

<b>JRPP No:</b>	2010SYE070
<b>DA No:</b>	DA2010/1446
<b>PROPOSED DEVELOPMENT:</b>	Construction of Mixed Use Commercial/Retail and Residential Buildings within The Freshwater Village Centre at 22-26 Albert Street, 18 -22 Marmora Street, 5, 5A, 9, 15 & 21 Lawrence Street, Freshwater -
<b>APPLICANT:</b>	Freshwater Village Developments Pty Ltd
<b>REPORT BY:</b>	Malcolm Ryan, Director Strategic and Development Services for Warringah Council

## ASSESSMENT REPORT AND RECOMMENDATION

<b>Address / Property</b>	Lot 1, DP 830423, No. 22-26 Albert Street, Lot 9, DP 10321, No. 18 Marmora Street, Lot 10, DP 10321, No. 20 Marmora Street, Lot 11, DP 10321, No. 22 Marmora Street, Lot 2, DP 581226, No. 21 Lawrence Street, Lot CP, SP 1172, No. 15 Lawrence Street, Lot A, DP 356986, No. 9 Lawrence Street, and Lot 394, DP 752038, Nos. 5 and No. 5A Lawrence Street Freshwater.
<b>Description:</b>	Demolition of existing buildings and construction of mixed-use retail and residential development comprising shop top housing buildings, a residential flat building and townhouse style buildings with 2 levels of basement car parking (within the Freshwater Village Centre).
<b>Development Application No:</b>	DA2010/1446
<b>Application Lodged:</b>	9 September 2010
<b>Plans Reference:</b>	A-0101 – A-0103, A-0200 -0217, A-0501-A0503, A-0601-0605 – prepared by SJB Architects.
<b>Amended Plans:</b>	No amended plans were submitted as part of this application.
<b>Applicant:</b>	Freshwater Village Developments Pty Ltd
<b>Owner:</b>	T & T Merillo Holdings Pty Ltd, T & F Holdings Pty Ltd
<b>Localities:</b>	H1 – Freshwater Beach & H2 - Harbord Village
<b>Category:</b>	<p><b><u>H1 – Freshwater Beach</u></b>  Category 1 – Housing  Category 3 – Basement Car parking servicing Housing (not on ground floor) and shops in the H2 locality.</p> <p><b><u>H2 - Harbord Village</u></b>  Category 1- shops and Housing (not on ground floor).  Category 2 - Housing on ground floor</p>
<b>Draft WLEP 2009 Permissible or Prohibited Land use:</b>	<p><b><u>R2 – Low Density Residential</u></b>  <b>Prohibited</b> - Multi Unit Housing (Townhouses)</p> <p><b><u>B2 – Local Centre</u></b>  <b>Permissible</b> - Shop Top Housing, Retail Premises, and Multi unit Housing.  <b>Prohibited</b> - Residential Accommodation (Building C)</p>

**Variations to Controls**

**YES**

**H1 – Freshwater Beach**

Housing Density

**H2 - Harbord Village**

Building Height

**Referred to JRPP:**

YES (Capital Investment Value >\$10m)

**Referred to WDAP:**

YES (Category 3 components to the Application)

**Land and Environment Court  
Action:**

NO

**SUMMARY**

**Submissions:**

A total of 1953 submissions (which includes a form Letter signed by 1813 people and 140 individual submissions) were received at the time of writing this report.

**Submission Issues:**

- Character of the area;
- View Loss;
- Overshadowing of Public domain;
- Increased traffic;
- Inadequate carparking;
- Inconsistency with Desired Future Character; Statements;
- Access to the site;
- Impact on property values;
- Compliance with SEPPP 65'
- Consideration of the DCP for Freshwater; and
- Compliance with built form controls for the H1 & H2 localities.

**Assessment Issues:**

- Draft Warringah LEP 2009;
- SEPP (Infrastructure) 2007 (RTA and Energy Australia requirements);
- SEPP 65;
- Warringah LEP 2000 with regards to Desired Future Character Statements for the H1 and H2 localities, Clause 20 Variations for built form controls for the H1 and H2 localities, and Traffic and Parking Issues;
- Category 3 Assessment; and
- Resident Issues (public notification)

**Recommendation:**

Approval

**Attachments:**

A. Site and Elevation Plans;

**Attachments under separate  
cover:**

B. Objectors List;  
C. Council's Letter Dated 22 June 2010.

## LOCALITY PLAN (not to scale)



### Subject Site:

- Lot 1, DP 830423, No. 22-26 Albert Street Freshwater
- Lot 9, DP 10321, No. 18 Marmora Street Freshwater
- Lot 10, DP 10321, No. 20 Marmora Street Freshwater
- Lot 11, DP 10321, No. 22 Marmora Street Freshwater
- Lot 2, DP 581226, No. 21 Lawrence Street Freshwater
- Lot CP, SP 1172, No. 15 Lawrence Street Freshwater
- Lot A, DP 356986, No. 9 Lawrence Street Freshwater
- Lot 394, DP 752038, Nos. 5 and No. 5A Lawrence Street Freshwater

### Public Exhibition:

The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan. As a result, the application was notified to 1,610 adjoining land owners and occupiers for a period of 21 calendar days commencing on 18 September 2010 and being finalised on 20 October 2010. Furthermore, the application was advertised within the Manly Daily on 18 September 2010.

## SITE DESCRIPTION

The land which is the subject of this application is located on the corner of Lawrence and Albert Streets and Marmora Street.

The site comprises the following parcels of land:

LOT/DP	Street Address	Site Area
Lot 2 DP 581226	21 Lawrence Street	963m <sup>2</sup>
SP1172	13, 15 & 7 Lawrence Street	1,424m <sup>2</sup>
Lot A DP 356986	9 Lawrence Street	1,184.6m <sup>2</sup>
Lot 394 DP 752038	5 & 5A Lawrence Street	2,061.6m <sup>2</sup>
Lot 9 DP 10321 sec 2	18 Marmora Street	737m <sup>2</sup>
Lot 10 DP 10321 sec 2	20 Marmora Street	428.5m <sup>2</sup>
Lot 11 DP 10321 sec 2	22 Marmora Street	484.4m <sup>2</sup>
Lot 1 DP 830423	22-26 Albert Street	2,282.8m <sup>2</sup>
		<b>Total = 9,565.6m<sup>2</sup></b>

As indicated in the above table, the proposed development will occupy (8) eight allotments of land and will have a combined site area of 9,565.6m<sup>2</sup>. The consolidated lots will be irregular in shape with a frontage to Lawrence Street of 65m, a frontage to Albert Street of 71.5m and a frontage to Marmora Street of 25m. The site falls approximately 4.3m along Lawrence Street towards the east and approximately 4m along Albert Street towards the north east.

The adjoining developments to the east and west of the site are retail and commercial buildings. To the south of the site on the opposite side of Lawrence Street is a three storey mixed use building that comprises retail, commercial, and residential units which are located on the corner of Lawrence Street and Albert Street.

A public car park (known as Oliver and Lawrence Street Car park), as well as an electrical substation adjoin the site to the west. To the north of the subject site is St Peters Uniting Church in Marmora Street.

## RELEVANT BACKGROUND

### Previous Development Applications

#### **DA2007/0856**

Part of the current site (5 & 5A Lawrence Street, Freshwater and 18 Marmora Street, Freshwater) was the subject of a previous Development Application (DA2007/0856) for the redevelopment of the site. The proposal involved the demolition of the existing buildings, construction of a mixed use development comprising basement car parking, 3 storey retail/ commercial building, 10 residential apartments in two buildings and a detached dwelling and stratum subdivision.

The above application was approved by the Land and Environment Court on 3 April 2009 (Minnici vs. Warringah Council (2009) NEWLEC 1098).

#### **DA2010/0697**

A previous Development Application (DA2010/0697) for a mixed use development was originally lodged with Council on 10 May 2010. By letter dated 22 June 2010 Council identified a number of concerns with the application and requested that the applicant withdraw the DA to address the concerns raised by Council.

Subsequently the applicant withdrew DA2010/0697 on 6 August 2010.

A summary of the issues raised in the letter dated 22 June 2010, as well as how the current application addresses these issues are outlined below:

### H1 Locality

#### **Issues raised in Council's Letter**

*"The proposed development is found to be inconsistent with the following provisions of the H1 locality;*

- *The proposed development is inconsistent with the desired future character statement as it does not provide detached style housing in landscape settings; and*
- *The proposed development fails to achieve compliance with the built form controls relating to Housing density, Landscape open space, and Building heights".*

**Comment:** The plans accompanying this application have made the following amendments in relation to the above issues:

- The deletion of 3 townhouses and introduction of additional above car parking landscaping;
- Deletion of pool and gymnasium resulting in additional above car parking landscape area.
- Deletion of rooftop access to townhouses; and
- Reconfiguration of 2 townhouses.

### H2 Locality

#### **Issues raised in Council's Letter**

*"The proposed development is found to be inconsistent with the following provisions of the H2 locality;*

- *The proposed development is inconsistent with the desired future character statement for the following reasons:*
  - *The proposed development does not provide low-rise shop-top housing due to the significant non-compliance with the built form control relating to building heights;*
  - *The proposed development does not provide vertical breaks along the façades for buildings fronting Lawrence Street and Albert Street;*
  - *The proposed development does not incorporate continuous footpath awnings;*
  - *Insufficient information submitted with the application to demonstrate that the first floor units are adaptable for business use in the future; and*
  - *In accordance with the desired future character statement for the H2 locality, the massing of the buildings in the H2 locality is to be substantially reduced on the top floor thereby reducing the visual bulk of the development and enabling views between buildings. The proposed development does not achieve compliance with this requirement.*
  - *The proposed development fails to comply with built form controls relating to the H2 locality, in particular the building height relating to buildings A, B, and D and the front setback control in relation to building A".*

**Comment:** The plans accompanying this application have made the following amendments in relation to the above issues:

## **Building A**

- Compliance with the front building setback built form control in that the 3rd storey is setback 5m from the street boundary;

## **Building B**

- Deletion of plant room;
- Reduction in floor to ceiling heights;
- Reduction in height of plant room by 1.5m;
- Building lowered by 1m; and
- Removal of part of topmost residential level (level 4) resulting in the loss of 2 units.
- The design has accommodated additional vertical elements along the Lawrence Street frontage;

## **Building C**

- Deletion of the plant room;
- Reduction of floor to ceiling heights;
- Removal of 2 units to level 4;
- Reconfiguration of northern end of Building C to accommodate a stormwater easement which results in the deletion of 1 unit and reconfiguration of 2 units to face north; and
- Move units C101, C102 and C103 south by 4m.

## **Building D**

- Reconfiguration of internal space resulting in a reduction of 150m<sup>2</sup> of retail space and 4 additional units;
- The parapet/roof overhang has been modified to become more transparent structure

## **Traffic and Parking**

In relation to the specific concerns raised by Council's Traffic Engineers and RTA (as detailed in Council's Letter dated 22 June 2010), the following amendments and additional information has been provided with this application:

- The service area (loading dock) re-designed to only allow for medium rigid tucks and the proposed turntable and "stop go" lights were removed;
- A roundabout at the intersection of Lawrence Street and Oliver Street introduced and the traffic report includes new modelling to demonstrate the traffic calming effect;
- With respect to parking, the traffic report has been amended to include further detail and/or comparison of other similar developments to determine an appropriate parking rate;
- Left in and left out movements are to be facilitated by a median strip;
- Reconfiguration of entry ramp to suit traffic changes;
- Amendments to parking layout and numbers to satisfy Councils stormwater easement (loss of 6 retail car spaces); and
- Additional information regarding crash history provided.



## **Urban Design**

In relation to the specific concerns raised by Council's Urban Designer (as detailed in Council's Letter dated 22 June 2010), the following amendments and additional information has been provided with this application:

- The applicant has indicated that the proposal purposefully did not allow public access across the entire site (linkages to Lawrence/Oliver Street Car Parks or Mamora Street) in order to promote safety and in an attempt to enhance privacy to residents;
- Building A only exceeds the building height at the eastern most part of the building whilst the western part of the building is only 2 storeys high;
- The plans demonstrate compliance with the built form control in that the 3rd storey is setback 5m from the street boundary;
- Building D parapet/roof overhang has been modified and now reads as an open and more transparent structure;

## **Energy Australia**

In relation to the specific concerns raised by Energy Australia (as detailed in Council's Letter dated 22 June 2010) in relation to the distance from the Substation, the following additional information has been provided with this application:

- A report investigating electromagnetic impact has been submitted with the application in order to address Energy Australia concerns; and

## **Development Engineers**

In relation to the specific concerns raised by Council's Development Engineers (as detailed in Council's Letter dated 22 June 2010) in relation to the stormwater issues, the following amendments and additional information has been provided with this application:

- Reconfiguration of northern end of Building C to accommodate a stormwater easement which results in the deletion of 1 unit and reconfiguration of 2 units to face north; and
- Further details with regards to the stormwater issues raised by Council's Development Engineer.

## **LAND AND ENVIRONMENT COURT**

**No court action has been commenced in relation to the current application.**

## **PROPOSED DEVELOPMENT**

The proposal involves the consolidation of the eight (8) Lots and the demolition of all existing buildings and structures including the removal of trees on the site and the development of the site for the following:

- Two basement levels containing a total of 335 carparking spaces (156 Retail spaces; 178 residential spaces and a carwash bay) a loading dock and three (3) at grade single garages for the dwellings fronting Marmora Street;
- A mixed use building (retail & residential above) fronting Lawrence St consisting of 2,271.18m<sup>2</sup> of retail space and 16 units (**Building A**);

- A mixed use building with 28 units adjoining the western side boundary including a retail component of 284.55m<sup>2</sup> (**Building B**);
- A residential flat building consisting of 21 units (**Building C**);
- A mixed use building (retail and residential) fronting Albert Street consisting of 858.5m<sup>2</sup> of retail and 26 units (**Building D**);
- Seven (7) townhouses located in the north eastern corner of the site.

