tree Species	Location	Bond
2 x <i>Platanus orientalis</i> (to 14m)	Public carpark opposite the rear of the subject site	\$15,000
3 x <i>Ficus</i> 'Hillii' stds - to be replaced with 3 x <i>Platanus digitata</i> (100l) complying with AS 2303:2018 Tree stock for landscape use, as indicated in amended plans. Awning cut-outs shall be provided to allow for future canopy growth, concrete cut- outs with rubberised surrounds shall be constructed/installed within the council verge as per council infrastructure specifications.	Council verge in front of subject site	\$9,000
1 x <i>Murraya paniculata</i> hedge	Council verge in front of 457 Miller St	\$2,000

(Reason: Protection of existing environment public infrastructure, community assets and significant trees)

Protection of Trees

C22. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 - Protection of trees on development sites:

Tree	Location	Height
2 x <i>Platanus orientalis</i>	Public carpark opposite the rear of the subject site	To 14m
1 x <i>Murraya paniculata</i> hedge	Council verge in front of 457 Miller St	1m

Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Any tree(s) shown as being retained on the approved plans (regardless of whether they are listed in the above schedule or not) must be protected and retained in accordance with this condition.

(Reason: Protection of existing environmental and community assets)

Garbage and Recycling Facilities

C23. An appropriate area must be provided within the premises for the storage of garbage bins and recycling containers and all waste and recyclable material generated by this premises. The following requirements must be met:

- a) all internal walls of the storage area must be rendered to a smooth surface, covered at the floor/wall intersection, graded and appropriately drained with a tap in close proximity to facilitate cleaning;
- b) provision for the separation and storage in appropriate categories of material suitable for recycling;
- c) the storage area must be adequately screened from the street, with the entrance to the enclosures no more than 2 m from the street boundary of the property;
- d) if a storage facility is to be provided at another suitable location within the building, a complementary garbage bin holding bay must be provided no more than 2 m from the street boundary of the property;
- e) garbage enclosures serving residential units are not to be located within areas designated for non-residential uses; and
- f) garbage enclosures serving non-residential uses are not to be located within areas designated for dining purposes.

Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Note: The applicant may wish to discuss bin storage requirements and location with Council's Environmental Services prior to finalisation of the required detail, and a copy of Council's Waste Handling Guide should be obtained for reference purposes before the design is finalised.

(Reason: To ensure the provision of appropriate waste facilities for residents and protect community health, and to ensure efficient collection of waste by collection contractors)

Construction Noise Management Plan

C24. A Construction Noise Management Plan must be prepared by an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, and must include the following:

- (a) Identification of noise affected receivers near to the site.
- (b) A prediction as to the level of noise impact at noise affected receivers from the use and proposed number of high noise intrusive appliances intended to be operated onsite.
- (c) Details of work schedules for all construction phases;
- (d) A statement should also be submitted outlining whether or not predicted noise levels will comply with the noise criteria stated within the Environment Protection Authority's EPA Construction Noise Guideline ("CNG").
- (e) Representative background noise levels should be submitted in accordance with the CNG.
- (f) Confirmation of the level of community consultation that is to be undertaken by occupants at noise affected receivers likely to be most affected by site works and the operation of plant/machinery particularly during the demolition and excavation phases.
- (g) Confirmation of noise monitoring methodology that is to be undertaken during the noise intensive stages of work including details of monitoring to be undertaken at the boundary of any noise affected receiver.
- (h) What course of action will be undertaken following receipt of a complaint concerning offensive noise.
- (i) Details of any noise mitigation measures that have been outlined by an acoustic consultant or otherwise that will be deployed on site to reduce noise impacts on the occupants at noise affected receivers.

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- (j) Details of selection criteria for any plant or equipment that is to be used on site, the level of sound mitigation measures to be undertaken in each case and the criteria adopted in their selection taking into account the likely noise impacts on occupants at noise affected receivers and other less intrusive technologies available; and
- (k) Details of site induction to be carried out for all employees and contractors undertaking work at the site.

“affected receiver” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship, commercial premises and parks and such other affected receiver as may be notified by the Council in writing.

“boundary” includes any window or elevated window of an affected residence.

The Construction Noise Management Plan must be submitted to the Principal Certifier and a copy provided to Council prior to the issue of the Construction Certificate.

(Reason: To ensure noise generating activities are appropriately managed and nearby sensitive receivers protected)

Noise from Plant and Equipment

C25. The use of all plant and equipment installed on the premises must:

- (a) Comply with the noise emission criteria in the Acoustic Logic Acoustic Assessment, dated December 2021 pertaining to the site

It must not contribute an LAeq(15min) which will cause the total LAeq(15min) from all plant and equipment operating contemporaneously on the site or in the strata scheme or in the mixed strata schemes to exceed the RBL by more than 5Db when measured at the boundary of any affected receiver. The modifying factor adjustments in Section 4 of the EPA Noise Policy for Industry 2017 shall be applied.

- (b) Cause “offensive noise” as defined in the *Protection of the Environment Operations Act 1997*.

“affected receiver” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship, commercial premises and parks and such other affected receiver as may be notified by the Council in writing.

“boundary” includes any window or elevated window of an affected receiver.

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Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

Air Conditioners in Residential Premises

C26. The use of any air conditioner installed on the premises must comply with the requirements of the Protection of the Environment Operations (Noise Control) Regulations 2008 and State Environmental Planning Policy (Infrastructure) 2007 and must not:

- (a) emit a noise that is audible within a habitable room in any affected residence (regardless of whether any door or window to that room is open);
 - (i) before 8.00 am and after 10.00 pm on any Saturday, Sunday or Public Holiday; or
 - (ii) before 7.00 am or after 10.00 pm on any other day
- (b) cause an LAeq(15min) which exceeds the RBL background noise level by more than 5dB when measured at the boundary of any affected residence. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy will be applied.

“affected residence” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation and hospitals.

“boundary” includes any window or elevated window of an affected residence.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

(Reason: To maintain residential amenity)

Compliance with Acoustic Report

C27. The recommendations contained in the acoustic report prepared by Acoustic Logic, dated 25 July 2022, must be implemented during construction and use of the development.

A statement from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, certifying that the acoustic mitigation measures outlined in the above stated report have been suitably incorporated into the development and that relevant noise criteria have been satisfied, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

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The Principal Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

Acoustic Privacy (Residential Apartments)

C28. Noise levels in sole occupancy units of residential apartments must not exceed the following:

Location	Maximum
Habitable Rooms other than Sleeping Areas	40 LAeq (1hr)
Sleeping Areas	35 LAeq (1hr)

The "Maximum" limits are to apply in any hour of a 24-hour period with the windows of the sole occupancy unit closed.

"habitable room" has the same meaning as in the Building Code of Australia.

A floor separating sole occupancy units shall have a weighted standardised impact sound pressure level $L'_{nT,w}$ not more than 55dB when measured insitu in accordance with AS ISO 140.7-2006 "Field measurements of impact sound insulation of floors," and rated to AS ISO 717.2-2004 "Rating of sound insulation in buildings and of building elements. Part 2: Impact sound insulation." This clause shall not apply to the floor of a kitchen, bathroom, toilet or laundry in a residential sole occupancy unit.

Mechanical equipment such as lift plant, air conditioning plant servicing the building and pumps shall not be located immediately adjacent bedrooms.

A statement from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, certifying that the acoustic mitigation measures outlined above have been satisfied, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

(Reason: To comply with best practice standards for residential acoustic amenity)

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Adaptable Housing

- C29. Proposed apartments 105 and 204 are to be designed with accessible features for disabled persons and must incorporate level entries and wider doorways and corridors, slip resistant surfaces, reachable power points, disabled toilet, and lever door handles and taps. These features are to be designed generally in accordance with the relevant Australian Standard 4299-1995. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure equity of access and availability of accommodation in the future for an ageing population)

Section 7.11 Contributions

- C30. A monetary contribution pursuant to the provisions of Section 7.11 of the Environmental Planning and Assessment Act 1979 is to be paid to Council, in accordance with the North Sydney Council's Contribution Plan, to provide for local infrastructure improvements.