The specific details of the proposed development (Level by Level) are indicated in the following table:

Level	Use	No of Bedrooms/carparking spaces	Gross floor Area
Basement 1	Retail Parking	156 spaces (including 3 disabled spaces)	-
Basement 2	Residential parking	179 spaces (including 20 visitors spaces, 3 disabled spaces and 1 carwash bay)	-
Ground Floor	Townhouses	3 single garages	-
<b>Total (Carparking)</b>			
Retail		<b>156 spaces</b>	-
Residential		<b>182 spaces</b>	-
<b>Building (A)</b>			
Ground Floor	Retail	-	1,359m <sup>2</sup>
Level 1	Retail Residential	- 2 x 1 & 1 x 2 bed = 3 units	Retail = 615.42m <sup>2</sup> Residential = 353.56m <sup>2</sup>
Level 2	Retail Residential	- 2 x 1 & 7 x 2 bed = 9 units	Retail = 296.76m <sup>2</sup> Residential = 586.74m <sup>2</sup>
Level 3	Residential	1 x 1 & 3 x 2 bed = 4 units	858.44m <sup>2</sup>
<b>Sub Total (Building A)</b>			
Retail		-	<b>Retail = 2,271.18m<sup>2</sup></b>
Residential		<b>5 x 1 &amp; 11 x 2 bed = 16 units</b>	<b>Residential = 1,798.74m<sup>2</sup></b>
<b>Building (B)</b>			
Ground Floor	Retail Residential	- 6 x 1 bed = 6 units	Retail = 284.55m <sup>2</sup> Residential = 430.46m <sup>2</sup>
Level 1	Residential	2 x 1 & 4 x 2 beds = 6 units	559.38m <sup>2</sup>
Level 2	Residential	2 x 1 & 4 x 2 beds = 6 units	562.79m <sup>2</sup>
Level 3 & 4	Residential	2 x 1 & 8 x 2 beds = 10 units	1073.84m <sup>2</sup>
<b>Sub Total (Building B)</b>			
Retail		-	<b>Retail = 284.55m<sup>2</sup></b>
Residential		<b>12 x 1 bed 16 x 2 bed = 28 units</b>	<b>Residential = 2,626.47m<sup>2</sup></b>
<b>Building (C)</b>			
Ground Floor	Residential	7 x 1 & 1 x 2 bed = 8 units	554.47m <sup>2</sup>
Level 1	Residential	2 x 1 & 3 x 2 bed = 5 units	461.09m <sup>2</sup>
Level 2 & 3	Residential	2 x 1 & 6 x 2 beds = 8 units	835.2m <sup>2</sup>
<b>Sub Total (Building C)</b>		<b>11 x 1 &amp; 10 x 2 bed – 21 units</b>	<b>1,850.77m<sup>2</sup></b>
<b>Building (D)</b>			
Ground Floor	Retail Residential	- 4 x 1 & 2 x 2 = 4 units	Retail = 858.5m <sup>2</sup> Residential = 591.93m <sup>2</sup>
Level 1	Residential	4 x 1, 4 x 2 & 2 x 3 bed = 10 units	1,090.33m <sup>2</sup>
Level 2	Residential	4 x 1, 5 x 2 & 2 x 3 bed = 11 units	1,081.17m <sup>2</sup>
<b>Sub Total (Building D)</b>			
Retail		-	<b>Retail = 858.50m<sup>2</sup></b>
Residential		<b>12 x 1, 10 x 2 &amp; 4 x 3 bed = 26 units</b>	<b>Residential = 2,763.43m<sup>2</sup></b>



Level	Use	No of Bedrooms/carparking spaces	Gross floor Area
<b>Townhouses</b>			
Townhouses	Residential	<b>4 x 2 &amp; 3 x 3 beds = 7 townhouses</b>	<b>1,146.33m<sup>2</sup></b>
<b>TOTAL</b>			
Retail		-	Retail = 3,415m <sup>2</sup>
Residential		40 x 1 bed 47 x 2 bed 4 x 3 bed <b>91 Units</b> <b>7 Townhouses</b> (4 x 2 & 3 x 3 beds) <b>Total = 98 units</b>	Residential = 10,180m <sup>2</sup>  <b>Total GFA - 13,595m<sup>2</sup></b>

## STATUTORY CONTROLS

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2000
- State Environmental Planning Policy No 55 – Remediation of Land
- State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Infrastructure) 2007
- Warringah Local Environment Plan 2000
- Warringah Development Control Plan
- Warringah Section 94A Development Contributions Plan
- Draft Warringah LEP 2009

## External Referrals

Referral Department	Comments Received
Department of Environment, Climate Change and Water (DECCW).	<p>The Geotechnical engineers report submitted with the application (prepared by Jefferey and Katauskas Pty Ltd), notes that the lowest basement level is below the level of where groundwater was encountered when borehole samples were taken.</p> <p>Accordingly, the Department of Environment, Climate Change and Water was requested to review of the proposal and confirm whether the proposed development requires a dewatering licence under the Water Act 1912 and therefore would become integrated development pursuant Section 91 of the Environmental Planning and Assessment Act, 1979.</p> <p>The following comments were received from DECCW:</p> <p>“The site is predominantly underlain by shallow sand and clay soils above sandstone and some shale. The likely dewatering is still not considered significant with respect to groundwater management <i>per se</i>. Therefore a licence for temporary construction dewatering is not considered necessary”.</p> <p><b>Comment:</b> Based on the above advice, the proposed development is not integrated development in this regard.</p>
Roads & Traffic Authority (RTA)	<p>The application was referred to the NSW Roads and Traffic Authority (RTA) in accordance with Clause 104 of State Environmental Planning Policy (Infrastructure) 2007.</p> <p>The specific comments received from the RTA have been addressed in detail under the heading “SEPP (infrastructure) 2007” of this report. In summary, The RTA has raised no objection to the proposed development subject to conditions, which have been incorporated within the recommendation of this report.</p>

Referral Department	Comments Received
Energy Australia	<p>The application was also referred to EA in accordance with Clause 45 of <i>State Environmental Planning Policy (Infrastructure) 2007</i>.</p> <p>The specific comments received from Energy Australia have been addressed in detail under the heading "SEPP (infrastructure) 2007" of this report. In summary, EA has raised no objection to the proposed development subject to conditions, which have been incorporated within the recommendation of this report.</p>
NSW Police	<p>The application was referred to the NSW Police for comment. The NSW Police carried out a crime risk assessment of the development. No issues were raised by the NSW Police in relation to the development. A number of recommendations were made by the NSW police, which has been included within the recommendation of this report.</p>

### **Internal Referrals**

Referral Department	Comments Received
Strategic Planning	<p>Council's Strategic Planning section has reviewed the proposal and has provided the following comments:</p> <p><i>"Under the State Government Metro Strategy and draft North East Subregional Plan, Freshwater (identified as 'Lawrence Street, Harbord') is classified as a 'Small Village'. The definition of a small village (which has radii of 400m) is "A small strip of shops and adjacent residential area within a 5 to 10 minute walk. Contain between 800 and 2,700 dwellings."</i></p> <p><i>In response to the applicants comments in its submission in reference to Councils 'Lack of Residential Strategy' and 'housing targets', Council is currently in the process of preparing a draft Housing Strategy to respond to the State Government's housing target for the LGA. Council has now completed Stage 1 and 2 of its adopted Engagement Plan for the development of the Strategy. Stage 2 of the plan included a "Talk of the Town" Community Summit which was held in May 2010. This event was the cornerstone of the engagement plan to consider the options identified for accommodating the additional dwellings in Warringah.</i></p> <p><i>Three broad options were presented at the Summit as ways to accommodate the additional dwellings. One of the options presented was a centre based options involving up-zoning of identified centres. All centres identified as a village or small village (as listed in the NE Subregional Strategy) were subject to consideration for future renewal and development. I have attached a copy of the summary of the 'Freshwater Centre Information' provided to participants as background information before attending the summit.</i></p> <p><i>The initial analysis of 'Talk of the Town' clearly identifies that the community does not want any additional dwellings to be located in the Freshwater Centre. Both the individual keypad voting and the mapping exercises that were undertaken individually and as a table, identified Freshwater as a centre that was unsuitable for additional dwellings. The results of the Talk of the Town will be presented to Council at its Ordinary meeting to be held on 22 June 2010. So although Council has not adopted a Housing Strategy for Warringah, the community has given Council Officers a very clear and consistent direction that the additional dwellings proposed in Warringah should not be located in the Freshwater Centre.</i></p> <p><i>These results reinforce the position that this development should not be allowed to develop over what the current WLEP 2000 controls permits and hence there is no justification to allow a departure from the controls to allow additional dwellings in the centre. Hence the height non compliances on Buildings A, B and D would be inconsistent with the community voice.</i></p> <p><i>Council adopted the draft LEP and DCP at its Ordinary Meeting on 8 June 2010 further confirming the intent to keep any development within the existing height limit.</i></p> <p><i>Under WLEP 2000 the proposed development straddles two localities – H1 Freshwater Beach and H2 Harbord Village. The Draft LEP identifies the majority of the site as zoned B2 Local Centre and R2 Low Density Residential Development.</i></p>

Referral Department	Comments Received
	<p><i>The applicant in their development application to Council recommends that the proposed B2 Local Centres be extended (in accordance with Figure 4 of the applicant's submission). Strategic Planning does not support the proposed extension of the B2 zone. Marmora Street is characterised by low density, detached dwellings and is suitably zoned as R2 Low Density Residential Development zone under the Draft LEP. To extend the B2 zoning could potentially have a detrimental effect on the amenity and character of Marmora Street.</i></p> <p><i>The other area of concern with the proposal is the car parking ratio used to determine the required car parking spaces. There is no justification as to why this car parking ratio was used in calculating the car parking requirement for the development application. From recent community consultations held in Freshwater, it is very clear the car parking provision in the centre is a big issue for the community. It is recommended that the applicant be requested to provide further information and justification as to why this car parking ratio was considered appropriate to use for this development application.</i></p> <p><b>Comment:</b> The specific concerns raised by Council's Strategic Planning have been addressed in detail throughout this report. In summary, despite the non-compliance with the building height and housing density built form controls under the H1 and H2 localities, the proposed development is found to be generally consistent with the planning controls that apply to the site and therefore the refusal of the application based on the concerns raised in these comments would not be warranted. It is also noted that the subject site could be developed with significantly more retail area than what is proposed.</p>
Urban Design	<p>Council's Strategic Planning section has reviewed the proposal and has provided the following comments:</p> <p><b>Positive aspects:</b></p> <ol style="list-style-type: none"> <li><i>Articulated building forms. Facades are composed with an appropriate scale, rhythm and proportion.</i></li> <li><i>Consistent retail street address at Lawrence and Albert Street with the rest of village. Buildings contribute to the public domain and streetscape by fronting onto major streets with active uses.</i></li> <li><i>Consolidated vehicular access point to allow continuous Lawrence/ Albert Street shopfront and mall (previously 7 driveways) providing safe pedestrian routes.</i></li> <li><i>Based on the solar study submitted, 70% of dwellings have minimum 3 hours of sunlight during the 21 June winter solstice. The recommendation of the Residential Flat Design Code (RFDC) is 70% and 71% of dwellings are naturally cross ventilated. (Recommendation of the RFDC is 60%).</i></li> <li><i>Provision of a central landscaped common area which is sunny during winter noon time.</i></li> </ol> <p><b>Negative Aspects:</b></p> <ol style="list-style-type: none"> <li><i>The retail plaza proposed does not provide public linkage to Lawrence Street car parking area. A through-site link will promote more lively streets and urban areas encouraging pedestrian movement.</i></li> <li><i>The retail plaza proposed is in shade during winter noon time i.e. east-west orientation. The plaza is a major public open space proposed in the development. The design should optimise solar access to contribute positively to public and residence amenity.</i></li> <li><i>Building height control of 3 storeys is exceeded by 1 and 2 storeys in Block A and B respectively. Building A, B, C and D exceed the height limit of 11m in parts by varying dimensions of up to about 2.5m. These non-compliances will set precedence for future developments to follow.</i></li> </ol> <p><b>Conclusion</b></p> <p><i>The initial analysis demonstrates that the proposed development exceeds the current WLEP 2000. However there may be justifications to allow a departure from the controls if the following suggestions are taken into consideration and to ensure that the non-compliances would not set precedence for future development in Freshwater village.</i></p>

Referral Department	Comments Received
	<ol style="list-style-type: none"> <li>1. <i>Provide future link possibility to the Retail Plaza so that the proposed development has the capacity to synergise with future developments to the west. This will provide through-site link for the community thereby creating more lively streets and urban areas to encourage pedestrian movement.</i></li> <li>2. <i>Optimise sun exposure into the plaza by cutting back the solid parapet treatment of the southern side of the roof at Block D and using a translucent roofing material to allow more light penetration. The awning at the retail plaza should also utilise a translucent roofing material.</i></li> <li>3. <i>Ensure the 11 m building height limit is complied with totally. Even though the storey controls are exceeded in Block A and B, the 11m height limit should not be breached especially when viewed from outside the boundaries at the adjacent streets and next door sites. The greater than three storey heights should only be visible from the internal plaza and courtyards within the development.</i></li> </ol> <p><b>Comment:</b> The concerns raised by Council's Urban Designer have been addressed throughout this report. It is considered that the concerns raised do not warrant the refusal of the application for the following reasons:</p> <ul style="list-style-type: none"> <li>• The applicant has indicated that the development purposefully did not allow public access across the entire site (linkages to Lawrence/Oliver Street Car Parks or Marmora Street) in order to promote safety and in an attempt to enhance privacy to residents;</li> <li>• The non-compliance with the building heights has been addressed under the built control for the H2 locality and found to be acceptable.</li> <li>• There are no specific planning controls that will restrict the overshadowing on the public domain. Further, even a fully compliant building will create the same overshadowing issue on the public domain and the internal plaza.</li> </ul>
Traffic Engineer	Council's Traffic Engineer has reviewed the proposal and has raised no objection subject to conditions. All recommended conditions have been included within the recommendation of this report.
Development Engineer	Council's Development Engineer has reviewed the proposal and has raised no objection subject to conditions. All recommended conditions have been included within the recommendation of this report.
Waste Services Officer	Council's Waste Services Officer has reviewed the proposal and has raised no objection subject to conditions. All recommended conditions have been included within the recommendation of this report.
Natural Environment	Council's Natural Environment has reviewed the proposal and has raised no objection subject to conditions. All recommended conditions have been included within the recommendation of this report.
Landscape Officer	Council's Landscape officer has reviewed the proposal and has raised no objection subject to conditions. All recommended conditions have been included within the recommendation of this report.
Heritage	Council's Heritage consultant has reviewed the proposal and has raised no objection subject to conditions. All recommended conditions have been included within the recommendation of this report.
Property & Commercial Development	Council's Property & Commercial Development section has reviewed the proposal and has raised no objection to the proposed development.
Environmental Health & Protection	Council's Environmental Health & Protection has reviewed the proposal and has raised no objection subject to conditions. All recommended conditions have been included within the recommendation of this report.
Building Assessment & Compliance	Council's Building Assessment and Compliance Officer has reviewed the application and raised no objections subject to a number of conditions being included in the consent if the application is approved. All recommended conditions have been included within the recommendation of this report.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan. As a result, the application was notified to 1,610 adjoining land owners and occupiers for a period of 21 calendar days commencing on 18 September 2010 and being finalised on 20 October 2010. Furthermore, the application has been advertised within the Manly Daily on 18 September 2010.

As result of the notification process and at the time of writing this report, Council has received a total of 1953 submissions, which includes a form letter signed by 1813 people and 140 individual letters of objections, all opposing the development. A list which includes the name and addresses of all the objectors is attached to this report.

The following issues were raised in the submissions received to this development. A comment on each issue is provided.

<b>Desired Future Character</b> Concern is raised that the development is not consistent with the Desired Future Character of the H1 and H2 localities and will detrimentally alter the low-density, small-scale business village character and atmosphere of the area resulting in an overall loss of amenity.  The proposed townhouses on Marmora Street are not consistent with detached style housing in landscaped setting as required by the Desired Future Character Statement of the H1 Locality.  Additionally, it is noted that Building B consists entirely of residential uses which is against the Desired Future Character of the H2 Locality.
<b>Comment:</b> An assessment of the proposed development against the Desired Future Character Statements for the H1 Freshwater Beach and H2 Harbord Village localities is provided in this report. In summary, the proposed development has been found to be consistent with the Desired Future Character Statements for each locality. Accordingly, the concerns raised do not warrant the refusal of the application.
<b>Housing Density</b> Concern has been raised that the development does not comply with the Housing Density Built Form Control under WLEP 2000.
<b>Comment:</b> This issue has been addressed in detail under 'Built Form Control' within the 'H1 Freshwater Beach Locality' section of this report. In summary, the housing density proposed has been found to be appropriate and suitable, given the development will maintain the residential character of the locality. Accordingly, the concern raised does not warrant the refusal of the application.
<b>Building Height</b> Concern has been raised that buildings A, B, C & D are too high for the area and do not comply with the Building Height Built Form Control under WLEP 2000 with regard to the height limitation of 11m.
<b>Comment:</b> This issue has been addressed in detail under 'Built Form Control' within the 'H2 Harbord Village Locality' section of this report. In summary, the proposed development seeks variations to the building height in relation to Building A, B, C and D. However, the non-compliance with the height requirement does not result in unacceptable or unreasonable impacts on adjoining and surrounding properties that would be symptomatic of overdevelopment. Accordingly, the concern raised does not warrant the refusal of the application.
<b>Front Setback</b> Concern is expressed that Building A fails to provide a 5.0m third storey setback to Lawrence Street.
<b>Comment:</b> This issue has been addressed in detail under 'Built Form Control' within the 'H2 Harbord Village Locality' section of this report. In summary, Building A has been design to achieve compliance with the requirement of the front building setback in the H2 locality. Accordingly, the concern raised does not warrant the refusal of the application.
<b>Landscaped Open Space</b> Concern is expressed that the landscaped open space for the site does not comply with the Built Form Control.
<b>Comment:</b> A minimum of 40% of the site area is required to be landscaped open space in accordance with the built form controls for the H1 Freshwater Beach locality. The table under 'H1 Freshwater Beach Locality – Built Form Compliance Table - of this report indicates that greater than 40% of the site within the H1 locality is proposed to be landscaped open space which complies with the planning controls. Accordingly, the concern raised does not warrant the refusal of the application.
<b>Construction Sites</b> Concerns have been raised that the construction process associated with the development will create undue noise, pollution and traffic congestion in the immediate area.

<p><b>Comment:</b> The applicant submitted a Construction Management Plan (CMP) that addresses issues of the construction phase such as noise and dust generation during demolition, excavation and construction. In addition, suitable conditions will be imposed on any consent in regard to the control and mitigation of noise and dust from demolition, excavation and construction works. The concern raised is noted and addressed by way of conditions.</p>
<p><b>Safety and Security</b> Concern is raised that the development may increase the crime rate, most especially within the development itself, as the narrow walkways will not be visible from the street.</p>
<p><b>Comment:</b> The application was referred to NSW police for comments and no objection were raised in relation to the safety and security of the development subject to conditions, which are included within the recommendation of this report. Accordingly, the concern raised does not warrant the refusal of the application.</p>
<p><b>Views</b> Concern has been raised by the occupier of 16 Oliver Street regarding a potential loss of ocean views caused by Building B in the development. The objector claims that if the building height of Building B is retained at the required 11m then no views will be lost.</p>
<p><b>Comment:</b> An assessment of view impacts was undertaken and is detailed later in this report (General Principle 61 – Views). The assessment was undertaken in accordance with the planning principles for view sharing handed down by Commissioner Roseth in the Land and Environment Court case known as “Tenacity Consulting v Warringah Council”. The assessment indicates that the view impacts are not considered to be significant enough to warrant amendment to the application or refusal of the application.</p>
<p><b>Access to Sunlight</b> Concern has been raised that the development will result in significant overshadowing both internally and externally in both the private domains and the public domains of Lawrence Street, Albert Street and Moore Road.</p>
<p><b>Comment:</b> The shadow diagrams indicate that the both the internal plaza and Lawrence street will be largely in shadow between 9am and 3pm in mid winter (21 June). This represents the worst case scenario for overshadowing of the public domain in Lawrence streets and the proposed internal plaza. Having regard to the allowable building heights on this site and the fact that the street domain is directly to the south of the site, such shadow impacts would be difficult to avoid and on balance is considered reasonable.</p>
<p><b>Privacy</b> Concern is raised that the development (proposed Building D and No. 22 Marmora Street) will overlook the rear yard of No. 28 Albert Street.</p>
<p><b>Comment:</b> This issue has been addressed under Clause 65 of this report. In summary, given the spatial separation provided between the proposed Building D and townhouses fronting Marmora Street and the residential development located at 28 Albert Street, which minimises direct overlooking and therefore, the concern raised in this regard does not warrant the refusal of the application.</p>
<p><b>Conservation of Energy and Water</b> Concern is raised that the proposed building height, density and internal separation of the development will create an increased use of energy for heating and cooling giving the development a significant carbon footprint.</p> <p>Further, concerns are raised that significant waste water management issues will be generated from ground water and run-off from hard surfaces stressing the capacity of the surrounding stormwater system.</p>
<p><b>Comment:</b> A BASIX certificate has been submitted for the residential component of the development. The BASIX certificate certifies that the development meets the State Governments targets established for thermal performance and energy and water consumption. Accordingly, the proposal is considered to meet the requirements of Clause 68 of WLEP 2000 and the concern raised in this regard does not warrant the refusal of the application.</p>
<p><b>Increased Traffic, Traffic Conflict and Traffic Congestion</b> The following specific concerns have been raised in relation to the Traffic Impact:</p> <ul style="list-style-type: none"> <li>• The proposed roundabout at Moore Road, the median in Albert Street and the left turn in/out will exacerbate an already congested area and funnel traffic into Marmora Street and Soldiers Avenue which are considered to be too narrow to cope.</li> <li>• The traffic overflow from the development will have an adverse impact upon the character and safety of Soldiers Avenue which is listed under the Warringah Heritage Inventory for its street trees.</li> <li>• The proposed single driveway is not wide enough to safely service the development.</li> </ul>
<p><b>Comment:</b> The traffic report submitted with the application (prepared by Colston Budd and Kafes) has considered the existing and proposed traffic conditions as well as the appropriateness of the proposed number of car parking spaces and traffic generation of the proposal. The report states that</p> <p><i>“Traffic generated by the proposed development will have its greatest effects during the weekday afternoon peak period when it combines with commuter traffic. Surveys were undertaken by CBHK based on the Roads and Traffic Authority guidelines. The survey demonstrated that the proposed development would generate some 345 to 460 vehicles per hour (two-way) during the weekday afternoon and Saturday peak periods respectively.”</i></p>

*When applying the same rates for the existing retail development on the site (710m<sup>2</sup> GLA specialty shops and 840m<sup>2</sup> large fruit market) traffic generation are 165 to 200 vehicles per hour (two way) in the weekday afternoon and Saturday peak periods, respectively.*

Accordingly, the net increase in traffic generation as a result of the proposed development would be some 180 to 260 vehicles per hour (two way) during the weekday afternoon and Saturday peak periods respectively

In order to manage traffic flow along Albert Street and to facilitate access a roundabout is proposed at the intersection of Moore Road and Albert Street. This would allow vehicles accessing the site from the north to undertake a u-turn at the new roundabout.

The intersections along Albert Street and Lawrence Street were analysed using SIDRA. The analysis found that the intersections along Albert Street would continue to operate at the same level of service as for the existing situation.

The report concluded that:-

*"In summary, the main points relating to the transport implications of the proposed development are:*

- i. *The proposed development would increase residential and retail densities close to public transport services;*
- ii. *The proposed parking provision is considered appropriate;*
- iii. *Access and internal layout will be provided in accordance with AS 2890.1-2004 and AS2890.2-2002;*
- iv. *The proposed development would result in the removal of a number of existing driveways on Albert Street and Lawrence Street which would reduce the number of potential conflict points and improve pedestrian flows along these streets;*
- v. *The surrounding road network can accommodate traffic from the proposed development with the intersections along Albert Street operating at the same level of service as for the existing situation; and*
- vi. *The revised scheme has addressed the traffic matters raised by the RTA and Council".*

The RTA has not raised any objections to the proposal in relation to the proposed traffic impacts of the development.

Council's Traffic Engineer has reviewed the proposal and raised no concerns regarding the impact of the development on local intersections or the increase in traffic generated by the proposal.

With regards to the other concerns raised by the residents, the following comments are provided:

- As indicated above, it is unlikely that the traffic overflow from the development will have an adverse impact upon the character and safety of Soldiers Avenue or the street trees.
- Council Traffic Engineer and RTA have raised no objection with regards to the access of the proposed development. The proposed driveway has been design with the appropriate clearances to cater for large service vehicles.

For the above reasons, the concerns raised in relation to the traffic impact and access way is noted but not considered to warrant the refusal of the application.

#### **Car Parking**

Concern has been raised that the on-site car parking provided for the development is inadequate which will result in increased on-street parking. It is claimed that the development is deficient by 43 spaces for the commercial component.

It is felt that the development will exacerbate already deficient on-street car parking.

**Comment:** The issue relating to the shortfall of the carparking have been addressed in detail under the heading of Schedule 17 of this report. In summary, the proposal provides a shortfall of 7 spaces to the retail component of the development but exceeds by 41 spaces for the residential component of the development. The shortfall of the retail component has been justified and accepted for the reasons provided under Schedule 17 of this report. Accordingly, the concern raised in this regard does not warrant the refusal of the application.

#### **SEPP**

**65**

Concern has been raised that the proposed development does not comply with following provisions of SEPP 65

- Internal building separation between habitable rooms and balconies is inadequate in some cases.
- Single-aspect apartments have distances between windows and the back of kitchens in excess of 8.0m.
- The development does not provide adequate communal open space within the site.

**Comment:** The issue in relation to SEPP 65 has been addressed under the heading "SEPP 65" of this report. In summary, the proposed development is found to be acceptable with the requirements of the RFDC code and SEPP 65. The concern raised in this regard does not warrant the refusal of the application.

#### **Freshwater Village Development Control Plan**

Concerns are expressed that the Freshwater Village DCP was not formulated prior to the development being considered.

**Comment:** The Freshwater Village DCP is currently being prepared, however the proposed development was lodged prior to the implementation of the DCP. Accordingly, the requirement of the DCP is not applicable to the assessment of the subject application. The concern raised in the regard does not warrant the refusal of the application.



<p><b>Lack of Resolution of Issues in Previous DA</b></p> <p>Concern is expressed that the current development application has failed to address the issues raised in the previous (withdrawn) application.</p>
<p><b>Comment:</b> The application has been amended to address significant concerns raised in the previous application. The specific details of the amendments made with this application are detailed in the background section of this report.</p> <p>Furthermore, each application lodged with Council is assessed on its individual merits and under the planning controls that apply to the site. The matters critical to the assessment of the current proposal include; the proposal's consistency with the desired future character of the locality and the proposal's compliance with all relevant planning controls related to the bulk and scale of the development. Adequate information has been submitted to demonstrate that the bulk and scale of the proposed development will be consistent with the desired future character requirements, and concerns raised by Energy Australia, the RTA, and internal referral bodies have all been resolved. The concerns raised in this regard do not warrant the refusal of the application.</p>
<p><b>Economic</b></p> <p>Concerns have been expressed that the development will introduce major name retail outlets into the area including a supermarket, which are not needed in the community and which will undermine the economic sustainability of small-scale local retailers in Harbord Village.</p>
<p><b>Comment:</b> The Economic impact of the proposed development has been addressed in detail under the heading 'SEPP (Competition) 2010 of this report. In summary, the proposed development will increase the commercial floor space within the locality and the development will contribute to the revitalisation of the Freshwater village. As such it is considered that the proposal will have not a negative economic impact. The concern raised in this regard does not warrant the refusal of the application.</p>
<p><b>Safety</b></p> <p>Concerns have been expressed regarding the setback from the Energy Australia substation and Building B within the development.</p> <p>Concern is also expressed for the safety of the workers during the construction stage of development due to the proximity of the site to the substation.</p>
<p><b>Comment:</b> The application was referred to Energy Australia (EA) for comments, EA has raised no objection to the proposed development subject conditions which require that additional measures are to be incorporated into the design (particularly with regards to Building B) with regards to the safety of the proposed development. The conditions as recommended by EA have been included within the recommendation of this report. Accordingly, the concerns raised in this regard are noted but do not warrant the refusal of the application.</p>
<p><b>Devaluation of surrounding property</b></p> <p>Concerns have been raised that the proposed development will result in a devaluation of surrounding property prices due to overcrowding and congestion associated with this development</p>
<p><b>Comment:</b> The residents claiming negative impacts on property values have submitted no documentary evidence to support such claims. Therefore, the claims cannot be the subject of review. Further, this is not a matter for consideration under Section 79C of the EP and A Act, 1979.</p>
<p><b>Community Involvement</b></p> <p>Concern has been expressed that no community/local business involvement/input was sought in the design process of the development.</p>
<p><b>Comment:</b> Whilst Council encourages community consultation prior to the lodgement of any application, it is not a legislative requirement. Council under the EP and A Act 1979 is required to assess every application that is lodged and assess it in accordance with the planning controls applying to the site. The fact that the applicant has not consulted the community in relation to the proposed development would not warrant the refusal of the application.</p>
<p><b>Impact on Current Village Upgrade</b></p> <p>Concern is raised that the development will have an adverse impact upon the investment made by Warringah Council on the recent upgrade to Freshwater.</p>
<p><b>Comment:</b> The concern raised is not a matter for consideration under Section 79C of the EPA Act, 1979 and would not warrant the refusal of the application.</p>
<p><b>Omissions in Support Documentation</b></p> <p>It is claimed that the documentation accompanying the development application omits major areas of concern, namely:</p> <ul style="list-style-type: none"> <li>• <i>ESD report</i></li> </ul> <p>The report fails to mention any attempt to deal with the carbon-footprint of the development. Also, concern is raised regarding the passing-on of groundwater into stormwater piping and onto Freshwater Beach.</p> <ul style="list-style-type: none"> <li>• <i>Heritage Impact Statement</i></li> </ul> <p>The report fails to mention the heritage significance of Soldiers Avenue as an avenue of honour. It is felt that the traffic flow resulting from the development will impact upon the heritage significance of the Avenue.</p>

<ul style="list-style-type: none"> <li>• <i>Consultation with Energy Australia</i> Concern is expressed regarding an apparent lack of consultation between the developer and Energy Australia over the proximity of Building B to the substation.</li> <li>• <i>Shadow Diagrams and View Sharing Plans</i> Concern is expressed regarding the accuracy of the shadow diagrams and the view sharing diagrams. It is considered that the diagrams and plans reflect a four storey development and not a five storey development.</li> <li>• <i>Traffic Report</i> The traffic report is considered to be out-of-date as it was prepared in March at the end of summer when fewer people would be passing through Freshwater for the beach.</li> </ul>
<p><b>Comment:</b> The supporting documentation submitted with the development application describes the proposed development and provides information for Council to determine whether the proposal complies with all relevant controls. Council undertakes its own assessment of the proposal and considers the expert reports provided by the applicant. In this regard, the information provided by the applicant is not always agreed with or relied upon. Where Council cannot complete the assessment due to insufficient or inadequate information, the applicant may be requested to provide amended or additional details. It is considered that the information submitted with the application was adequate to allow for the complete and proper assessment of the application.</p>
<p><b>Lack of Financial Assurance</b> Concern is raised regarding the financial ability of the developer to complete the development, if approved.</p>
<p><b>Comment:</b> The concern raised is not a matter for consideration under Section 79C of the EP and A Act, 1979 and would not warrant the refusal of the application.</p>

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979 are:

Section 79C 'Matters for Consideration'	Comments
<b>Section 79C (1) (a)(i) – Provisions of any environmental planning instrument</b>	See discussion on "State Environmental Planning Policy No. 55 – Remediation of Land", 'State Environmental Planning Policy (BASIX: Building Sustainability Index) 2004', 'State Environmental Planning Policy (Infrastructure) 2007', 'State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development' and 'Warringah Local Environmental Plan 2000' in this report.
<b>Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument</b>	Refer to discussions on Draft Environmental Planning Instruments in the body of the report.
<b>Section 79C (1) (a)(iii) – Provisions of any development control plan</b>	The application was advertised and notified in accordance with Warringah Development Control Plan.
<b>Section 79C (1) (a)(iia) - Provisions of any Planning Agreement or Draft Planning Agreement</b>	None applicable.
<b>Section 79C (1) (a)(iv) - Provisions of the regulations</b>	<p>Clause 50(1A) of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. A design verification certificate has been submitted with the application.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia. A condition of consent could be included in the consent if the application was worthy of approval that all works to be consistent with the provisions of the Building Code of Australia.</p>
<b>Section 79C (1) (b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</b>	(i) The environmental impacts of the proposed development on the natural and built environment are addressed in detail under the General Principles of Development Control in this report and are found to be acceptable and reasonable.