Based on the cost of development at the date of determination, the total contribution payable to Council is **\$133,453.94**.

A	B (\$)
Open space and recreation facilities	\$74,826.20
Public domain	\$39,385.12
Active transport	\$2,247.98
Community facilities	\$15,029.18
Plan administration and management	\$1,965.46
The total contribution is	\$133,453.94

A copy of the North Sydney Contribution Plan can be viewed at North Sydney Council's Customer Service Centre, 200 Miller Street, North Sydney or downloaded via Council's website at www.northsydney.nsw.gov.au.

(Reason: To provide for local infrastructure identified in the North Sydney Council

Security Deposit/Guarantee Schedule

- C31. All fees and security deposits/guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

Security Deposit/Guarantee	Amount (\$)
Drainage Construction Bond	\$15,000.00
Engineering Construction Bond	\$55,000.00
TOTAL BONDS	\$70,000.00

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Note: The following fees applicable

Fees	
Section 7.11 Contributions	\$133,453.94
TOTAL FEES	\$133,453.94

The security required by the above schedule must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

(Reason: Compliance with the development consent)

BASIX Certificate

C32. Under clause 97A(3) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. 320194M_02 for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

Under Awning Lighting

C33. Under awning lighting must be provided to the Miller Street frontage of the site. Such lighting is to be designed to P1 standard in accordance with AS/NZS 1158.3.1. The luminaries must be:

- a) weatherproof and vandal proof;
- b) designed in conjunction with Energy Australia so that the system can easily be connected to a public lighting system when available; and
- c) the location and type of the said luminaries shall be to the satisfaction of Council's Director of Engineering and Property Services.

Plans and specifications complying with this condition must be submitted to the Certifying Authority and the Council's Director of Engineering and Property Services for approval prior to the issue of any Construction Certificate. A construction certificate must not be issued without the approval of the Council's Director of Engineering and Property Services. The Certifying Authority must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To enhance the amenity and safety of the footpath adjacent to the premises)

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Outdoor Lighting

- C34. All outdoor lighting must comply with, where relevant AS/NZ1158.3:1999 Pedestrian Area (Category P) Lighting and AS4282:1997 Control of the Obtrusive Effects of Outdoor lighting. Details demonstrating compliance with these requirements must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To maintain the amenity of adjoining land uses)

D. Prior to the Commencement of any Works (and continuing where indicated)

Protection of Trees

- D1. All trees that are specifically nominated to be retained by notation on plans or by condition as a requirement of this consent must be maintained and protected during demolition, excavation and construction on the site in accordance with AS4970-2009 (Protection of trees on development sites). A report containing recommendations, and methods of tree protection prepared by an appropriately qualified person must be provided to the Certifying Authority for approval by an appropriately qualified person prior to commencement of any works on the site. Any recommendations must be undertaken for the duration of works on the site.

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

Protection of Public Trees

- D2. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 – Protection of trees on development sites:

Tree	Location	Protection
2 x <i>Platanus orientalis</i>	Public carpark opposite the rear of the subject site	Trunk, branch & root protection
1 x <i>Murraya paniculata</i> hedge	Council verge in front of 457 Miller St	branch & root protection

Trunk protection to be installed by first wrapping the stem of the tree in hessian or like material then strapping timber battens over the top. It is recommended that timber battens with the dimensions of length 2000mm, width 75mm and depth 50mm are used. The battens are not to be directly screwed or nailed into the tree.

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Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: Protection of existing environmental and community assets)

Public Liability Insurance - Works on Public Land

- D3. Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of public land and the undertaking of approved works within Council's road reserve or public land, as approved by this consent. The Policy is to note and provide protection/full indemnification for North Sydney Council, as an interested party. A copy of the Policy must be submitted to Council prior to commencement of any works. The Policy must be valid for the entire period that the works are being undertaken.

Note: Applications for hoarding permits, vehicular crossings etc will require evidence of insurance upon lodgement of the application.

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

Asbestos Material Survey

- D4. Prior to the commencement of any works, a report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

Any demolition works or other works identified in the report as having to be carried out must be carried out in accordance with the recommendations of the report and the following:

- a) the removal of asbestos must be undertaken by a WorkCover licensed contractor;
- b) all removal must be in strict accordance with the requirements of the WorkCover Authority in relation to the removal, handling and disposal of material containing asbestos and any Work Safe Australia requirements.
- c) during the removal of any asbestos a sign stating "DANGER ASBESTOS REMOVAL IN PROGRESS" must be erected in a visible position at the boundary of the site; and
- d) Waste disposal receipts must be provided to the Certifying Authority as proof of correct disposal of asbestos laden waste.

The report must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the report, and other plans, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the long-term health of workers on site and occupants of the building is not put at risk unnecessarily)

Sydney Water Approvals

- D5. Prior to the commencement of any works, the approved plans must be submitted to Sydney Water to determine whether the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The Certifying Authority must ensure that Sydney Water has appropriately stamped the plans before the commencement of building works.

Notes: **Sydney Water Building Plan Approvals** can be obtained from the Sydney Water Tap in™ online service. Building plans must be submitted to the Tap in™ to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met. For further information visit <http://www.sydneywater.com.au/tapin/index.htm> or call 13 000 TAP IN (1300 082 746) for further information.

(Reason: To ensure compliance with Sydney Water requirements)

Commencement of Works' Notice

- D6. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least two days' notice to North Sydney Council of the person's intention to commence building work, demolition or excavation in accordance with this development consent.

(Reason: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

E. During Demolition and Building Work**Parking Restrictions**

- E1. Existing public parking provisions in the vicinity of the site must be maintained at all times during works. The placement of any barriers, traffic cones, obstructions or other device in the road shoulder or kerbside lane is prohibited without the prior written consent of Council. Changes to existing public parking facilities/restrictions must be approved by the North Sydney Local Traffic Committee. The Developer will be held responsible for any breaches of this condition and will incur any fines associated with enforcement by Council regulatory officers.

(Reason: To ensure that existing kerbside parking provisions are not compromised during works)

Road Reserve Safety

- E2. All public footways and roadways fronting and adjacent to the site must be maintained in a safe condition at all times during the course of the development works, with no obstructions caused to the said footways and roadways. Construction materials and plant must not be stored in the road reserve without approval of Council. A safe pedestrian circulation route and a pavement/route free of trip hazards must be maintained at all times on or adjacent to any public access ways fronting the construction site.

Where public infrastructure is damaged, repair works must be carried out in when and as directed by Council officers (at full Developer cost). Where pedestrian circulation is diverted on to the roadway or verge areas, clear directional signage and protective barricades must be installed in accordance with AS1742-3 (1996) "Traffic Control Devices for Work on Roads". **If pedestrian circulation is not satisfactorily maintained across the site frontage, and action is not taken promptly to rectify the defects, Council may undertake proceedings to stop work.**

(Reason: Public Safety)

Temporary Disposal of Stormwater Runoff

- E3. During construction, stormwater runoff must be disposed in a controlled manner that is compatible with the erosion and sediment controls on the site. Immediately upon completion of any impervious areas on the site (including roofs, driveways, paving) and where the final drainage system is incomplete, the necessary temporary drainage systems must be installed to reasonably manage and control runoff as far as the approved point of stormwater discharge. Such ongoing measures must be to the satisfaction of the Certifying Authority.

(Reason: Stormwater control during construction)

Geotechnical Stability during Works

- E4. A contractor with specialist excavation experience must undertake the excavations for the development and a suitably qualified and consulting geotechnical engineer must oversee the excavation procedure.

Geotechnical aspects of the development work, namely appropriate excavation method and vibration control, support and retention of excavated faces, and hydrogeological considerations must be undertaken in accordance with the recommendations of the Geotechnical Assessment Report prepared by Michael Adler and Associates dated 8 August 2022 and all subsequent geotechnical inspections carried out during the excavation and construction phase.