Section 79C 'Matters for Consideration'	Comments
	<p>(ii) The development will not have a detrimental social impact in the locality considering the proposal involves the construction of commercial/retail and residential development, which is envisaged under WLEP 2000.</p> <p>(iii) The development will not have a detrimental economic impact in the locality. The development will increase the commercial floor space within the locality. As such it is considered that the proposal will not have a negative economic impact.</p>
<b>Section 79C (1) (c) – The suitability of the site for the development</b>	<p>In land use terms, the site is in a transitional location between commercial development fronting Lawrence and Albert streets and residential development to the Marmora Street. The existing use of the site for largely commercial purposes also lends the site to being redeveloped with elements of commercial.</p> <p>In transport and accessibility terms, the site is located in close proximity to public transport (bus) in Lawrence and Albert Streets, thus lessening the dependence on private motor vehicles and providing choice in mode of transport to work and play.</p> <p>The proposal will allow fulfilment of the streetscape objectives under the desired future character statement and represents an appropriate infill development.</p> <p>The site does not contain any significant constraints and therefore subject to the provision of adequate drainage, the site is considered suitable for the uses proposed.</p>
<b>Section 79C (1) (d) – Any submissions made in accordance with the EPA Act or EPA Regs</b>	The public submissions received in response to the development are addressed under 'Notification & Submissions Received' within this report.
<b>Section 79C (1) (e) – the public interest</b>	The proposal is considered to be favourable in respect to the wider and sectionalised public interest as the development provides for a wider housing choice in the area, provides a greater range of commercial and retail facilities and satisfies the requirements of WLEP 2000 and other applicable controls.

### **Draft Warringah Local Environmental Plan 2009 (Draft WLEP 2009)**

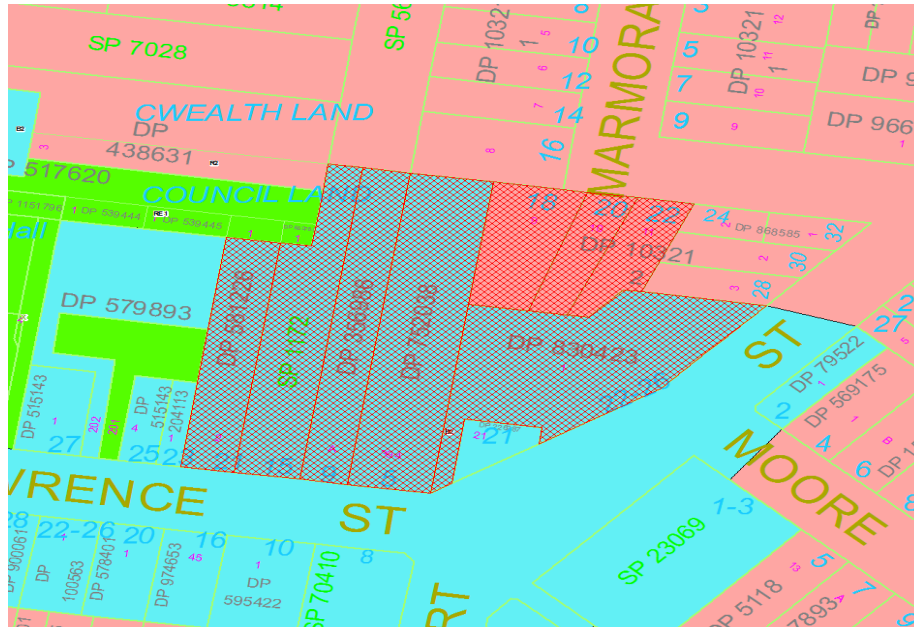
The public exhibition of the draft Warringah Local Environmental Plan 2009 (DWLEP 2009) commenced on 12 October 2009 and ended on 30 December 2009. The DWLEP 2009 was subsequently adopted by Council at its meeting on 8 June 2010. The DWLEP 2009 is therefore a mandatory matter for consideration under Section 79 (1) (a) (ii) of the Environmental Planning and Assessment Act, 1979 and weight must be given to it in the assessment of the subject application.

### **Definition**

Proposed Land Use	Land use definition under WLEP 2000	Land use definition under DWLEP 2009
Townhouses	Housing	Multi Unit Housing
Shops	Shops	Retail premises
Shop Top Housing	Housing (not on ground level)	Shop Top Housing
Residential Flat Building	Housing	Residential Accommodation

## Land Use Zones

The site has a split zoning under the provisions of the DWLEP 2009 as indicated in the zoning map below. In this regard, part of the site being No's. 18, 20, and 22 Marmora Street, Freshwater is proposed to be zoned 'R2 Low Density Residential' (coloured pink). The remainder of the site is proposed to be zoned B2 – Local Centre (coloured blue).



## Permissible or Prohibited

Zone	Proposed Land Use	Permissible or Prohibited
R2 – Low Density Residential	Multi Unit Housing (5 Townhouses)	Prohibited
B2 - Local Centre	Shop Top Housing (Buildings A, B, and D)	Permissible
	Retail Premises (Buildings A, B, and D)	Permissible
	Residential Accommodation (Building C)	Prohibited (no retail proposed at the ground level & therefore not defined as shop top housing)
	Multi unit Housing (2 Townhouses)	Permissible (not a specified Land use within item 2 or 4)

## Additional Permitted uses for particular land (Refer to Schedule 1): No

As indicated in the above table, the proposed multi unit housing (i.e. five (5) townhouses) within the R2 zone and the residential accommodation (i.e. Building C) in the B2 zone, are prohibited development under the draft LEP. The applicant acknowledges, within the Statement of Environment Effects, the prohibition of these two land uses within the subject site. However, in response to this, the applicant is relying on the savings provisions and has indicated that the draft WLEP 2009 has no determining weight.

The relevance of a draft LEP and the weight to be given to it relies on the facts of the particular case and circumstances which have been highlighted by numerous Land and Environment Court cases including *Mathers v North Sydney Council* [2000] NSWLEC 84, *Haywood and Bakker Pty Ltd v North Sydney Council* [2000] NSWLEC 138 *Blackmore Design Group Pty Ltd v North Sydney Council* [2001] NSWLEC 279).

In summary, the primary principles arising from Land and Environment Court cases are that the weight to be placed upon a draft LEP, when determining a development application depends on:

1. The imminence of the draft LEP and the degree of certainty that it will come into force;
2. The extent of conflict between proposed development and planning objectives contained in the draft LEP; and
3. The existence and applicability of savings provisions in the draft LEP.

### **Council's Assessment**

#### **1. The imminence of the draft LEP and the degree of certainty that it will come into force.**

Comment: The draft WLEP 2009 has completed the public exhibition process, has been adopted by Council and subsequently forwarded to the Department of Planning for gazettal. In this regard, the plan is considered both imminent and certain. On this basis, the draft WLEP 2009 is required to be given weight in the consideration under Section 79C of the EP & A Act, 1979.

#### **2. The extent of conflict between the proposed development and the planning objectives contained in the draft LEP.**

##### **R2 – Low Density Residential**

An assessment of the multi unit housing (i.e. the provisions of the five (5) townhouses within the R2 zone) in relation to the objectives of the 'R2 – Low Density Residential' is as follows:

- ***To provide for the housing needs of the community within a low density residential environment.***

**Comment:** The development proposes the construction of five (5) townhouses within the R2 zone. Three (3) of the proposed two-storey townhouses located closest to the corner of Marmora Street and Albert Street are grouped as detached style housing while one is located further to the west and is grouped as a two-storey terrace featuring two townhouses in an attached configuration. The built form and scale of the development is consistent with the built form and scale of development in the locality in that whilst they are attached, they have the appearance of detached style housing due to the varying setbacks and articulated design.

In this regard, it is considered that the proposed development within the R2 zone provides housing needs for the community within a low density residential environment. Accordingly, the proposed development is consistent with this objective.

- ***To enable other land uses that provides facilities or services to meet the day to day needs of residents.***

**Comment:** Marmora Street is an 'L' shaped street which abuts the northern boundary of the subject site and the H2 Harbord Village Locality. The townhouse component of the development is located within the shorter southern length of Marmora Street which is situated within close proximity to the more densely developed residential and commercial area immediately adjacent to Harbord Village. The townhouse component of the development maintains the residential use of the land within close proximity of commercial/retail area that will meet the day to day needs of the residents. In this regard, the proposed development is consistent with this objective.

- ***To ensure that low density residential environments are characterised by landscaped settings that are harmonious with the natural environment of Warringah***

**Comment:** As indicated above, due to the shape of the site the proposed development provides for 3 detached-style dwellings fronting Marmora Street. The proposed detached style housing is located within a landscaped garden setting, whilst the bulk, scale and form of the proposed dwellings are designed to maintain the building mass of the existing streetscape which is a mixture of single and 2 storey dwelling houses. The proposal has been designed to be harmonious with the natural environment of the area.

For the above reasons, it is concluded that the proposed development is consistent with the objectives of the 'R2 – Low Density Residential Zone' and the provisions of multi unit housing within this zone can be supported in this instances.

## **B2 - Local Centre**

An assessment of the residential accommodation (i.e. Building C) in relation to the objectives of the 'B2 – Local Centre is as follows:

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

**Comment:** Building C is proposed to be exclusively residential having no retail or commercial space proposed within this building. The provision of housing only in Building C does not result in any adverse impacts on the area as Building C is not conveniently located with respect to access to/from the surrounding streets that have retail/commercial uses. Security within the site would also be compromised for residents if retail/commercial uses were contained in Building C due to the configuration of access through the development.

Notwithstanding the above, the mixed use of the entire development allows for the opportunity to provide for a range of retail uses within the public plaza. The redevelopment of the site is capable of supporting the surrounding neighbourhood and providing for housing needs and choice, whilst providing facilities to meet the daily needs of residents in the area. Accordingly, the proposed development is consistent with this objective.

- ***To encourage employment opportunities in accessible locations.***

**Comment:** The development as whole increases the commercial floor space within Freshwater Village and therefore despite the fact that Building C is residential only, the majority of the development provides employment opportunities within the locality and thus improves the accessibility of housing to employment and assists in minimising the distances travelled to employment destinations.

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

**Comment:** The provision of the additional employment generating uses within the locality maximises the potential use for alternative forms of transport to be used for the journey to work such as public transport, walking and cycling. The development includes bicycle storage areas within the basement of both the residential and commercial car parking to further encourage the use of alternative forms of transport.

- ***To provide a pedestrian environment that is safe, comfortable and interesting.***

**Comment:** The mixed use proposal allows for the opportunity to provide for a range of retail uses within a safe and attractive public plaza environment. The proposed development is considered to achieve an appropriate and compatible relationship of land uses without having an adverse effect on the amenity of lower density residential properties.

- ***To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.***

**Comment:** Buildings fronting the street or public domain have been designed so that the massing is reduced by stepping the facade back from the podium thereby reducing the visual bulk of the development. Though the development provides the removal of some non-significant vegetation, the proposal provides landscaping, which will provide some natural landscape area.

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

**Comment:** The proposed built form provides a transition to adjacent residential development (to the north), including reasonable landscaping setbacks from side boundaries. The highest built form is located within the centre of the site, adjoining the Harbord Main electrical substation and the 6 storey Telstra building. Adequate separation is provided between buildings to provide a reasonable level of amenity,

Based on the above, it is concluded that the residential accommodation (Building C) is consistent with the objectives of the B2 – Local Centre zone and can be supported in this instance.

#### **Principal Development Standards - R2 Low Density Residential:**

The only Principal Development Standard in Part 4 of the DWLEP which is relevant to the development is 'Height of Buildings'. The draft 'Height of Buildings' control Map referred to in Clause 4.3(2) of the DWLEP shows that a 8.5m building height limit applies to the site under the R2 zone. The proposed development (within the R2 zone) complies with the standard as indicated in the table below.

Development Standard	Permitted	Proposed	Complies	Clause 4.6 Exception to Development Standards
Height of Buildings:	8.5m	5.5m – 8.0m	Yes	No

#### **Principal Development Standards – B2 Local Centre:**

The draft 'Height of Buildings' control Map referred to in Clause 4.3(2) of the DWLEP shows that a 11m building height limit applies to the site under the B2 zone. The proposed development does not comply with the Standard as indicated in the table below:

Development Standard	Permitted	Proposed	Complies	Clause 4.6 Exception to Development Standards
Height of Buildings:	11.0m	<b>Building A</b> 11.2m – 14.2m	No	Yes
		<b>Building B</b> 12.0m - 13.5m	No	Yes
		<b>Building C</b> 11.2m - 12.5m	No	Yes
		<b>Building D</b> 9.5m – 13.5m	No	Yes
		<b>Townhouses</b> 6.4m – 7.5m	YES	No



### **Clause 4.3 – Hight of Buildings (DWLEP 2009)**

The proposed development (i.e. Buildings A, B, C, and D) does not comply with the Building Height Development Standard as detailed in the above compliance table under the provisions of the DWLEP 2009. In this regard, the objectives of the Standard are addressed below:

- (a) *To ensure that buildings are compatible with the height, bulk and scale of the desired future character of the locality that may be identified in any development control plan made by the Council.***

Comment: The height standard for the site falls under the Draft LEP only, whilst the Draft Warringah DCP does not have a desired future character statement, the proposed development has been found to be consistent with the DFC statement for the H1 and H2 localities under the current WLEP 2000 as discussed elsewhere in the report. Further, the proposed height of each individual building is considered not to have an unreasonable impact in terms of its height, bulk and scale of the current (and that is envisaged in the future) for the following reasons:

#### **Building A**

The extent of the non-compliance is limited to the eastern part of Building A, noting that as a result of the land falling away from Lawrence Street, the non-compliances will not have any unreasonable impact on surrounding properties as it is not readily visible from the public domain. In cross section the non-complying elements are limited to services (plant room) which are not visually dominant and are not considered to adversely impact on surrounding properties in terms of views, privacy or overshadowing.

#### **Building B**

Building B is not readily visible from the public domain as it is located within the centre of the site. It is considered that the proposed height of the building does not visually dominant the surrounding spaces by virtue of its height or bulk, especially when viewed within the existing context providing for good articulation and visual interest. The existing 6 storey Telstra building remains the dominant structure within this area.

#### **Building C**

The non-complying elements are considered not to cause any unreasonable impacts on surrounding properties by way of overshadowing, view loss or overlooking and are appropriately setback from the side boundary so as not to visually dominate the existing church.

#### **Building D**

The maximum non-compliance occurs to the eastern part of Building D fronting Albert Street. The perceived bulk as seen from the street is reduced by the greater setback provided from Albert Street. Further, the non-compliance does not cause an adverse impact on surrounding spaces by way of overshadowing, view loss or overlooking and is considered not to dominate the public domain.

For the above reasons, the non-compliances with Building A, B, C, and D are considered to consistent with this objective.

- (b) *To minimise visual impact, disruption or views, loss of privacy and loss of solar access.***

Comment: The non-compliance with the height standard will not result in inconsistencies with this objective under the Draft LEP as indicated above, the extent of non-compliance with the four (4) buildings will not result in adverse impacts with regards to views, loss of privacy and loss of solar access.

Buildings B and C are sufficiently setback from the residential properties along Marmora Street to maintain visual and acoustic privacy. In addition, as the development is situated to the south of Marmora Street no overshadowing will occur on the adjoining residential land to the north.

**c) *To minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments.***

Comment: The non-compliance with the height standard will not result in inconsistencies with this objective under the Draft LEP as the building does not sit within a bushland environment. Whilst located within a coastal environment, the proposed development is located sufficient distance from Freshwater Beach to ensure no unreasonable impacts will occur as a result of the proposed development. Contextually there are many buildings located east of the subject site (closer to Freshwater Beach) that are significantly higher than what is proposed.