Approval must be obtained from all affected property owners, including North Sydney Council where rock anchors (both temporary and permanent) are proposed below adjacent private or public property.

(Reason: Ensure appropriate professional are engaged at appropriate stages during construction)

Progress Survey

- E5. In order to ensure compliance with approved plans, a Survey Certificate, to Australian Height Datum, must be prepared by a Registered Surveyor as follows:
- a) at the completion of the first structural floor level indicating the level of that floor and the relationship of the building to the boundaries;
 - b) at the completed height of the building, prior to the placement of concrete in form work, or the laying of roofing materials; and
 - c) at completion, the relationship of the building, and any projections thereto, to the boundaries.

Progress certifications in response to points (a) through (c) must be provided to the Certifying Authority for approval at the time of carrying out relevant progress inspections. In the event that such survey information is not provided or reveals discrepancies between the approved plans and the proposed works, all works, save for works necessary to bring the development into compliance with the approved plans, must cease. Works may only continue upon notification by the Certifying Authority to the Applicant that survey information (included updated survey information following the carrying out of works to comply with the approved plans) complies with this condition.

(Reason: To ensure compliance with approved plans)

Council Inspection of Public Infrastructure Works

E6. During the works on public infrastructure reverting to Council's care and control, Council's development engineer may undertake inspections of the works at the following hold points:

- Formwork for layback, kerb/gutter, footpath, etc
- All reinforcement for the concrete base beneath pavers,
- Formwork and reinforcement for in-situ stormwater pits,
- Pipe connections prior to back filling

All works must proceed in accordance with Roads Act 1993 approvals or other permits relating to roads issued by Council. A minimum of 48 hours' notice must be given to Council to book an inspection. Work must not proceed until the works or activity covered by the inspection is approved.

(Reason: To ensure quality of construction joints and connections in the drainage system)

Noise and Vibration

E7. The works must be undertaken in accordance with the "Interim Construction Noise Guideline," published by the NSW Environment Protection Authority, to ensure excessive levels of noise and vibration do not occur so as to minimise adverse effects experienced on any adjoining land.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

No Work on Public Open Space

E8. No work can be undertaken within adjoining public lands (i.e., Parks, Reserves, Roads etc) without the prior written consent of Council. In this regard the developer is to liaise with Council prior to the commencement of any design works or preparation of a Construction and Traffic Management Plan.

(Reason: Protection of existing public infrastructure and land and to ensure public safety and proper management of public land)

Developer's Cost of Work on Council Property

E9. The developer must bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas.

(Reason: To ensure the proper management of public land and funds)

No Removal of Trees on Public Property

E10. No trees on public property (footpaths, roads, reserves, etc.) unless specifically approved by this consent shall be removed or damaged during construction including for the erection of any fences, hoardings or other temporary works.

(Reason: Protection of existing environmental infrastructure and community assets)

Special Permits

E11. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development must occur entirely on the property.

The developer, owner or builder may apply for specific permits available from Council's Customer Service Centre for the undermentioned activities on Council's property. In the event that a permit is granted by Council for the carrying out of works, processes, storage of materials, loading and unloading associated with the development on Council's property, the development must be carried out in accordance with the requirements of the permit. A minimum of forty-eight (48) hours' notice is required for any permit:

1) **On-street mobile plant**

E.g., cranes, concrete pumps, cherry-pickers, etc. - restrictions apply to the hours of operation, the area of operation, etc. Separate permits are required for each occasion and each piece of equipment. It is the developer's, owner's and builder's responsibilities to take whatever steps are necessary to ensure that the use of any equipment does not violate adjoining property owner's rights.

(Reason: Proper management of public land)

2) **Hoardings**

Permits are required to erect Class A and Class B hoardings. If an 'A' Class hoarding is to alienate a section of Council's property, that section will require a permit for the occupation of Council's property.

(Reason: Proper management of public land)

3) Storage of building materials and building waste containers (skips) on Council's property

Permits to utilise Council property for the storage of building materials and building waste containers (skips) are required for each location. Failure to obtain the relevant permits will result in the building materials or building waste containers (skips) being impounded by Council with no additional notice being given. Storage of building materials and waste containers on open space reserves and parks is prohibited.

(Reason: Proper management of public land)

4) Kerbside restrictions, construction zones

Attention is drawn to the existing kerbside restrictions adjacent to the development. Should alteration of existing kerbside restrictions be required, or the provision of a construction zone, the appropriate application must be made and the fee paid to Council. Alternatives to such restrictions may require referral to Council's Traffic Committee and may take considerable time to be resolved. An earlier application is suggested to avoid delays in construction programs.

(Reason: Proper management of public land)

Construction Hours

E12. Construction activities and works approved under this consent must be carried out only within the hours stipulated in the following table:

Standard Construction Hours		
Location	Day	Hours
All Other Zones	Monday - Friday	7.00 am - 5.00 pm
	Saturday	8.00 am - 1.00 pm
	Sunday, Public holiday	No work permitted

Construction activities for development approved under this consent must be carried out in accordance with the standard construction hours above and any Construction Noise Management Plan required under this consent.

In the event of breach to the approved hours of construction Council take may take enforcement action under Part 9 of the EP&A Act 1979 and in accordance with Council's adopted Compliance and Enforcement Policy.

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

Installation and Maintenance of Sediment Control

- E13. Erosion and sediment controls must be installed and maintained at all times in accordance with the Sediment and erosion control plan submitted and approved with the Construction Certificate.

Erosion and sediment measures must be maintained in accordance with the publication Managing Urban Stormwater: Soils and Construction (4th edition, Landcom, 2004), commonly referred to as the “Blue Book” and can only be removed when development activities have been completed and the site fully stabilised.

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

Sediment and Erosion Control Signage

- E14. A durable sign must be erected during building works in a prominent location on site, warning of penalties should appropriate erosion and sedimentation control devices not be maintained. A sign of the type referred to in this condition is available from Council.

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

Site Amenities and Facilities

- E15. Where work involved in the erection and demolition of a building is being carried out, amenities which satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements, must be provided and maintained at all times. The type of workplace determines the type of amenities required.

Further information and details can be obtained from the Internet at www.workcover.nsw.gov.au.

(Reason: To ensure the health and safety of the community and workers on the site)

Health and Safety

- E16. All work undertaken must satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements to prepare a health and safety plan. Site fencing must be installed sufficient to exclude the public from the site. Safety signs must be erected that warn the public to keep out of the site and provide a contact telephone number for enquiries.

Further information and details regarding occupational health and safety requirements for construction sites can be obtained from the internet at www.workcover.nsw.gov.au.

(Reason: To ensure the health and safety of the community and workers on the site)

Prohibition on Use of Pavements

- E17. Building materials must not be placed on Council's footpaths, roadways, parks or grass verges, (unless a permit is obtained from Council beforehand). A suitable sign to this effect must be erected adjacent to the street alignment.

(Reason: To ensure public safety and amenity on public land)

Waste Disposal

- E18. All records demonstrating the lawful disposal of waste must be retained and kept readily accessible for inspection by regulatory authorities such as North Sydney Council and the Environmental Protection Authority.

(Reason: To ensure the lawful disposal of construction and demolition waste)

Asbestos Removal

- E19. All demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current WorkCover Asbestos or "Demolition Licence" and a current WorkCover "Class 2 (Restricted) Asbestos Licence and removal must be carried out in accordance with National Occupational Health and Safety Commission.

(Reason: To ensure works are carried out in accordance with relevant WorkCover requirements)

F. *Prescribed Conditions imposed under EP&A Act and Regulations and other relevant Legislation***National Construction Code**

- F1. All building work must be carried out in accordance with the provisions of the National Construction Code.