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

Comment: The non-compliance with the height standard will not result in inconsistencies with this objective under the Draft LEP by maintaining the street level of Lawrence Street and excavating within the site, the development minimises its potential impact upon the streetscape by a stepped and articulated design which, in turn minimises visual bulk of the proposal onto the public domain.

In conclusion, a variation to the Building Height Development Standard under Clause 4.3 of Draft WLEP 2009 can be supported for reasons that it is found to be consistent with objectives of the standard as discussed above.

#### **Clause 4.6 - Exception to Development Standard**

This Clause applies when a Development standard is varied under the provisions of the DWLEP 2009. As indicated above, the height of the proposed development (i.e. Buildings A, B, C, and D) exceeds the 11.0m maximum building height standard under the proposed zone.

The objectives of this Clause are:

- a) *To provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- b) *To achieve better outcomes for and from development allowing flexibility in particular circumstances.*

Clause 4.6 (subclause 4) states that consent must not be granted for development that contravenes a standard unless the consent authority is satisfied that:

- (i) *The applicant's written request that adequately addressed the matter required to be demonstrated by subclause (3).***

**Comment:** The applicant has provided a written request that addresses the non-compliance in relation to varying the building height development standard under the provisions of the DWLEP 2009.

- (ii) *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.***

**Comment:** The non-compliance with the building height standard is considered to be in the public interest as the proposed development is found to be consistent with the zone objectives of the B2 zone as discussed in the previous section of this report.

#### **Sydney Metropolitan Strategy – 'City of Cities', A Plan for Sydney's Future - Draft North East Subregional Strategy**

Freshwater (identified 'Lawrence Street, Harbord) is identified as a 'small village' in the Draft North East Subregional Strategy. The definition of a small village is "a small strip of shops and adjacent residential area within a 5 to 10 minute walk that contains between 800 and 2,700 dwellings.

The classification of the site at state level reinforces the development potential of the site. The redevelopment of the site will assist in achieving its status as a “*small village*” capable of supporting the surrounding neighbourhood and providing for housing needs and choice, whilst providing facilities to meet the daily needs of residents.

The mixed use proposal allows the opportunity to provide for a range of retail uses within a public plaza environment. The proposed development is considered to achieve an appropriate and compatible relationship of land uses without having an adverse effect on the amenity of lower density residential properties.

**For the above reasons, it can be concluded that the scale of the proposed development is consistent with the Draft North East Subregional Strategy.**

### **State Environmental Planning Policies**

Further consideration is required for the following State policies:

#### **State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX) applies to the residential component of the development.

BASIX Certificate has been submitted for the residential component of the development. The certificate confirms that the proposed development meets the NSW government’s requirements for sustainability. The development meets the water and energy performance targets and achieves a pass for thermal comfort.

#### **State Environmental Planning Policy No. 55 – Remediation of Land**

Clause 7(1)(a) of State Environmental Planning Policy No. 55 – Remediation of Land and Clause 48 of WLEP 2000 state that a consent authority must not consent to the carrying out of any development on land unless;

- It has considered whether the land is contaminated, and
- If the land is contaminated, it is satisfied that the land is suitable in its contaminated state for the purpose for which the development is proposed to be carried out, and
- If the land requires remediation to be made suitable for the development proposed to be carried out, it is satisfied that the land will be remediated before the development is carried out.

In response to these requirements the applicant submitted a *Phase 1 – Preliminary Contamination Assessment* prepared by Environmental Investigation Services (EIS) dated March 2010 (Ref: E22337KBrpt3).

The Report notes that based on the scope of work undertaken for this assessment EIS consider that the site can be made suitable for the proposed development provided that the following recommendations are implemented:

- *The site should be inspected by experienced environmental personnel during the demolition and excavation works to assess any unexpected conditions or subsurface facilities that may be discovered between investigation locations. This should facilitate appropriate adjustment of the works programme and schedule in relation to the change site conditions; and*
- *Prior to demolition of the existing site buildings, a suitably qualified consultant should undertake a hazardous building materials inspection. The demolition works should be undertaken in accordance with the recommendations made within the hazardous building materials report; and*

- *A management plan should be prepared for the excavation and disposal of fill and natural soil. The recommendations outlined in the plan should be implemented during the proposed development works.*

The Assessment was referred to Council's Environmental Health Officer who raised no objection to the proposal subject to conditions.

Accordingly, based on the information submitted, the requirements of SEPP 55 and Clause 48 of WLEP 2000 have been satisfied and the land is considered to be suitable for the development subject to conditions which adopt the recommendations of the above-mentioned *Phase 1 – Preliminary Contamination Assessment* by EIS.

### **State Environmental Planning Policy (Infrastructure) 2007**

Clause 45 of SEPP Infrastructure requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- Within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists);
- Immediately adjacent to an electricity substation; or
- Within 5m of an exposed overhead electricity power line.

The application was referred to Energy Australia (EA) and EA has provided the following comments:

*"The development site adjoins Energy Australia's 'Harbord 33 kV Zone Substation', located on Lot 202 DP 579893, Lawrence Street, Freshwater.*

*As indicated in previous correspondence to Council, Energy Australia has been in discussion with the proponents of the proposed development with a view to ensuring that any concerns that Energy Australia may have in regard to the proposed development are capable of resolution.*

*As a consequence of these discussions Energy Australia now requests Council to attach a number of conditions to any development consent issued by the council in respect to the proposed development."*

The conditions as recommended by EA have been included within the recommendation of the report. Subject to the EA conditions, the proposed development is considered to meet the requirements of Clause 45 of the SEPP.

Pursuant to Clause 106(1) (a) of SEPP (Infrastructure) 2007 applies to new premises of a "relevant size or capacity".

"Relevant size or capacity" means:

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

Clause 106 'Traffic Generating Development' of the SEPP requires the application to be referred to the RTA if the development is specified in Schedule 3 of the SEPP. Schedule 3 of the SEPP applies to this application as the proposed development provides more than 200 parking spaces (total of 338 being 335 within the basement and 3 garages accessed via Marmora Street) parking spaces are proposed as part of the development. Consequently, the application was referred to the RTA.

The RTA by letter dated 9 November 2010 has provided the following responding comments:

*“Safety concerns are raised with regard to the bottom of the street access driveway ramp where the residential car park, retail car park and service area accesses all intersect.*

- 1. Appropriate measures (including signage, vehicle actuated warning lights and convex mirrors) should be devised to improve sight distance and the safety of all vehicles at this location to the satisfaction of Council.*
- 2. The traffic report indicates that the largest vehicle to enter the site would be an 8.8m Medium Rigid Vehicle (MRV) which is smaller than the 12.5m Large Rigid Vehicle (LRV) proposed in an earlier submission.*

*Council should be satisfied that a MRV will satisfy the demands of the development. Council should also include a condition that prohibits entry to vehicles larger than an 8.8m MRV in the development consent.*

- 3. Swept path analyses shall be provided to the RTA and Council demonstrating that a MRV can:*
  - Travel through the proposed roundabout at the intersection of Lawrence Street/Albert Street;*
  - Enter and exit the site in a forward direction; and*
  - Enter and exit the loading area in a forward direction while all other docks are occupied and not encroaching onto the other side of the driveway ramp.*

*Any Construction Certificate shall not be issued until the swept path analysis has been endorsed by the RTA and Council.”*

**Comment:** The concerns raised by the RTA in relation to the driveway ramp where the residential car park, retail car park and service area accesses all intersect have been appropriately conditioned by Council's Traffic Engineer. All the remaining points identified by the RTA have been included as conditions within the recommendation of this report.

All potential traffic safety and parking implications of the development have been considered in detail under Clause 71-75 in the General Principles of Development Control table in this report. The proposed development has been found to be consistent with the requirements of these clauses.

No objections have been raised by Council's Traffic Engineer in relation to traffic impacts of the proposed development.

For the reasons outlined above, the proposed development is considered to meet the requirements of Clause 106 of the SEPP.

### **State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development**

State Environmental Planning Policy No. 65 – Design Quality for Residential Flat Development applies to new residential flat buildings, the substantial redevelopment/refurbishment of existing residential flat buildings and conversion of an existing building to a residential flat building.

Clause 3 of SEPP 65 defines a residential flat building as comprising or including:

- (a) 3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and*
- (b) 4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops), but does not include a Class 1a building or a Class 1b building under the Building Code of Australia.”*

Proposed Buildings A, B, C, and D are consistent with the above and are thus defined as 'residential flat buildings' under the SEPP. Therefore, the provisions of the SEPP are applicable to the assessment of this development.

SEPP 65 requires residential flat development to be assessed against 10 Design Quality Principles as well as the Primary Development Controls contained within the associated Residential Flat Design Code (RFDC).

#### Design Quality Principle 1: Context

*"Good design responds and contributes to its context. Context can be defined as the key natural and built features of an area.*

*Responding to context involves identifying the desirable elements of a location's current character or, in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality and identity of the area."*

**Comment:** The Harbord Village precinct is characterised by generally low-rise commercial development of a mixed age, form and height which follows the gradual downward slope, most notably along Lawrence Street and Albert Street.

The standard of existing development within the precinct is varied with older, traditional shopfronts sporadically occurring alongside newer commercial development which creates an eclectic and active streetscape.

The site area of the proposed development currently consist of a fruit market with associated outdoor car parking area and four shop fronts (Nos. 5, 9, 15 & 21 Lawrence Street) each with extensive rear yard areas.

The Energy Australia sub-station at Lot 202 Lawrence Street and the Telstra Corporation facility at No. 23A Oliver Street, both of which are situated within the north-western half of the H2 Harbord Village Locality, both provide a visual contrast to the generally consistent level of commercial development in the area with both facilities adding a visually disruptive industrial/utilitarian element to the otherwise urban character of the precinct.

The development proposes to introduce a consistent architectural theme and land use within the core of this area and is considered to be complimentary to the desired mixed-use character of the locality and thus, contributory to the quality and cohesive identity of the area.

Housing (not on the ground floor) is identified as Category 1 development in the H2 Harbord Village locality. Category 1 development is development that is generally consistent with the desired future character statement.

Housing on the ground floor is Category 2 development. The provision of housing on the ground floor of Buildings B, and C is considered appropriate as ground floor commercial premises would not be readily visible from Lawrence and Albert Streets.

The residential uses proposed within Building C in the H2 locality provide a more appropriate transition of use between the retail/commercial development along Lawrence Street to the low density residential development in Marmora Street.

Buildings A and D have been designed to be compatible with future development on the adjoining site to the west. The design of both buildings ensures that the amenity of future development on the adjoining site and the amenity of future occupants on the subject site will not be unreasonably impacted by the proposed development.

The setback of Building C to the northern boundary has also been increased to provide greater separation and an improved transition between the residential development on the subject site and the lower density development to the north.

A landscaped area has been provided to the east of Building C which will assist in providing a visual transition between the development in the H2 locality and development in the H1 locality.

It is considered that the development has satisfactorily addressed the design objectives of this principle.

#### Design Quality Principle 2: Scale

*“Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings.*

*Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of the area.”*

**Comment:** The scale of the development at street level (i.e. along the Lawrence Street and Albert Street frontages) is considered to be consistent with the scale of development in the area. In terms of scale, the area of inconsistency is situated within the site itself and only evident from the central space of the development.

The proposed building height of the eastern half of Building A does add extra building height and thus bulk and scale, to the Lawrence Street streetscape but, because of the architectural modulation of the building, its scaled height increase from the eastern edge of the site (adjacent to No. 23 Lawrence Street), and the retention of the Bendigo Bank next door which provides a transition to the eastern end of Building A. The extra height, bulk and scale is not considered to be excessive in that it would create a building that will be consistent with other development within the locality.

Similarly, the eastern end of Building D (facing Albert Street) achieves a height in excess of the permitted building height but due to the articulated setbacks to the upper residential levels, the visual bulk and scale is effectively reduced such that the only evident structure to Albert Street is the shop front.

The combination of the separation of buildings, variable building heights, the effective use of vertical and horizontal articulation and the materials used all contribute towards the visual impact of the development. With regards to this development, all aspects appear to have been used to achieve a considered and satisfactory outcome in terms of scale and consistency with the streetscape.

The proposal is therefore consistent with this design quality principle.

#### Design Quality Principle 3: Built Form

*“Good design achieves an appropriate built form for a site and the building’s purpose, in terms of building alignments, proportions, building type and the manipulation of building elements.*

*Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.”*

**Comment:** The development has been designed to respond to the shape and topography of the site while respecting the existing scale of development along Lawrence Street and Albert Street. This has been achieved by excavating within the site while retaining existing street levels which results in the appearance of 2/3 storey development along the two street frontages and some higher development within the site itself.



All buildings follow a consistent architectural theme but have a variable building height which incorporates a stepped-down appearance from the centre of the site towards the southern boundary facing Lawrence Street and the northern boundary facing Marmora Street. In this regard, the development appears to visually respect the character of Lawrence Street and Albert Street and the residential character of Marmora Street.

Building separation within the development is appropriate and provides, in conjunction with the variable building heights and the provision of a wide communal open space area, open horizontal and vertical vistas which avoids a sense of enclosure within the ground floor pedestrian areas.

The development clearly defines the public domain by providing a pedestrian mall from Albert Street. The remainder of the street frontages of Lawrence Street and Albert Street are clearly delineated by the presence of shop frontages. This contributes towards the socially active character of the precinct and its village-like commercial streetscape.

Overall, the building alignments, proportions, building types and the manipulation of building elements all contribute towards the appropriate built form for the site and the mixed-use purpose of each building.

The proposal is therefore consistent with this design quality principle.

#### Design Quality Principle 4: Density

*“Good design has a density appropriate for a site and its context, in terms of floor space yields (or number of units or residents).*

*Appropriate densities are sustainable and consistent with the existing density in an area or, in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality.”*

**Comment:** No floor space ratio or density built form controls apply to the H2 Harbord Village locality within which Buildings A, B, C and D are located. Accordingly, the appropriateness of the density proposed is determined through the level of compliance with all relevant planning controls.

Whilst all four (4) buildings provide non-compliances with the building height control, the amenity provided for future occupants meets the requirements of the Residential Flat Design Code and the development has access to, and provides within itself, adequate infrastructure in the form of access to Sydney Water sewer lines, the Energy Australia power grid and public transport systems commensurate with infrastructure availability within a long established urban area. It is noted that an alternative design could provide significantly more retail/commercial floor space at the ground level within the H2 locality.

The proposal is therefore consistent with this design quality principle.

#### Design Quality Principle 5: Resource, Energy and Water Efficiency

*“Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction.*

*Sustainability is integral to the design process. Aspects include demolition of existing structures, recycling of materials, selection of appropriate and sustainable materials, adaptability and reuse of buildings, layouts and built form, passive solar design principles, efficient appliances and mechanical services, soil zones for vegetation and reuse of water.”*

**Comment:** The proposal involves the demolition and excavation of the site to facilitate the construction of the development. In this regard, a Construction Management Plan, addressing the

recycling of demolition and excavation materials, and a Waste Management Report, addressing ongoing waste management for the completed development, is provided with the application.

The proposed construction materials and building design have incorporated passive solar, insulation and sun protection in its design. In NSW, energy and water efficiency for residential development is guided by *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*. In this regard, the application includes BASIX Certificate which indicates that the development will meet the required targets and commitments for efficient energy & water efficiency and thermal comfort.

The proposal is therefore consistent with this design quality principle.