(Reason: Prescribed - Statutory)

Home Building Act

- F2. 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) for which the *Home Building Act 1989* requires there to be a contract of insurance under Part 6 of that Act must not be carried out unless the Principal Certifying Authority for the development to which the work relates has given North Sydney Council written notice of the contract of insurance being issued and of the following:

- a) in the case of work for which a principal contractor is required to be appointed:

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- i) the name and licence number of the principal contractor, and
 - ii) the name of the insurer by which the work is insured under Part 6 of that Act, or
- (b) in the case of work to be done by an owner-builder:
 - (i) the name of the owner-builder, and
 - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- 2) If arrangements for doing residential building work are changed while the work is in progress such that the information submitted to Council in accordance with this conditions is out of date, work must cease and no further work may 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.

Note: A certificate purporting to be issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.

(Reason: Prescribed - Statutory)

Appointment of a Principal Certifying Authority (PCA)

- F3. Building work, demolition or excavation in accordance with the development consent must not be commenced until the developer has appointed a Principal Certifying Authority for the building work in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

Construction Certificate

- F4. Building work, demolition or excavation in accordance with the development consent must not be commenced until a Construction Certificate for the relevant part of the building work has been issued in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

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Occupation Certificate

- F5. A person must not commence occupation or use of the whole or any part of a new building (*new building* includes an altered portion of, or an extension to, an existing building) unless an Occupation Certificate has been issued in relation to the building or part. Only the Principal Certifying Authority appointed for the building work can issue an Occupation Certificate.

(Reason: Statutory)

Critical Stage Inspections

- F6. Building work must be inspected by the Principal Certifying Authority on the critical stage occasions prescribed by the EP&A Act and its Regulations, and as directed by the appointed Principal Certifying Authority.

(Reason: Statutory)

Commencement of Works

- F7. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least two (2) days' notice to North Sydney Council of the person's intention to commence the erection of the building.

(Reason: Statutory: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

Excavation/Demolition

- F8. 1) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
- 2) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
- 3) Demolition work must be undertaken in accordance with the provisions of AS2601- Demolition of Structures.

(Reason: To ensure that work is undertaken in a professional and responsible manner and protect adjoining property and persons from potential damage)

Protection of Public Places

- F9. 1) A hoarding and site fencing must be erected between the work site and adjoining public place.

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- 2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- 3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- 4) Any such hoarding, fence or awning is to be removed when the work has been completed.
- 5) No access across public reserves or parks is permitted.

Note: Prior to the erection of any temporary fence or hoarding over property owned or managed by Council, written approval must be obtained. Any application needs to be accompanied by plans indicating the type of hoarding and its layout. Fees are assessed and will form part of any approval given. These fees must be paid prior to the approval being given. Approval for hoardings will generally only be given in association with approved building works, maintenance or to ensure protection of the public. An application form for a Hoarding Permit can be downloaded from Council's website.

(Reason: To ensure public safety and the proper management of public land)

Site Sign

- F10.
- 1) A sign must be erected in a prominent position on the site
 - a) stating that unauthorised entry to the work site is prohibited;
 - b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
 - c) showing the name, address and telephone number of the Principal Certifying Authority for the work.
 - 2) Any such sign must be maintained while to building work or demolition work is being carried out but must be removed when the work has been completed.

(Reason: Prescribed - Statutory)

G. Prior to the Issue of an Occupation Certificate

Infrastructure Repair and Completion of Works

- G1. Prior to the issue of any Occupation Certificate any and all works relating to the development:

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- a. in the road reserve must be fully completed; and
- b. to repair and make good any damaged public infrastructure caused as a result of any works relating to the development (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) must be fully repaired;

to the satisfaction of Council Engineers at no cost to Council.

(Reason: Maintain quality of public assets)

Noise Certification

- G2. Prior to issue of the any Occupation Certificate a certificate from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants is to be submitted to, and approved by, the Certifying Authority certifying that the noise and vibration from use of the development complies with the conditions of consent herein.

(Reason: To ensure acoustic amenity)

Certification - Civil Works

- G3. An appropriately qualified and practising Civil Engineer must certify to the Certifying Authority that the stormwater drainage system is constructed in accordance with this consent and the provisions of the applicable Australian Standard. A copy of the certificate must be submitted to Council (if it is not the Certifying Authority) upon completion of the development works and prior to the issue of an Occupation Certificate.

(Reason: Compliance with the Consent)

Works as Executed Drawings and Video

- G4. A works-as-executed survey drawing (W.A.E.) of the completed stormwater drainage system must be obtained. The W.A.E. survey drawing must show the alignment, depth and grade of the stormwater drainage pipelines, pits and ancillary plumbing. The W.A.E. survey drawing must be reviewed by a qualified and practising civil engineer and certification provided to the Certifying Authority that the as-built system achieves the design intent of the plans approved with the Construction Certificate. Certification must be provided with the W.A.E. survey drawing to the Certifying Authority prior to the issue of an Occupation Certificate.

CCTV inspection of conduits, that revert to the care and control of the Council, shall be conducted in accordance with the Conduit Inspection Reporting Code of Australia WSA 05-2013.

The camera, transportation unit, distance measuring devices, illumination systems and ancillary equipment shall be used suitable for the conduit size, material and conditions under which the inspection is undertaken.

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The camera shall be steerable and be able to negotiate bends within the drainage pipe. The use of a pushrod camera may only be acceptable for pipe diameters less than 150mm or where a steerable camera cannot navigate.

A colour camera shall be used which has remotely operated automatic and/or manual adjustment of the focus and iris to allow optimum picture quality to be achieved.

The camera lens shall be capable of viewing the extremities of the conduit and panning and or tilting to view the lateral connections and defects or features at any position around the conduit regardless of the direction of travel of the camera in the main conduit.

The adjustment of focus and iris shall provide a focal range from 15 mm to infinity. The distance along the conduit in focus from the initial point of observation shall be a minimum of four times the vertical height of the conduit.

Where required, specialised instruments, apparatus and/or software shall be used to facilitate the measurement of parameters to determine acceptance. Hardware and software used in measuring the parameters shall be correctly calibrated for each application using the manufacturer's methods.

For circular or regular-shaped conduits, the camera shall be positioned centrally, $\pm 10\%$ of the vertical and horizontal diameter, within the conduit.

A copy of the WAE survey drawing, certification and CCTV inspection footage must be submitted to the Council if it is not the Certifying Authority.

(Reason: Compliance with the Consent)

Damage to Adjoining Properties

- G5. All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.

(Reason: To ensure adjoining owner's property rights are protected)

Utility Services

- G6. All utility services shall be adjusted to the correct levels and/or location/s required by this consent, prior to issue of an occupation certificate. This shall be at no cost to Council.

(Reason: To ensure compliance with the terms of this consent)

Covenant and Restriction (Stormwater Control Systems)

- G7. An Instrument pursuant to Sections 88B and 88E of the *Conveyancing Act 1919* and one copy must be submitted to Council in registrable form, providing for:

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- a. a restriction as to user and positive covenant as to user as appropriate in favour of North Sydney Council burdening 451 Miller Street requiring the ongoing retention, maintenance and operation of the stormwater facility (on-site detention, pump-out, charged lines);
- b. North Sydney Council being nominated in the Instrument as the only party authorised to release, vary or modify the Instrument;
- c. the wording on the Instrument making reference to the Council file/s which hold:
 - (a) the Construction plans; and
 - (b) the "Work-as-Executed" (as built) plans;

Upon Council being satisfied as to the terms of the Instrument, North Sydney Council's official seal will be affixed to these documents, prior to submission to the Land and Property Information Office for registration

The Instrument creating the restriction and/or covenant under ss 88B and 88E required by this condition of consent must be registered on the Title of the development site prior to the issue of an Occupation Certificate or commencement of use of the site, whichever is the earlier. Typical wording for the Instrument can be sourced from Council's "Specification for the Management of Stormwater".

Evidence of the registration of the instrument referred to in this condition is to be provided to Council prior to the issue of an Occupation Certificate.

All costs associated with the preparation, approval and registration of the Instrument required by this condition of consent must be borne by the person acting on this consent including the reasonable costs of Council in obtaining advice, negotiating the terms or otherwise facilitating the execution and registration of the required Instrument.

(Reason: Compliance and adequate maintenance of drainage system)

Basement Pump-out Maintenance

- G8. Prior to issue of an Occupation Certificate a Maintenance Regime must be prepared for the basement stormwater pump-out system and submitted to the Principal Certifying Authority for approval with the Occupation Certificate documentation. The regime must specify that the system is to be regularly inspected and checked by qualified practitioners.

The basement stormwater pump-out system must be maintained in accordance with the approved Maintenance Regime at all times.

(Reason: To ensure future provision for maintenance of the drainage system)

Asbestos Clearance Certificate

G9. For building works where asbestos based products have been removed or altered, an asbestos clearance certificate signed by an appropriately qualified person (being an Occupational Hygienist or Environmental Consultant) must be submitted to and approved by the Certifying Authority (and a copy forwarded to Council if it is not the Certifying Authority) for the building work prior to the issue of any Occupation Certificate, the asbestos clearance certificate must certify the following:

- a) the building/land is free of asbestos; or
- b) the building/land has asbestos that is presently deemed safe.

The certificate must also be accompanied by tipping receipts, which detail that all asbestos waste has been disposed of at an approved asbestos waste disposal depot. If asbestos is retained on site the certificate must identify the type, location, use, condition and amount of such material.

Note: Further details of licensed asbestos waste disposal facilities can be obtained from www.epa.nsw.gov.au.

(Reason: To ensure that building works involving asbestos-based products are safe for occupation and will pose no health risks to occupants)

Sydney Water

G10. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained.

The final Section 73 Certificate must be submitted to the Certifying Authority prior to release of any linen plan for subdivision or prior to occupation of the development, whichever is the earlier.

Notes: Application must be made through an authorised Water Servicing Co-ordinator, for details see the Sydney Water web site www.sydneywater.com.au/customer/urban/index, or telephone 13 20 92.

Following application, a 'Notice of Requirements' will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

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

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BASIX Completion Certificate

G11. In accordance with Section 45 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, prior to issuing a final occupation certificate, the Principal Certifier must provide a BASIX completion receipt.

(Reason: To ensure compliance with the Regulations)

House Numbering (Dwellings)

G12. Prior to any Occupation Certificate being issued an application must be made to North Sydney Council for written confirmation, or allocation, of the street address(es) or apartment number(s) for the completed project in accordance with Council's Property Addressing Policy. These are the numbers that will be recorded in Council records and must be displayed at the property in accordance with the provisions of AS/NZS 4819:2011.

Note: If apartments are to be sold off the plan, the applicant must have written confirmation from Council of the address and apartment numbering if the apartment number is to be identified on the contract.

(Reason: To ensure that Council records are accurate, and that house numbering complies with the requirements of Council's House Numbering Policy. Proper house numbering also assists emergency services in readily locating properties.)

Landscaping

G13. The landscaping shown in the approved landscape plan numbered 501 prepared by PA Studio dated 5 December 2022 must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

Damage to Adjoining Properties

G14. On completion of the development the subject of this consent and prior to the issue of the Occupation Certificate, a report is to be prepared by an appropriately qualified consultant and is to be provided to the Certifying Authority (and a copy to Council if it is not the Certifying Authority) certifying:

- a) whether any damage to adjoining properties has occurred as a result of the development;
- b) the nature and extent of any damage caused to the adjoining property as a result of the development;
- c) the nature and extent of works required to rectify any damage caused to the adjoining property as a result of the proposed development;
- d) the nature and extent of works carried out to rectify any damage caused to the adjoining property as a result of the development; and

- e) the nature and extent of any agreements entered into for rectification of any damage caused to the adjoining property as a result of the development.

The report and certification must reference the dilapidation survey and reports required to be provided to the Certifying Authority in accordance with this consent.

Where works required to rectify any damage caused to adjoining property as a result of the development identified in the report and certification have not been carried out, a satisfactory agreement for rectification of the damage is to be made with the affected person/s as soon as possible prior to the issue of an Occupation Certificate.

All costs incurred in achieving compliance with this condition shall be borne by the developer.

(Reason: To ensure adjoining owner's property rights are protected in so far as possible)

I. Ongoing/Operational Conditions

First Use of Premise - Further Consent Required

11. A separate development application for the fit out and use of commercial tenancy must be submitted to and approved by Council prior to that fit out or use commencing.

(Reason: To ensure development consent is obtained prior to uses commencing)

Noise and Vibration Impact

12. The ongoing use of the premises approved under this consent must comply with all conditions pertaining to noise and vibration specified in this consent.

(Reason: To ensure compliance with the specified levels of noise and vibration and to maintain the amenity of surrounding land uses)

Minimum Headroom for Car Parking

13. Minimum headroom of 2.2 m must be provided over all car-parking areas.

(Reason: To ensure compliance with relevant standards and provide appropriate headroom)

Waste Collection

14. Waste and recyclable material, generated by this premises, must not be collected between the hours of 10.00 pm and 6.00 am on any day.

(Reason: To ensure the amenity of surrounding properties)

**451-455 MILLER STREET, CAMMERAY
DEVELOPMENT APPLICATION NO. 248/22**

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Delivery Hours

15. No deliveries, loading or unloading associated with the premises are to take place between the hours of 10.00 pm and 6.00 am on any day.

(Reason: To ensure the acoustic amenity of surrounding properties)

Maintenance of Structures on Public Land

16. The owner of the premises at 451-455 Miller Street, Cammeray is to maintain the awning approved by this consent and located over Council's footpath, directly adjacent to the property. This awning must be maintained at all times to a structurally sound condition in order to provide an acceptable level of public safety.

(Reason: To ensure pedestrian and public safety and ensure that structures located on public land for private benefit are maintained to an acceptable standard)

Maintenance of Approved Landscaping

17. The owner of the premises at 451-455 Miller Street, Cammeray is to maintain the landscaping approved by this consent generally in accordance with drawing number/s 501 dated 05.12.2022.

Any replacement plants required shall be advanced in growth and be selected to maintain the anticipated mature height, canopy density and nature of those plant species as originally approved.

Should it be desired to substitute plants which are not of the same mature height, canopy density and nature (particularly flowering for non-flowering, native for exotic, deciduous for nondeciduous or the reverse of any these) a modification to this consent will be required.

(Reason: To ensure maintenance of the amenity, solar access and views of adjoining properties)

J. *Prior To the Issue of Any Subdivision Certificate (Land/Torrens/Stratum)***Sydney Water Compliance Certificate**

- J1. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained prior to the release of a subdivision certificate.

The Section 73 Certificate must be submitted to the certifying authority or North Sydney Council with the documentation to enable the issue of the Strata Certificate.

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Notes: Application must be made through an authorised Water Servicing Co-ordinator, for details see the Sydney Water web site <http://www.sydneywater.com.au/SW/plumbing-building-developing/developing/providers/lists/index.htm>, or telephone 13 20 92.