#### Design Quality Principle 6: Landscape

*“Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain.*

*Landscape design builds on the existing site’s natural and cultural features in responsible and creative ways. It enhances the development’s natural environmental performance by co-ordinating water and soil management, solar access, micro-climate, tree canopy and habitat values. It contributes to the positive image and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character.*

*Landscape design should optimise useability, privacy and social opportunity, equitable access and respect for neighbours’ amenity, and provide for practical establishment and long term management.”*

**Comment:** Deep soil landscaping opportunities have been provided within the centre of the site to accommodate a communal open space area for the occupants of the development. The extent of landscaping is substantially greater than that required by WLEP 2000 built form controls.

The proposal satisfies Council’s Landscape Open Space provision and it is considered that the proposal provides for appropriate landscaping for the scale of the development.

The proposal is therefore consistent with this design quality principle.

#### Design Quality Principle 7: Amenity

*“Good design provides amenity through the physical, spatial and environmental quality of a development.*

*Optimising amenity requires 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.”*

**Comment:** The development maintains a satisfactory separation between the buildings within and adjacent to the site.

The design provides high levels of internal amenity to future residents, with the units ranging in size and the number of bedrooms. All units benefit from suitable building depths and orientation. Private recreation areas are provided in the form of balconies off the living areas and are supplemented by a communal area in the centre of the site for the enjoyment and use of residents.

It is considered that the development satisfies the provisions with respect to solar access, privacy and amenity.

The pedestrian entry into the site from Albert Street introduces a street level mall which provides an interactive zone.

The proposal is therefore consistent with this design quality principle.

#### Design Quality Principle 8: Safety and Security

*“Good design optimises safety and security, both internal to the development and for the public domain.*

*This is achieved by maximising overlooking of public and communal spaces while maintaining internal privacy, avoiding dark and non-visible areas, maximising activity on streets, providing clear, safe access points, providing quality public spaces that cater for desired recreational uses, providing lighting appropriate to the location and desired activities, and clear definition between public and private spaces.”*

**Comment:** Safety and security has been assessed in detail under ‘Safety and Security’ in the Residential Flat Design Code table of this report. In summary, the proposal is considered to adequately achieve safety and security for future occupants of the development by providing good casual visual surveillance of the street and the private domain. The NSW Police service raised no objection to the proposed development subject to conditions which are included within the recommendation of this report.

The proposal is therefore consistent with this design quality principle.

#### Design Quality Principle 9: Social Dimensions

*“Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities.*

*New developments should optimise the provision of housing to suit the social mix and needs in the neighbourhood or, in the case of precincts undergoing transition, provide for the desired future community.”*

**Comment:** The development provides apartment style and multi unit dwellings which are an alternative to detached style housing within the locality. The development will enable population growth whilst providing no unreasonable the impacts on the local area.

The location of the development is appropriate as the pedestrians can easily access Freshwater Village and public transport as well as accessing the nearby recreational facilities at Freshwater Beach and local parks.

It is considered that the development improves housing choice within the locality and therefore responds positively to the housing needs of the local community. The proposed development is therefore considered to be consistent with this design quality principle.

#### Design Quality Principle 10: Aesthetics

*“Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.”*

**Comment:** The design of the building is compatible with the design and scale of the desired future character of the Freshwater Village locality. The external finishes will complement the surrounding developments and contribute to a quality appearance.

The proposed landscaping works will contribute positively to the streetscape whilst softening the appearance of the built form.

The proposed development is considered to be consistent with this design quality principle.

## Residential Flat Design Code

The following table provides an assessment of the development against the provisions of the Residential Flat Design Code:

Primary Development Controls	Guideline	Comments																				
<b>PART 01 - LOCAL CONTEXT</b>																						
<b>Building Height</b>	Where there is an existing floor space ratio (FSR), test height controls against it to ensure a good fit.	<b>Not Applicable</b> No FSR controls apply to the proposed development																				
	<b>Test heights against the number of storeys and the minimum ceiling heights required for the desired building use.</b>	<p><b>YES</b></p> <p>Unlike the requirement of the Building Height Built Form Control under WLEP 2000, the building height test under the SEPP is assessed from the actual ground level of the proposal. In this regard, the proposed overall building heights are generally commensurate with the total floor-to-ceiling heights for retail and residential uses (3.3m &amp; 2.7m respectively) as recommended under the SEPP (the variations are indicated).</p> <p>The following tables provide an assessment of the overall building heights to the recommended floor-to-ceiling heights for each use (note: only the apartment buildings have been tested. Townhouses are not covered by the SEPP):</p> <p><b>Building A</b></p> <table> <tr> <th>Level</th><th>floor-to-ceiling heights</th><th>Compliance</th></tr> <tr> <td>Retail (Ground Level)</td><td>4.2m</td><td>Yes</td></tr> <tr> <td>Retail (First Floor)</td><td>3.4m</td><td>Yes</td></tr> <tr> <td>Residential (All Levels)</td><td>3.2</td><td>Yes</td></tr> </table> <p><b>Building B</b></p> <table> <tr> <th>Level</th><th>floor-to-ceiling heights</th><th>Compliance</th></tr> <tr> <td>Retail/Residential (Ground Level)</td><td>3.2m</td><td>Yes</td></tr> <tr> <td>Residential (All Levels)</td><td>3m</td><td>Yes</td></tr> </table>	Level	floor-to-ceiling heights	Compliance	Retail (Ground Level)	4.2m	Yes	Retail (First Floor)	3.4m	Yes	Residential (All Levels)	3.2	Yes	Level	floor-to-ceiling heights	Compliance	Retail/Residential (Ground Level)	3.2m	Yes	Residential (All Levels)	3m
Level	floor-to-ceiling heights	Compliance																				
Retail (Ground Level)	4.2m	Yes																				
Retail (First Floor)	3.4m	Yes																				
Residential (All Levels)	3.2	Yes																				
Level	floor-to-ceiling heights	Compliance																				
Retail/Residential (Ground Level)	3.2m	Yes																				
Residential (All Levels)	3m	Yes																				

Primary Development Controls	Guideline	Comments		
		<b>Building C</b>		
		<b>Level</b>	<b>floor-to-ceiling heights</b>	<b>Compliance</b>
		<b>Residential (All Levels)</b>	2.7m	<b>Yes</b>
		<b>Building D</b>		
		<b>Level</b>	<b>floor-to-ceiling heights</b>	<b>Compliance</b>
		<b>Retail</b>	4.2m	<b>Yes</b>
		<b>Residential (All Levels)</b>	3.2m	<b>Yes</b>
<b>Building Depth</b>	In general, an apartment building depth of 10 -18 metres is appropriate. Developments that propose wider than 18 metres must demonstrate how satisfactory day lighting and natural ventilation are to be achieved.	<b>YES</b> All apartments achieve a depth of no greater than 18m.		
<b>Building Separation</b>	<p>For buildings up to four storeys/ 12 metres, the following distances of separation are suggested;</p> <ul style="list-style-type: none"> <li>12 metres between habitable rooms/balconies</li> <li>9 metres between habitable/balconies and non-habitable rooms</li> <li>6 metres are provided between non-habitable rooms.</li> </ul> <p>A habitable room is any room or area used for normal domestic activities, including living, dining, family, lounge, bedrooms, study, kitchen, sun room and play room.</p> <p>A non-habitable room is a space of a specialised nature not occupied frequently or for extended periods, including bathrooms, toilets, pantries, walk in wardrobes, corridors, lobbies, photographic darkrooms and clothes drying rooms.</p> <p>The objectives of the suggested dimensions are to provide visual and acoustic privacy for existing and new residents, control overshadowing, and ensure that new development is scaled to support the desired area character with appropriate massing and spaces between buildings, to allow for the provision of open space and to provide deep soil zones.</p>	<p><b>YES</b></p> <p>The development is categorised under the SEPP as a 'hybrid group' which incorporates a mix of retail and residential uses accommodated within row apartment type buildings surrounding a communal landscaped courtyard.</p> <p>The internal building separations, together with variable building heights, provide adequate sunlight access to the 18.0m wide central courtyard area and north and east facing apartments.</p> <p>The width of the central courtyard and its associated pedestrian access ways from Albert Street allow for efficient airflow throughout the site.</p> <p>Whilst no hybrid group type development can satisfy complete privacy, the proposed internal building separations (provided below) do achieve an appropriate level of visual and acoustic privacy through the strategic placement of buildings around the site as well as the use of privacy screens.</p> <p><b>Internal Separation</b></p> <p><b>Ground Floor</b></p> <p>Building A – Building D = 9.0m (retail to retail)</p> <p>Building B - Building D = 11.0m (balcony to blank wall)</p> <p>Building B - Building C = 4.5m (balcony to side wall)</p> <p>Building C – Building D = 5.6m (balcony to side wall)</p> <p><b>Level 1</b></p> <p>Building A – Building D = 10.0m* (balcony to balcony)</p> <p>Building B - Building D = 12.1m (balcony to side wall)</p> <p>Building B - Building C = 7.0m</p>		

Primary Development Controls	Guideline	Comments
		<p>(balcony to side wall) Building C – Building D = 9.0m (balcony to side wall)</p> <p><b>Level 2</b> Building A – Building D = 10.0m* (balcony to balcony) Building B - Building D = 12.1m (balcony to side wall) Building B - Building C = 6.8m (wall to wall) Building C – Building D = 10.0m (balcony to side wall)</p> <p><b>Level 3</b> Building A – Building C = 35.0m (balcony to side wall) Building B - Building C = 5.2m (balcony to side wall)</p> <p><b>Level 4</b> Only Building B remains at this level.</p> <p>* Numerical non-compliances with this Rule of Thumb are considered to be satisfactory in that they do not impact upon internal privacy due to the placement of privacy screens and incorporation of walkways.</p>
<b>Street Setbacks</b>	Identify the desired streetscape character, the common setback of buildings in the street, the accommodation of street tree planting and the height of buildings and daylight access controls.	<p><b>YES</b></p> <p><b>Lawrence Street</b> Existing development along Lawrence Street is predominantly retail which has a nil setback to the street.</p> <p>In this regard, the continuation of retail uses with a nil street setback along Lawrence Street is considered to be appropriate.</p> <p>Existing street tree planting is sporadic due to the use of awnings over the footpath.</p> <p>The development proposes an incremental building height along Lawrence Street, ranging in height from two storeys to three storeys towards the Albert Street junction. The proposed two storey building height at the western boundary of the site is consistent with the prevailing building heights in the area. The proposed three storey building height element of the development is treated such that sufficient architectural articulation and façade modulation is provided to relieve the sense of additional bulk and scale. Additionally, the bulk and scale of this element of the development is visually diffused by its location opposite the Harbord Village square which provides an expansive open space counterbalance.</p> <p>The development does not propose any additional street planting along Lawrence Street due to the proposed awning placement.</p> <p><b>Albert Street</b> Existing development along Albert Street predominantly consists of retail and associated open-air car parking with three (3) lots of residential development immediately to the</p>

Primary Development Controls	Guideline	Comments
		<p>north-east of the site (at the corner of Albert Street and Marmora Street).</p> <p>The retail and car parking uses each have a nil setback to Albert Street whilst the three residential buildings each have a setback of 6.2m – 10.0m, 5.7m – 10.8m &amp; 7.6m – 8.0m respectively.</p> <p>The development proposes a three storey building height along part of the Albert Street frontage. In essence, the element of the development facing Albert Street is the eastern side elevation of Building D which extends into the centre of the site and forms a visual consistency and relationship with the proposed building height of Building A facing Lawrence Street. Notwithstanding, the street facing elevation has been designed to reflect the mixed-use character of Freshwater Village with the upper level residential components being effectively articulated from the street through the incorporation of wide balconies. In this regard, the bulk and scale of the development is visually reduced.</p> <p>Street tree planting is regular due to the lack of awnings along this part of Albert Street</p> <p><b>Marmora Street</b> Existing development along Marmora Street is low density residential with a prevailing setback of 6.1m to the street.</p> <p>The development proposes a two storey building height to the proposed townhouses on Marmora Street. The building heights, while not considered under the SEPP, are consistent with the scale of residential development in the area.</p> <p>Street tree planting is dense due to the open streetscape.</p>
	Identify the quality, type and use of gardens and landscaped areas facing the street.	<p><b>YES</b></p> <p><b>Lawrence Street</b> The landscaped areas along Lawrence Street are minimal as it is an active streetscape serving retail outlets.</p> <p>The development will retain the predominant highly trafficable retail character of the street and will not add any landscape elements at ground level. However, it is noted that the apartments on Levels 2 and 3 will include planter boxes facing Lawrence Street which will provide some landscaped feature, although this will generally be visible from high level surrounding development.</p> <p><b>Albert Street</b> The landscaped areas along Albert Street are also minimal due to the lack of street trees or any other landscaped feature.</p> <p>The development will add two new landscaped features along Albert Street through the incorporation of a pedestrian access way and a new driveway – both of which include</p>



Primary Development Controls	Guideline	Comments
		<p>landscaped features.</p> <p>Like the upper floors facing Lawrence Street, the upper floors facing Albert Street include wide terraces which may include planting to soften the architectural scale of Building D.</p> <p><b>Marmora Street</b></p> <p>The landscaped areas along Marmora Street are reasonable due to the long established low density residential character of the street and existing street trees.</p> <p>The development includes seven (7) townhouses which face Marmora Street and incorporate landscaped front garden areas to provide some visual consistency with the established landscaped setting of the street.</p>
<b>Side &amp; rear setbacks</b>	Relate side and rear setbacks to existing streetscape patterns.	<p><b>YES</b></p> <p>The site is a unique, and an irregular shaped allotment which has three (3) street frontages. As such, and because of the collective internal arrangement of buildings within the development, the assessment of rear setbacks to existing streetscape patterns is problematic.</p> <p><b>Lawrence Street</b></p> <p>It is noted that the side setbacks along Lawrence Street are nil because of the retail character of the street. The result is a shop row appearance of which the development attempts to emulate through boundary-to-boundary construction between the neighbouring property at No. 23 Lawrence Street and the Bendigo Bank site.</p> <p><b>Albert Street</b></p> <p>The building separation between Building A, the Bendigo Bank site and Building D provides an effective visual setback along Albert street which relieves the bulk and scale of the development through appropriate articulation. Similarly, the building separation between Building D and the north-eastern boundary provides an effective transitional setback between the development and the existing residential properties at the corner of Albert street and Marmora Street.</p> <p>The townhouse development along Marmora Street achieves setbacks commensurate with freestanding residential development in the area. The 1.5m wide eastern setback and the landscaped setback to the west provide visual setbacks which are generally in keeping with the existing setbacks along Marmora Street.</p>
<b>Floor space ratio</b>	<p>Test the desired built form outcome against proposed floor space ratio to ensure consistency with:</p> <ul style="list-style-type: none"> <li>- building height</li> <li>- building footprint</li> <li>- the three dimensional building envelope</li> <li>- Open space requirements.</li> </ul>	<p><b>Not Applicable</b></p> <p>No Floor Space Ratio controls apply to the proposed development.</p>