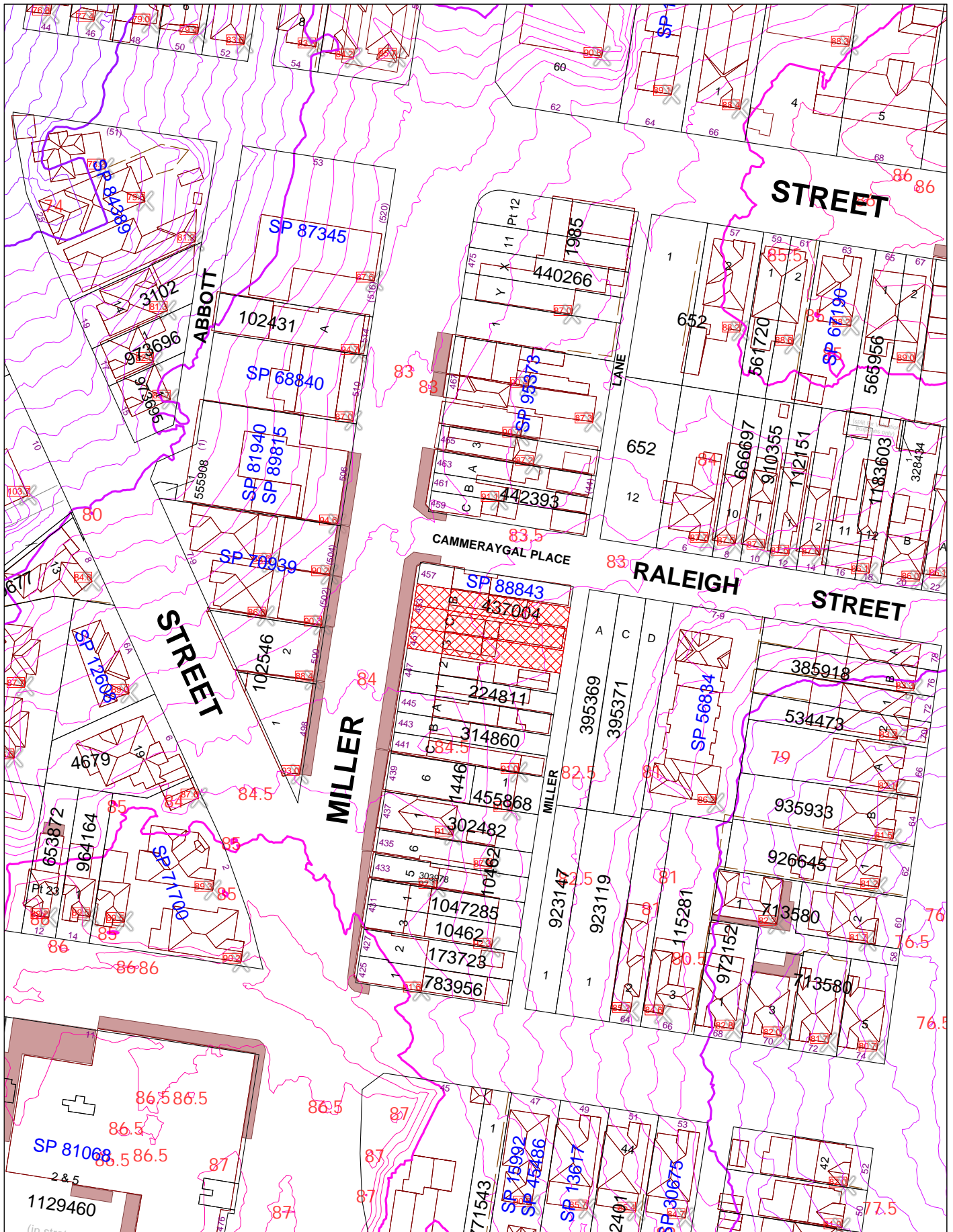
Following application, a 'Notice of Requirements' will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

(Reason: To ensure compliance with Sydney Water requirements)

Services within Lots

- J2. A report must be provided by a Registered Surveyor certifying that all services (including but not limited to stormwater drainage, gas, electricity, telephone cable) as constructed or to be constructed are/will be contained within each lot or within the necessary easements to accommodate such services. The report must be submitted to the Certifying Authority for approval prior to the issue of any Subdivision Certificate.

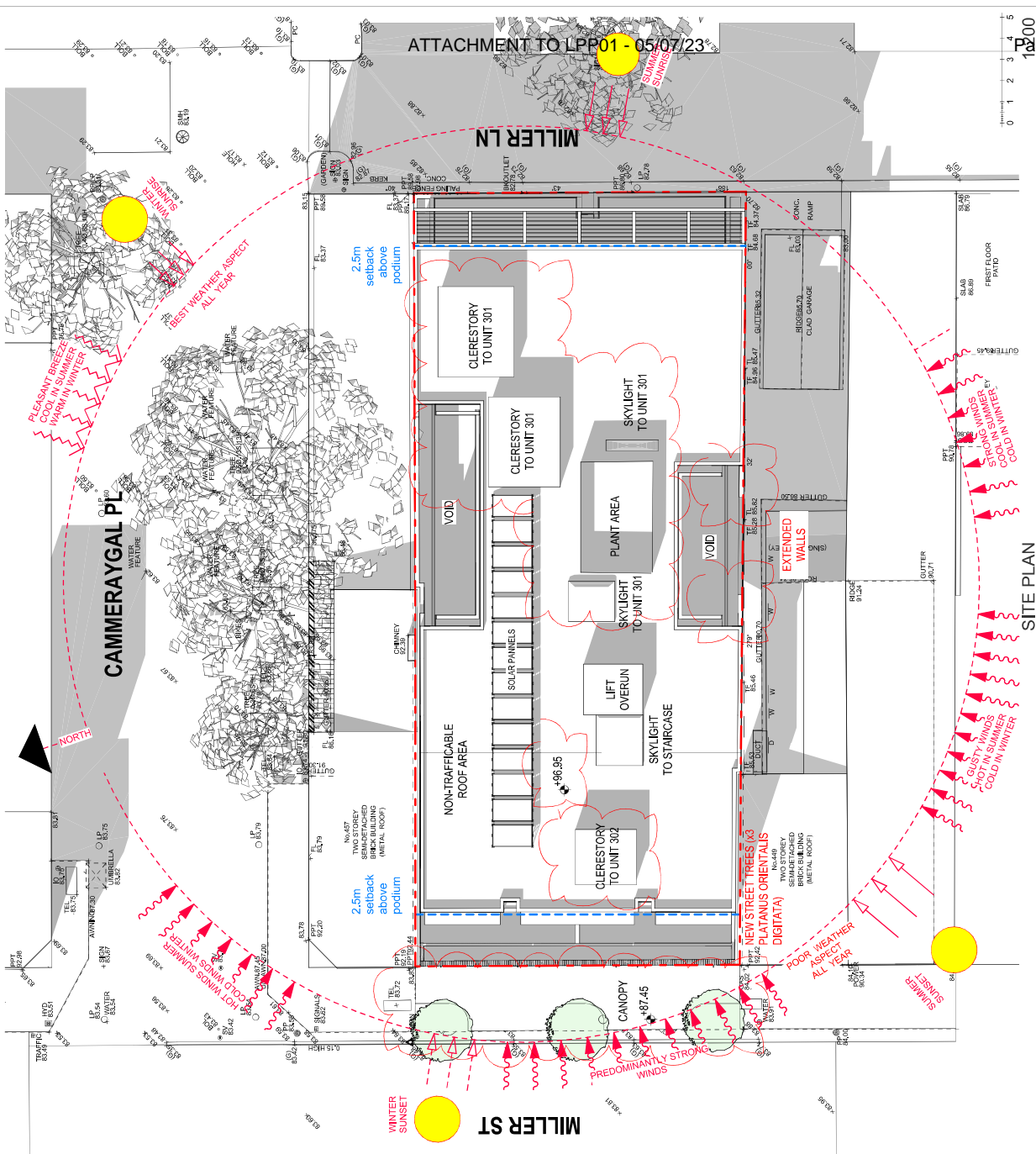
(Reason: To ensure adequate servicing of the development)



North Sydney Council

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Further details can be obtained by calling (02) 9936 8100 or e-mail mapping@northsydney.nsw.gov.au.



SITE PLAN



SITE LOCATION



AERIAL VIEW

General Notes:
 1. All dimensions are in meters unless otherwise stated.
 2. The client is responsible for obtaining all necessary permits for construction.
 3. Drawings shall not be used for construction purposes until issued for construction.
 4. All boundaries and contours subject to survey.

FILE PATH: Z:\MIL-451\MIL-451.rvt

ISSUE	REVISIONS	DATE	ISSUE	REVISIONS	DATE
B	RESPONSE TO DEP FEEDBACK	05.12.2022			
A	ORIGINAL ISSUE	29.07.2022			

PROJECT:
451-455 Miller Street
 451-455 Miller Street Cammeray NSW
 Australia
 #MIL451

SCALE:
 AS SHOWN

SUBJECT: FLOOR PLANS
 DRAWN BY: DDCSUFKAWH
 FILE: MIL451.rvt

ISSUE
 100
 101
 B



ATTACHMENT A

Request to Vary the Building Height Control

INTRODUCTION

Clause 4.3 of the North Sydney Local Environmental Plan (LEP) 2013 specifies a maximum building height of 13 metres.

The proposed development extends to a maximum height of approximately 13 metres measured to the front (western) parapet, 14.2 metres to the rear (eastern) parapet, 14.6 metres measured to the top of the lift overrun, and 15 metres measured to the louvres surrounding the rooftop plant.

The portion of the building that extends above the building height control is identified on the plan extract below.



In the circumstances, this *“written request”* has been prepared to vary the building height control pursuant to Clause 4.6 of the LEP.

The building height control is a development standard and is not excluded from the operation of Clause 4.6 of the LEP.

CLAUSE 4.6 OF THE NORTH SYDNEY LEP 2013

Clause 4.6(1) is facultative and is intended to allow flexibility in applying development standards in appropriate circumstances.

Clause 4.6 does not directly or indirectly establish a test that non-compliance with a development standard should have a neutral or beneficial effect relative to a complying development (Initial at 87).

Clause 4.6(2) of the LEP specifies that *“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”*.

Clause 4.6(3) specifies that 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.*

The requirement in Clause 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard has a better environmental planning outcome than a development that complies with the development standard (Initial at 88).

Clause 4.6(4) specifies that 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*
 - (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, and*
- (b) the concurrence of the Secretary has been obtained.*

Clause 4.6(5) specifies that in deciding whether to grant concurrence, the Secretary must consider:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

CONTEXT AND FORMAT

This “*written request*” has been prepared having regard to “*Varying development standards: A Guide*” (August 2011), issued by the former Department of Planning, and relevant principles identified in the following judgements:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*
- *Wehbe v Pittwater Council [2007] NSWLEC 827;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248;*
- *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7;*
- *Moskovich v Waverley Council [2016] NSWLEC 1015;*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118;*
- *Hansimikali v Bayside Council [2019] NSWLEC 1353;*
- *Big Property Group Pty Ltd v Randwick City Council [2021] NSWLEC 1161.*
- *HPG Mosman Projects Pty Ltd v Mosman Municipal Council [2021] NSWLEC 1243.*

“*Varying development standards: A Guide*” (August 2011) outlines the matters that need to be considered in DA’s involving a variation to a development standard. The Guide essentially adopts the views expressed by Preston CJ, in *Wehbe v Pittwater Council [2007] NSWLEC 827* to the extent that there are effectively five (5) different ways in which compliance with a development standard can be considered unreasonable or unnecessary as follows:

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

As Preston CJ, stated in *Wehbe*, the starting point with a SEPP No. 1 objection (now a Clause 4.6 variation) is to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances. The most commonly invoked 'way' to do this is to show that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard. The Applicant relies upon ground 1 in *Wehbe* to support its submission that compliance with the development standard is both unreasonable and unnecessary in the circumstances of this case.

In that regard, Preston CJ, in *Wehbe* states that "... *development standards are not ends in themselves but means of achieving ends*". Preston CJ, goes on to say that as the objectives of a development standard are likely to have no numerical or qualitative indicia, it logically follows that the test is a qualitative one, rather than a quantitative one. As such, there is no numerical limit which a variation may seek to achieve.

The above notion relating to 'numerical limits' is also reflected in Paragraph 3 of Circular B1 from the former Department of Planning which states that:

As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases the variation will be numerically small in others it may be numerically large, but nevertheless be consistent with the purpose of the standard.

It is important to emphasise that in properly reading *Wehbe*, an objection submitted does not necessarily need to satisfy all of the tests numbered 1 to 5, and referred to above. This is a common misconception. If the objection satisfies one of the tests, then it may be upheld by a Council, or the Court standing in its shoes. Irrespective, an objection can also satisfy a number of the referable tests.

In *Wehbe*, Preston CJ, states that there are three (3) matters that must be addressed before a consent authority (Council or the Court) can uphold an objection to a development standard as follows:

1. The consent authority needs to be satisfied the objection is well founded;
2. The consent authority needs to be satisfied that granting consent to the DA is consistent with the aims of the Policy; and
3. The consent authority needs to be satisfied as to further matters, including non-compliance in respect of significance for State and regional planning and the public benefit of maintaining the planning controls adopted by the environmental planning instrument.

Further, it is noted that the consent authority has the power to grant consent to a variation to a development standard, irrespective of the numerical extent of variation (subject to some limitations not relevant to the present matter).

The decision of Pain J, in *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* suggests that demonstrating that a development satisfies the objectives of the development standard is not necessarily sufficient, of itself, to justify a variation, and that it may be necessary to identify reasons particular to the circumstances of the proposed development on the subject site.

Further, Commissioner Tuor, in *Moskovich v Waverley Council [2016] NSWLEC 1015*, considered a DA which involved a relatively substantial variation to the FSR (65%) control. Some of the factors which convinced the Commissioner to uphold the Clause 4.6 variation request were the lack of environmental impact of the proposal, the characteristics of the site such as its steeply sloping topography and size, and its context which included existing adjacent buildings of greater height and bulk than the proposal.

The decision suggests that the requirement that the consent authority be satisfied the proposed development will be in the public interest because it is “consistent with” the objectives of the development standard and the zone, is not a requirement to “achieve” those objectives. It is a requirement that the development be ‘compatible’ with them or ‘capable of existing together in harmony’. It means “something less onerous than ‘achievement’”.

In *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ found that it is not necessary to demonstrate that the proposed development will achieve a “better environmental planning outcome for the site” relative to a development that complies with the development standard.

In *Hansimikali v Bayside Council [2019] NSWLEC 1353*, Commissioner O’Neill found that it is not necessary for the environmental planning grounds relied upon by the Applicant to be unique to the site.

Finally, in *Big Property Group Pty Ltd v Randwick City Council [2021] NSWLEC 1161*, Commissioner O’Neill found that “The desired future character of an area cannot be determined by the applicable development standards for height and FSR alone”.

Further, Commissioner O’Neill found that “The presumption that the development standards that control building envelopes determine the desired future character of an area is based upon a false notion that those building envelopes represent, or are derived from, a fixed three-dimensional masterplan of building envelopes for the area and the realisation of that masterplan will achieve the desired urban character”.

Similarly, in *HPG Mosman Projects Pty Ltd v Mosman Municipal Council [2021] NSWLEC 1243*, Commissioner O’Neill found that “The desired

future character of an area is not determined and fixed by the applicable development standards for height and FSR, because they do not, alone, fix the realised building envelope for a site. The application of the compulsory provisions of cl 4.6 further erodes the relationship between numeric standards for building envelopes and the realised built character of a locality (SJD DB2 at [62]-[63]). Development standards that determine building envelopes can only contribute to shaping the character of the locality (SJD DB2 at [53]-[54] and [59]-[60])”.

ASSESSMENT

Is the requirement a development standard?

The building height control is a development standard and is not excluded from the operation of Clause 4.6 of the LEP.

What is the underlying object or purpose of the standard?

The objectives of the building height control are expressed as follows:

- (a) *to promote development that conforms to and reflects the natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) *to promote the retention and, if appropriate, sharing of existing views,*
- (c) *to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) *to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) *to encourage compatibility between development, particularly at zone boundaries,*
- (f) *to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of an area,*
- (g) *to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.*

In relation to objective (a), the topography of the site includes a gentle fall towards the rear (Miller Lane) of approximately 1 metre, and the level

change has been accommodated by providing internal stairs at the ground floor level to ensure the retail floor space is at footpath level along both street frontages.