Primary Development Controls	Guideline	Comments
<b>PART 02 - SITE DESIGN</b>		
<b>Deep Soil Zones</b>	A minimum of 25% of the open space area of a site should be a deep soil zone; more is desirable. Exceptions may be made in urban areas where sites are built out and there is no capacity for water infiltration. In these instances, stormwater treatment measures must be integrated with the design of the residential flat building.	<p><b>YES</b></p> <p>The H2 locality does not specify a minimum landscaped open space or deep soil zone requirement.</p> <p>The development provides 1,448.7m<sup>2</sup> (15.1%) of deep soil area (raised planter areas above the basement carpark which achieve a minimum soil depth of 1.0m).</p> <p>In addition to the above, the proposed development also provides an additional 864m<sup>2</sup> (9%) of landscape area in the central courtyard.</p> <p>In total the proposal provides for 24.1% landscape area.</p> <p>The shortfall of 0.9% is considered to be minor and acceptable given there is no requirement for a deep soil zone in Council's planning controls for the H2 locality.</p>
<b>Open Space</b>	The area of communal open space required should generally be at least between 25% and 30% of the site area. Larger sites and Brownfield sites may have potential for more than 30 percent.	<p><b>YES</b></p> <p>An area of communal space is not required by WLEP 2000.</p> <p>The development provides 864m<sup>2</sup> (9%) of communal open space within the central courtyard area. The communal area provided is adequate for the needs of future occupants particularly given future occupants will have access to nearby public reserves and beaches</p>
	The minimum recommended area of private open space for each apartment at ground level or similar space on a structure, such as on a podium or car park is 25m <sup>2</sup> ; the minimum preferred dimension in one direction is 4 metres. (see Balconies for other private open space requirements)	<p><b>YES</b></p> <p>The development provides the minimum private open space area of 25m<sup>2</sup> for each ground floor apartment.</p>
<b>Planting on structures</b>	In terms of soil provision there is no minimum standard that can be applied to all situations as the requirements vary with the size of plants and trees at maturity.	<p><b>YES</b></p> <p>The development provides adequate provision of planter boxes at ground level (i.e. above the basement car parks) to accommodate a variety of native planting.</p>
<b>Safety</b>	Carry out a formal crime risk assessment for all residential developments of more than 20 new dwellings.	<p><b>YES</b></p> <p>NSW Police have provided comments and recommendations in support of the application, as assessed under CPTED.</p>
<b>Visual privacy</b>	Refer to Building Separation minimum standards	<p><b>YES</b></p> <p>Refer to 'Building Separation' in this table and Clause 65 Privacy in the General Principles of Development Control Table of this report.</p>

Primary Development Controls	Guideline	Comments
Pedestrian access	Identify the access requirements from the street or car parking area to the apartment entrance.	<b>YES</b> The development includes multiple level pedestrian access points from street level and from the basement car parks.
	Follow the accessibility standard set out in Australian Standard AS 1428 (parts 1 and 2) as a minimum.	<b>YES</b> The application may be conditioned to address Australian Standard AS 1428 (parts 1 and 2).
	Provide barrier free access to at least 20 percent of dwellings in the development.	<b>YES</b> The development provides barrier free access to the following apartment numbers: <b>Ground Floor</b> 18/20 apartments (90%) (Townhouses not included) <b>Level 1</b> 24/24 Apartments (100%) <b>Level 2</b> 33/33 apartments (100%) <b>Level 3</b> 14/14 apartments (100%) <b>Level 4</b> N/A – crossover apartments <b>Total</b> – 89/91 (97.8%) apartments achieve barrier free access.
Vehicle access	Generally limit the width of driveways to a maximum of six metres.	<b>YES</b> While the development proposes a driveway/crossover width of 8.79m it is noted that it supports both the residential and retail components and is considered to be appropriate under the circumstances to minimise conflict and congestion at the street level entry. The proposed also provides for the deletion of seven (7) existing crossovers.
	Locate vehicle entries away from main pedestrian entries and on secondary frontages.	<b>YES</b> The driveway is located 30m from the main pedestrian access entry on Albert Street. Given the location of the site, Albert Street may be considered to be the only option as a secondary street frontage as Lawrence Street is the main retail/commercial street and Marmora Street is a low intensity residential street. The proposed also provides for the deletion for the deletion of seven (7) existing crossovers.
<b>PART 03 - BUILDING DESIGN</b>		
Apartment layout & mix	Single-aspect apartments should be limited in depth to 8 metres from a window.	<b>YES</b> All single aspect apartments achieve a depth of not more than 8.0m from a window.
	The back of a kitchen should be no more than 8 metres from a window.	<b>YES</b> All apartments have a depth of 8.0m or less to the back of the kitchen.

Primary Development Controls	Guideline	Comments
	The width of cross-over or cross-through apartments over 15 metres deep should be 4 metres or greater to avoid deep narrow apartment layouts.	<b>YES</b> The majority of cross-over apartments have a depth of less than 15m with exception to units A.2.04 – A.2.09 which have a depth of 16m with a width of 4.0m.
	If council chooses to standardise apartment sizes, a range of sizes that do not exclude affordable housing should be used. As a guide, the Affordable Housing Service suggest the following minimum apartment sizes, which can contribute to housing affordability: (apartment size is only one factor influencing affordability)  - 1 bedroom apartment 50m <sup>2</sup> - 2 bedroom apartment 70m <sup>2</sup> - 3 bedroom apartment 95m <sup>2</sup>	<b>YES</b> While Council has not chosen to standardise apartment sizes, the development includes the following apartment mix which ensures a range of affordability.  40 x 1 bedroom 47 x 2 bedroom 4 x 3 bedroom
<b>Balconies</b>	Provide primary balconies for all apartments with a minimum depth of 2 metres. Developments which seek to vary from the minimum standards must demonstrate that negative impacts from the context- noise, wind – can be satisfactorily mitigated with design solutions.	<b>YES</b> All upper floor apartments have balconies with a minimum depth of 2.0m.
<b>Ceiling Heights</b>	The following recommended dimensions are measured from finished floor level (FFL) to finished ceiling level (FCL). These are minimums only and do not preclude higher ceilings, if desired.  In residential flat buildings or other residential floors in mixed use buildings:  - In general, 2.7 metre minimum for all habitable rooms on all floors, 2.4 metres is the preferred minimum for all non-habitable rooms, however 2.25m is permitted.	<b>YES</b> All apartments have a minimum floor-to-ceiling height of 2.7m for habitable rooms.
<b>Ground Floor Apartments</b>	Optimise the number of ground floor apartments with separate entries and consider requiring an appropriate percentage of accessible units. This relates to the desired streetscape and topography of the site.	<b>YES</b> All ground floor apartments have separate entries from the main pedestrian walkways as well as via internal lift cores and corridors.
	Provide ground floor apartments with access to private open space, preferably as a terrace or garden.	<b>YES</b> All ground floor apartments have access to private open space areas which have been allocated as private terraces.
<b>Internal Circulation</b>	In general, where units are arranged off a double-loaded corridor, the number of units accessible from a single core/corridor should be limited to eight.	<b>YES</b> A maximum of four units are provided on each corridor.

Primary Development Controls	Guideline	Comments
<b>Storage</b>	<p>In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates:</p> <ul style="list-style-type: none"> <li>- studio apartments 6m<sup>3</sup></li> <li>- one-bedroom apartments 6m<sup>3</sup></li> <li>- two-bedroom apartments 8m<sup>3</sup></li> <li>- three plus bedroom apartments 10m<sup>3</sup></li> </ul>	<p><b>YES</b></p> <p>The development requires the following additional storage space:</p> <p>1 bedroom (40 x 6m<sup>2</sup>) = 240m<sup>2</sup>  2 bedroom (51 x 8m<sup>2</sup>) = 408m<sup>2</sup></p> <p>The development provides 918m<sup>2</sup> of storage space with the basement carpark. This exceeds the required total storage area of 648m<sup>2</sup> by 270m<sup>2</sup>.  (Note: townhouses not assessed).</p>
<b>Building Amenity</b>		
<b>Daylight Access</b>	<p>Living rooms and private open spaces for at least 70% of apartments in a development should receive a minimum of three hours direct sunlight between 9 am and 3 pm in mid winter. In dense urban areas a minimum of two hours may be acceptable.</p>	<p><b>YES</b></p> <p>The development provides for 76 (83%) apartments which receive a minimum of three hours direct sunlight between 9 am and 3 pm in mid winter.</p>
	<p>Limit the number of single-aspect apartments with a southerly aspect (SW-SE) to a maximum of 10% of the total units proposed. Developments which seek to vary from the minimum standards must demonstrate how site constraints and orientation prohibit the achievement of these standards and how energy efficiency is addressed (see Orientation and Energy Efficiency).</p>	<p><b>YES</b></p> <p>There are 2 single aspect apartments with a southerly aspect – which represents 2% of the total apartments.</p>
<b>Natural Ventilation</b>	<p>Building depths, which support natural ventilation typically, range from 10 to 18 metres.</p>	<p><b>YES</b></p> <p>All apartments achieve depths of less than 18m.</p>
	<p>Sixty percent (60%) of residential units should be naturally cross ventilated.</p>	<p><b>YES</b></p> <p>The development provides for 63 (69.2%) apartments which achieve natural cross ventilation.</p>
<b>Building Performance</b>		
<b>Waste Management</b>	<p>Supply waste management plans as part of the development application submission as per the NSW Waste Board.</p>	<p><b>YES</b></p> <p>The application includes a Waste Management Plan. However, suitable conditions may be imposed to enhance Council's waste disposal requirements.</p>
<b>Water Conservation</b>	<p>Rainwater is not to be collected from roofs coated with lead- or bitumen-based paints, or from asbestos- cement roofs. Normal guttering is sufficient for water collections provided that it is kept clear of leaves and debris.</p>	<p><b>YES</b></p> <p>A BASIX certificate has been submitted to demonstrate the proposed development meets the required water conservation standard.</p>

## **Draft State Environmental Planning Policy (Competition) 2010**

In determining a development application under Part 4 of the EP&A Act, Council is required under section 79C(1)(b) of the Act to consider the likely economic impacts of a proposed development within a locality.

The Draft SEPP has been developed to promote economic growth and competition and to remove anti-competitive barriers in environmental planning and assessment. It will attempt to achieve this aim by:

- (i) Prohibiting Council from considering the commercial viability of proposed development, and
- (ii) Overcoming restrictions in planning instruments on the number of a particular type of retail premises and their proximity to other retail premises of that type.

The Draft SEPP defines commercial development as development for purposes of (or including or any combination of) the following:

- (a) Retail premises;
- (b) Business premises; and
- (c) Office premises.

The Draft SEPP identifies the following areas of economic impact which Council cannot consider in its determination of a development application:

- (i) The commercial viability of the proposed commercial development;
- (ii) The loss of trade to other existing or proposed commercial development;
- (iii) Restrictions imposed by an LEP or DCP on the number of particular types of retail premises within a development; and
- (iv) Restrictions imposed by an LEP or DCP on the proximity of particular types of retail premises to other retail premises.

The Draft SEPP was released for public comment from 27 July 2010 to 26 August 2010.

**Comment:** The development involves ground floor retailing within Buildings A, B, and D. Retail use is defined under the Draft SEPP as commercial development.

The proposed mixed use development provides additional retail space which is focused onto the Lawrence and Albert Street site frontages in the centre of the Freshwater Village. The proposed mixed use development provides for a total of 3,115m<sup>2</sup> GFA retail space. The provision of a net gain of 1,565m<sup>2</sup> of retail space after demolition of the existing shops on site, together with supporting specialty convenience retail and services, would provide increased choice for the surrounding local neighbourhood, and increased convenience for surrounding residents and increase employment opportunities.

As such, the development is considered to be consistent with the provisions of the Draft SEPP.

## **Warringah Local Environmental Plan 2000**

### **DESIRED FUTURE CHARACTER**

The site is unusual in that it has a split locality. In this regard, Nos. 18, 20, and 22 Marmora Street, Freshwater are located in the H1 Freshwater Beach Locality pursuant to the provisions of WLEP 2000. A different locality statement (H2 – Harbord Village) applies to the remainder of the site. The Desired Future Character Statement for this locality is as follows:

### **H1 Freshwater Beach Locality**

*The Freshwater Beach locality will remain characterised by detached style housing in landscaped settings interspersed by existing apartment style housing and a range of complementary and compatible uses.*

*Future development will maintain the visual pattern and predominant scale of existing detached style housing in the locality except for the Harbord Diggers Club. The streets will be characterised by landscaped front gardens and consistent front building setbacks. Unless exemptions are made to the housing density standard in this locality statement, any subdivision of land is to be consistent with the predominant pattern, size and configuration of existing allotments in the locality.*

*The locality contains hillsides and elevated landforms, prominent coastal headlands and cliffs and remnant vegetation. These elements will be protected from development that would detract from their visual and natural qualities, presenting in some parts of the locality a constraint to further development.*

*The Harbord Diggers Club will continue to cater for the recreational and leisure needs of the community. If the existing approved building and carparking areas are to be expanded, regard must be had to any approved and detailed masterplan for the site. Such a masterplan is to address issues such as views, visual impact, natural features, management of traffic and impact upon the amenity of the locality.*

*The locality will continue to be served by the existing local retail centre shown on the map. Future development in this centre will be in accordance with the general principles of development control provided in clause 39.*

Housing is identified as Category 1 development within the H1 locality. The proposed basement carparking, access ramp to the basement carpark, and a switch room, being ancillary development to both the residential and retail (“shops”) uses are classified as Category 3 development within the H1 (Freshwater Beach) locality, as “shops” not located within the local retail centres are identified as Category 3 development. The proposed development does not propose any “shops” within the H1 locality but rather, because of the integrated nature of the development, these elements are not exclusively related to the “housing” alone, and will be ancillary to or shared by the proposed “shop” uses.

Clause 12(3) (a) of WLEP 2000 requires the consent authority to consider the desired future character described in the relevant Locality Statement. Clause 12(3) (b) states that the consent authority must be satisfied that the development is consistent with the desired future character of the locality for Category 3 development.

Accordingly, an analysis of the various relevant components of the Desired Future Character of the H1 Freshwater Beach Locality is as follows:

***The Freshwater Beach locality will remain characterised by detached style housing in landscaped settings interspersed by existing apartment style housing and a range of complementary and compatible uses.***

**Comment:** The development proposes the construction of five (5) townhouses within the locality. Three (3) of the proposed two-storey townhouses located closest to the corner of Marmora Street and Albert Street are grouped as detached style housing while one is located further to the west and is grouped as a two-storey terrace featuring two townhouses in an attached configuration. The built form and scale of the development is consistent with the built form and scale of development in the locality in that whilst they are attached, they have the appearance of detached style housing due to the varying setbacks and articulated design.

The townhouses are sited in a landscaped setting commensurate to the landscaped character of the area. It is therefore considered that the proposal is consistent with this component of the desired future character statement.

The Category 3 component (the basement car parking, access ramp to the basement car park, and switch room) are located underground ensures that the proposal is consistent with detached style housing within the landscaped setting.

***Future development will maintain the visual pattern and predominant scale of existing detached style housing in the locality except for the Harbord Diggers Club. The streets will be characterised by landscaped front gardens and consistent front building setbacks.***

**Comment:** The development maintains the visual pattern and predominant scale of detached style housing in the locality. The 7.7m depth of the front setback areas maintains the landscaped character and front building setbacks of the area.

The Category 3 uses within this locality (namely, the basement car parking, access ramp to the basement car park, and switch room), all of which are associated with the higher density residential development and retailing, proposed in the H2 locality, are compatible with the existing residential use of the land (noting that no retail or shop top housing is proposed with the H1 locality) and are incorporated into the development in such a way as to ensure that the overwhelming character and appearance of the development is primarily residential as required by this component of the DFC. In this regard, the frontage to Marmora Street will be largely residential as the basement car parking is located underground will not be readily visible from the street.

It is therefore considered that the proposal is consistent with this component of the desired future character statement.

***Unless exemptions are made to the housing density standard in this locality statement, any subdivision of land is to be consistent with the predominant pattern, size and configuration of existing allotments in the locality.***

**Comment:** Whilst the development does not propose any subdivision it is noted that the predominant subdivision pattern, size and configuration of existing allotments within this part of the locality (closest to Harbord Village) varies considerably.