In relation to objective (b), the proposed development will have no significant or adverse impact on any existing public or private views.

In relation to objective (c), the shadows cast by the proposed building will predominately fall within the shadows cast by the existing and surrounding buildings to the south, and will otherwise fall over the road carriageways to the east and west, and/or the roof surfaces and rear portions of the surrounding sites to the south that typically accommodate secondary buildings, service areas and car parking facilities.

In relation to objective (d), the residential apartments are orientated towards the east and west, and the side (north and south) facing window openings are limited to bedrooms, studies and amenities.

In relation to objective (e), the surrounding land to the north- south and west is similarly zoned B1 – Neighbourhood Centre, and the surrounding land to the east is zoned SP2 – Car Park. Further, the site is separated from the closest land zoned for residential purposes by the public car park to the east. In the circumstances, the proposed development provides an appropriate design response to the zoning boundaries in the locality.

In relation to objective (f), the proposed development has been carefully designed to provide a high quality mixed-use building, respecting the form of surrounding development, and continuing the emergence of 4-storey “shop top housing” developments in the vicinity of the site, along both side of Miller Street.

In that regard, the proposed development is consistent with the *Desired Future Character* of the *Cammeray Village Centre* in terms of providing active retail uses at the ground floor level and three (3) levels of residential apartments above.

In relation to objective (g), the site is zoned B1 – Neighbourhood Centre, circumstances in which objective (g) is not relevant to the proposed development.

In summary, the proposed development is generally consistent with the objectives of the building height control, notwithstanding the numerical variation.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The Department of Planning published "*Varying development standards: A Guide*" (August 2011), to outline the matters that need to be considered in Development Applications involving a variation to a development standard. The Guide essentially adopts the views expressed by Preston CJ in *Wehbe v Pittwater Council [2007] NSWLEC 827* to the extent that there are five (5) different ways in which compliance with a development standard can be considered unreasonable or unnecessary.

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*

The proposed development is generally consistent with the objectives of the building height control, notwithstanding the numerical variation.

2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

The objectives and purpose of the building height control remain relevant, and the proposed development is generally consistent with the objectives of the building height control, notwithstanding the numerical variation.

3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

The proposed development is generally consistent with the objectives of the building height control, notwithstanding the numerical variation.

Further, strict compliance with the building height control would effectively require the removal of the rooftop clerestory windows, plant and lift overrun in circumstances where the proposed development is compatible with the desired future character of the locality, and will not impose any significant or unreasonable impacts on the visual character of the public domain, or the amenity of surrounding properties.

Further, the portions of the building that extend above the building height control are recessed from the perimeter of the building, and will have limited visibility from any proximate locations.

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;*

The building height control has not specifically been abandoned or destroyed by the Council's actions. Irrespective, the Council has consistently adopted an orderly but flexible approach to the implementation of development standards (including the building height control) in appropriate circumstances, including when the objectives of the standard are achieved, notwithstanding numerical variations.

In that regard, the Council has approved approximately 98 DA's involving variations to the building height control for the most recent reporting period of January 2019 to June 2022.

Further, the objectives of Clause 4.6 of the LEP includes to provide "*an appropriate degree of flexibility in applying certain development standards to particular development*".

5. *Compliance with the development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

The zoning of the land remains relevant and appropriate. Irrespective, strict compliance with the building height control would effectively require the removal of the rooftop clerestory windows, plant and lift overrun in circumstances where the proposed development is compatible with the desired future character of the locality, and will not impose any significant or unreasonable impacts on the visual character of the public domain, or the amenity of surrounding properties.

Further, the portions of the building that extend above the building height control are recessed from the perimeter of the building, and will not be visible from any proximate locations.

Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposed numerical variation to the building height control is reasonable and appropriate in the particular circumstances on the basis that:

- the proposed building complies with the building height control along the primary elevation to Miller Street;
- the variation to the building height control along the rear elevation to Miller Street is a consequence of the topographical fall of approximately 1 metre, and the need to maintain the retail floor space at the footpath level;
- the variation to the building height control is otherwise limited to rooftop elements that are setback from the perimeter of the building, and will have limited visibility from any proximate locations;
- the proposed development has been carefully designed to provide a high quality mixed-use building, respecting the form of surrounding development, and continuing the emergence of 4-storey "shop top housing" developments in the vicinity of the site, along both sides of Miller Street;
- the proposed development is consistent with the *Desired Future Character* of the *Cammeray Village Centre* in terms of providing active retail uses at the ground floor level and three (3) levels of residential apartments above;
- the proposed development will have no significant or adverse impact on any existing public or private views;
- the shadows cast by the proposed building will predominately fall within the shadows cast by the existing and surrounding buildings to the south, and will otherwise fall over the road carriageways to the east and west, and/or the roof surfaces and rear portions of the surrounding sites to the south that typically accommodate secondary buildings, service areas and car parking facilities;
- the residential apartments are orientated towards the east and west, and the side (north and south) facing window openings are limited to bedrooms, studies and amenities, circumstances in which the proposed development will have no significant privacy impacts;
- strict compliance with the building height control would effectively require the removal of the rooftop clerestory windows, plant and

- lift overrun in circumstances where the proposed development is compatible with the desired future character of the locality, and will not impose any significant or unreasonable impacts on the visual character of the public domain, or the amenity of surrounding properties;
- the portions of the building that extend above the building height control are recessed from the perimeter of the building, and will not be visible from any proximate locations;
 - the building form provides horizontal and vertical articulation, and the architectural expression of the building provides a 2-storey podium element at the Miller Street frontage, a setback of 2.5 metres above the podium, and the façade is divided into a series of vertical bays to reflect the finer-grain form of traditional development;
 - the proposed development has been carefully designed to achieve a very high standard of architectural presentation to the public domain, with the building designed to address the street frontages, with active uses at the ground floor level, and a refined palette of external materials and finishes;
 - the proposed development will promote good design and the amenity of the built environment which is a recently incorporated object of the Act: *“(g) to promote good design and amenity of the built environment”*;
 - the Council has consistently adopted an orderly but flexible approach to the implementation of development standards (including the building height control) in appropriate circumstances, including when the objectives of the standard are achieved, notwithstanding numerical variations;
 - the proposed development is consistent with, or not antipathetic to, the relevant objectives of the B1 – Neighbourhood Centre zone; and
 - the proposed development is generally consistent with, or not antipathetic to, the objectives of the building height control, notwithstanding the numerical variation.

Are there any matters of State or regional significance?

The proposed numerical variation to the building height control does not raise any matters of State or regional significance.

What is the public benefit of maintaining the standard?

The proposed development is generally consistent with the objectives of the building height control, notwithstanding the numerical variation.

In the circumstances, the proposed development does not affect the public benefit of maintaining compliance with the building height control in other instances.

In that regard, the objectives of Clause 4.6 of the LEP includes to provide *"an appropriate degree of flexibility in applying certain development standards to particular development"*.

Any other matters?

There are no further matters of relevance to the proposed variation to the building height control.

Zone Objectives and Public Interest

The objectives of the B1 – Neighbourhood Centre zone are expressed as follows:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- *To encourage active street life while maintaining high levels of residential amenity.*
- *To encourage development for the purpose of shop top housing.*

The proposed development is generally consistent with (or not antipathetic to) the objectives of the B1 – Neighbourhood Centre zone on the basis that:

- the retail component will serve the needs of people who live or work in the surrounding neighbourhood;
- the retail component will activate the street frontages and maintain high levels of amenity; and
- the proposed development will continue the emergence of *"shop top housing"* in the locality.

Further, the proposed development will serve the public interest in terms of contributing to a diverse range of residential and non-residential activities within an established mixed-use precinct.

CONCLUSION

The purpose of this submission is to formally request a variation in relation to the building height control in Clause 4.3 of the North Sydney LEP 2013.

In general terms, strict compliance with the building height control is unreasonable and unnecessary in the particular circumstances, and there are sufficient environmental planning grounds to justify the numerical variation.