Notwithstanding, it is noted that the individual site configuration for each townhouse is generally consistent with the pattern, size and configuration of existing allotments within this part of the locality. It is therefore considered that the proposal is consistent with this component of the desired future character statement

***The locality contains hillsides and elevated landforms, prominent coastal headlands and cliffs and remnant vegetation. These elements will be protected from development that would detract from their visual and natural qualities, presenting in some parts of the locality a constraint to further development.***

**Comment:** Nos .18, 20, and 22 Marmora Street is the lowest part of the site and is not a visually prominent area within the locality. The proposed five (5) townhouses will not be a prominent development. The building complies with the relevant built form controls, with exception to housing density, which is supported for reasons outline elsewhere in this report. The proposed townhouses are adequately articulated and modulated and the basement carparking will not be visible. The proposed development within the H1 locality will not therefore detract from the visual or natural qualities of the local area.

***The Harbord Diggers Club will continue to cater for the recreational and leisure needs of the community. If the existing approved building and car parking areas are to be expanded, regard must be had to any approved and detailed masterplan for the site. Such a masterplan is to address issues such as views, visual impact, natural features, management of traffic and impact upon the amenity of the locality.***

**Comment:** This component of the desired future character statement is not relevant to the proposed development.



***The locality will continue to be served by the existing local retail centre shown on the map. Future development in this centre will be in accordance with the general principles of development control provided in Clause 39.***

**Comment:** The subject site is not nominated a “local retail centre” within the H1 Locality. Therefore this component of the Desired Future Character Statement is not applicable to the proposed development.

### **H1 Freshwater Beach Locality – Built Form Control Table**

<b>Standard</b>	<b>Permitted</b>	<b>Proposed</b>	<b>Compliant</b>
<b>Housing Density</b> (H1 Site Area = 1,649.9m <sup>2</sup> )	1 dwelling/450m <sup>2</sup>	1 dwelling/329.9m <sup>2</sup>	<b>No</b>
<b>Building Height</b> (Overall)	8.5m	7.0m – 8.0m	Yes
<b>Building Height</b> (Floor-to-Ceiling)	7.2m	6.2m - 7.2m	Yes
<b>Front Building Setback</b> (Marmora Street)	6.5m	7.7m	Yes
<b>Rear Building Setback</b> Depth 50% (free of structure)	6.0m 24m <sup>2</sup> (50%)	6.2m – 8.8m 36.8m <sup>2</sup> (76.6%)	Yes Yes
<b>Side Boundary Setback</b> East	0.9m	1.2m	Yes
<b>Side Boundary Envelope</b> East	5 x 45°	5 x 45°	Yes
<b>Landscape Open Space</b> (H1 Site Area = 1,649.9m <sup>2</sup> )	40% (659.9m <sup>2</sup> )	40.7% (672.3m <sup>2</sup> )*	Yes
<b>Setback to Coastal Cliffs</b>	N/A	N/A	N/A

\*The Landscape open space includes permeable paving stones which permit water filtration.

### **Clause 20 Variation**

A Clause 20 variation is required to support the above non-compliances to the Housing Density Built Form Controls under the H1 locality.

Clause 20 of WLEP 2000 states the following:

*“Consent may be granted to proposed development even if the development does not comply with one or more development standards, providing the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State Environmental Planning Policy.”*

In assessing these non-complying elements of the proposal, consideration must be given to:

**(i) General Principles of Development Control**

The proposal is consistent with the General Principles of Development Control as detailed in the ‘General Principles of Development Control’ table as detailed in this report.

**(ii) Desired Future Character of the Locality**

The proposal is consistent with the Desired Future Character Statement as detailed earlier in this report.

**(iii) Relevant State Environmental Planning Policies**

The proposed development is consistent with the provisions of the following State Environmental Planning Policies (SEPP’s):

- SEPP No. 65 - Design Quality of Residential Flat Buildings;
- SEPP (Infrastructure) 2007;
- SEPP (Building Sustainability Index: BASIX) 2004; and
- SEPP No. 55 - Remediation of Land.

Based on the above assessment, the development qualifies to be considered for a variation to the Housing Density.

### Housing Density

Standard	Permitted	Proposed	Compliant
<b>Housing Density</b> (H1 Site Area = 1,649.9m <sup>2</sup> )	1 dwelling/450m <sup>2</sup>	1 dwelling/329.9m <sup>2</sup>	<b>No</b>

In accordance with the housing density built form control, to measure housing density the site area is divided by the number of dwellings proposed on the site. The site is the allotment which exists on the day WLEP 2000 came in to effect. The development does not comply with the Housing Density Built Form Control by 120.1m<sup>2</sup> per dwelling as indicated in the compliance table above.

Whilst it is acknowledged that the development site, in its entirety, exceeds 3000m<sup>2</sup>, it is also positioned within two different localities. Of the two, the H1 Freshwater Beach Locality is the only locality which includes Housing Density as a Built Form Control. Therefore, it is considered appropriate that, in determining the housing density, only the total area of the on-site allotments located within the H1 Freshwater Beach Locality are used resulting in a total site area of 1,649.9m<sup>2</sup>.

The housing density control is one of a suite of planning controls designed to limit the intensity of development on the site to a suitable and appropriate level designed to achieve the desired future character. The housing density control limits the number of dwellings on one site, the landscaped open space control limits the built upon area on the site and the setback, building envelope and height controls limit the scale of development and amount of floor space on the site. The 'General Principles of Development Control' in Part 4 of WLEP 2000 also limit the intensity of development on a site. The appropriateness of the intensity proposed is therefore determined by the way the design responds to the general principles of development control, the desired future character of the locality and the other built form controls. Given the appropriateness of the intensity of the development proposed is related to compliance with a range of controls, this issue is addressed throughout this report.

Furthermore, Marmora Street is an 'L' shaped street which abuts the northern boundary of the subject site and the H2 Harbord Village Locality. The townhouse component of the development (the subject of this Clause 20 variation) is located within the shorter southern length of Marmora Street which is situated within close proximity (66m) to the more densely developed residential area immediately adjacent to Harbord Village. Additionally, the townhouse component of the development maintains the residential use of the land which provides an effective buffer, in both use and scale, from development within the commercially orientated H2 Harbord Village Locality.

In this regard, the combination of it's proximity to the higher density residential areas adjacent to the Harbord Village and its transitional function between the H1 Freshwater Beach Locality and the H2 Harbord Village Locality sets the site apart from the typical, lower density residential properties in the northern part of Marmora Street and thus renders the site as unique within it's setting.

Notwithstanding the unique character of the site, the proposed density does not detract from the visual appearance of the development from the street and is consistent with the Desired Future Character statement by maintaining, through its variable building heights and setback alignments, the visual pattern and predominant scale of detached style housing in the locality.

## H2 Harbord Village Locality

The remainder of the site (being Nos. 22 – 26 Albert Street, 5 and 5A, 9, and 15 Lawrence Street) are located within the H2 Harbord Village Locality. The Desired Future Character Statement for this locality is as follows:

*The Harbord Village will retain its retail character incorporating a mix of small retail and business uses with low-rise shop-top housing. A range of retailing and after-hours activities at street level will reinforce the character of the village.*

*Future development will maintain the continuity of existing building facades ensuring that they are broken into distinct vertical segments reflecting the traditional pattern of shop front development. The design and treatment of buildings will also reflect the exposed nature of the locality incorporating continuous footpath awnings and creating a pedestrian environment which is safe, comfortable and interesting. Commercial use of part of the footpath for outdoor eating is appropriate.*

*The ground floor of buildings will be predominantly used for business purposes while upper floors may be used for housing. Building design will enable the first floor to be adapted for business use in the future.*

*Buildings greater than 2 storeys in height are to be designed so that the massing is substantially reduced on the top floor thereby reducing the visual bulk of the development and enabling views between buildings.*

*Development that adjoins residential land is not to reduce the amenity enjoyed by adjoining occupants. In this regard the built form of development in the village is to provide a transition to adjacent residential development, including reasonable setbacks from side and rear boundaries, particularly above the ground floor level.*

Retail and housing are proposed within the H2 Harbord Village locality. Retail is proposed within Buildings A, B, and D and housing is proposed within buildings A, B, C, and D as well as two townhouse style buildings.

Shops and Housing (not on ground floor) are classified as Category 1 development which is development that is generally consistent with the Desired Future Character of the locality.

Housing on the ground floor is categorised as Category 2 development as the use is not listed as a Category 1, 2 or 3 use and it is not prohibited.

Clause 12(3) (a) of WLEP 2000 requires the consent authority to consider the desired future character described in the relevant Locality Statement. Clause 12(3) (b) states that the consent authority must be satisfied that the development is consistent with the desired future character of the locality for Category 2 development.

Accordingly, an analysis of the various relevant components of the Desired Future Character of the H2 Harbord Village Locality is as follows:

***The Harbord Village will retain its retail character incorporating a mix of small retail and business uses with low-rise shop-top housing. A range of retailing and after-hours activities at street level will reinforce the character of the village.***

**Comment:** The development incorporates a mix of retail and business uses with shop-top housing which will maintain the retail character of the locality.

The development maintains the low-rise character of the locality by limiting the most visible building heights along Lawrence Street and Albert Street to three (3) storeys. The buildings located along both street frontages exhibit appropriate architectural form, upper floor articulation and fenestration treatment to provide a visual continuity and relationship between the scale of the proposed development to existing development within Freshwater Village.

***Future development will maintain the continuity of existing building facades ensuring that they are broken into distinct vertical segments reflecting the traditional pattern of shopfront development. The design and treatment of buildings will also reflect the exposed nature of the locality incorporating continuous footpath awnings and creating a pedestrian environment which is safe, comfortable and interesting. Commercial use of part of the footpath for outdoor eating is appropriate.***

**Comment:** The proposed development is located sufficient distance from Freshwater Beach to ensure no unreasonable impacts will occur as a result of the proposed development. Contextually there are many buildings located east of the subject site (closer to Freshwater Beach) that are significantly higher than what is proposed. Buildings fronting the streets have been designed to incorporate distinct vertical segments. The design incorporates footpath awning along the Lawrence and Albert Streets frontages.

The removal of seven (7) existing driveways cross-overs will provide a pedestrian environment that is safe and comfortable.

The proposed development does not propose any outdoor seating areas on the footpath, but there are sufficient areas within the internal mall to provide outdoor seating.

For the reasons given, it is considered that the proposal is generally consistent with this component of the desired future character statement.

***The ground floor of buildings will be predominantly used for business purposes while upper floors may be used for housing. Building design will enable the first floor to be adapted for business use in the future.***

**Comment:** This component of the desired future character anticipates that the ground floor of buildings will usually be used for business purposes. There is however some scope for other uses to be provided on the ground floor depending upon the context of the site, the site constraints and surrounding development.

The development incorporates commercial uses at the ground floor level of both street frontages (i.e. within Buildings A and D) which provides a continuation of street activation within the Freshwater Village. The upper floors are dedicated to residential uses only although it is noted that Building A adjacent to Lawrence Street includes two levels of commercial floor space due to the internal excavation and leveling of the site. There is also retail proposed in part of the ground level of Building B, which faces the plaza.

Part of the ground level of Building B and the entire ground level of Building C is proposed to be residential. The provision of housing on the ground floor of Buildings B and C does not result in any unreasonable impacts on the streetscape of Lawrence Street and Albert Street.

The ground floor of part of Building B and particularly Building C are not conveniently located with respect to Lawrence Street. The provision of housing only in within these buildings does not result in any adverse impacts on the area as part of Building B and Building C is not conveniently located with respect to access to/from the surrounding streets that have retail/commercial uses. Security within the site would also be compromised for residents if retail/commercial uses were proposed contained in these buildings due to the configuration of access through the development.

Further, if business uses were proposed on the ground level of Building C and the other side of building B, it would be difficult to provide a clear separation between commercial and residential uses as required by the RFDC guidelines. The mix of uses would also reduce the safety of the occupants of the residential component of the development.

For these reasons the proposed development, and use of the ground floor of Building B and C for residential uses, is considered appropriate and consistent with this component of the desired future character statement.

***Buildings greater than 2 storeys in height are to be designed so that the massing is substantially reduced on the top floor thereby reducing the visual bulk of the development and enabling views between buildings.***

**Comment:** The development has been designed to reduce the visual massing significantly by increasing the setback for the upper residential levels away from the street.

The façade of the upper two levels of Building A (facing Lawrence Street) have been setback 5.0m to the building façade. The façade of the upper two levels of Building D (facing Albert Street) have been setback 5.0m from the boundary.

The design of the development includes a stepped approach which positions the lower level buildings (townhouses) to the north and gradually increasing in height to the southern boundary. This approach controls massing within the site to permit adequate sunlight access, ventilation and across –site view sharing.

For the reasons given, it is considered that the proposal is generally consistent with this component of the desired future character statement.

***Development that adjoins residential land is not to reduce the amenity enjoyed by adjoining occupants. In this regard the built form of development in the village is to provide a transition to adjacent residential development, including reasonable setbacks from side and rear boundaries, particularly above the ground floor level.***

**Comment:** The development includes the construction of seven (7) townhouses along the northern boundary, four (4) of which face Marmora Street. The placement of these buildings, which are of a scale commensurate to other residential development in Marmora Street, provides an appropriate transition between the mixed use character of the development within the H2 Harbord Village Locality and the predominantly residential character of the neighbouring H1 Freshwater Beach Locality.

The design of the development includes a stepped approach which positions the lower level buildings (townhouses) to the north and gradually increasing in height to the southern boundary. This approach controls massing within the site to permit adequate sunlight access, ventilation and across-site view sharing.

## H2 Harbord Village Locality – Built Form Compliance Table

Standard	Permitted	Proposed	Compliant
<b>Building Height</b>	Not to exceed 3 storeys nor 11 metres	<b>Building A</b> 11.2m - 14.2m to Parapet 3- 4 storeys	<b>No*</b>
		<b>Building B</b> 12.1m - 13.5m top of parapet 4 -5 storeys	<b>No*</b>
		<b>Building C</b> 11.2m - 12.5m 4 storeys	<b>No*</b>
		<b>Building D</b> 9.5m – 13.5m top of skylights 3 storeys	<b>No*</b>
		<b>Townhouses</b> 6.4m – 7.5m 2 storeys	<b>Yes</b>

Standard	Permitted	Proposed	Compliant
<b>Front Building Setback</b>	Ground floor must be aligned on the street frontage  3 <sup>rd</sup> storey - 5m  Attached elements such as pergolas, sun control awnings, balcony balustrades which are substantially transparent structures may encroach	<b>Building A (fronting Lawrence St)</b>  <ul style="list-style-type: none"> <li>• Ground: 0 -1m</li> <li>• 3<sup>rd</sup> storey: 3.6m (to sun control awning); and 5.0m to building façade</li> </ul>	Yes
		<b>Building D (fronting Albert St)</b>  <ul style="list-style-type: none"> <li>• Ground: 0 – 1m</li> <li>• 3<sup>rd</sup> storey: 5m</li> </ul>	Yes
<b>Footpath Awnings</b>	Awnings must be incorporated into the design	The development incorporates an awning which is stepped to ensure that the awning does not impact on the sightlines from the driveway.	Yes

## Clause 20 Variation

A Clause 20 variation is required to support the above non-compliance to the Building height Built Form Control under the H2 Harbord Village Locality.

Clause 20 of WLEP 2000 states the following:

*“Consent may be granted to proposed development even if the development does not comply with one or more development standards, providing the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State Environmental Planning Policy.”*

In assessing these non-complying elements of the proposal, consideration must be g

### (i) General Principles of Development Control

The proposal is consistent with the General Principles of Development Control as detailed in the ‘General Principles of Development Control’ table as detailed in this report.

### (ii) Desired Future Character of the Locality

The proposal is consistent with the Desired Future Character Statement as detailed earlier in this report.

### (iii) Relevant State Environmental Planning Policies

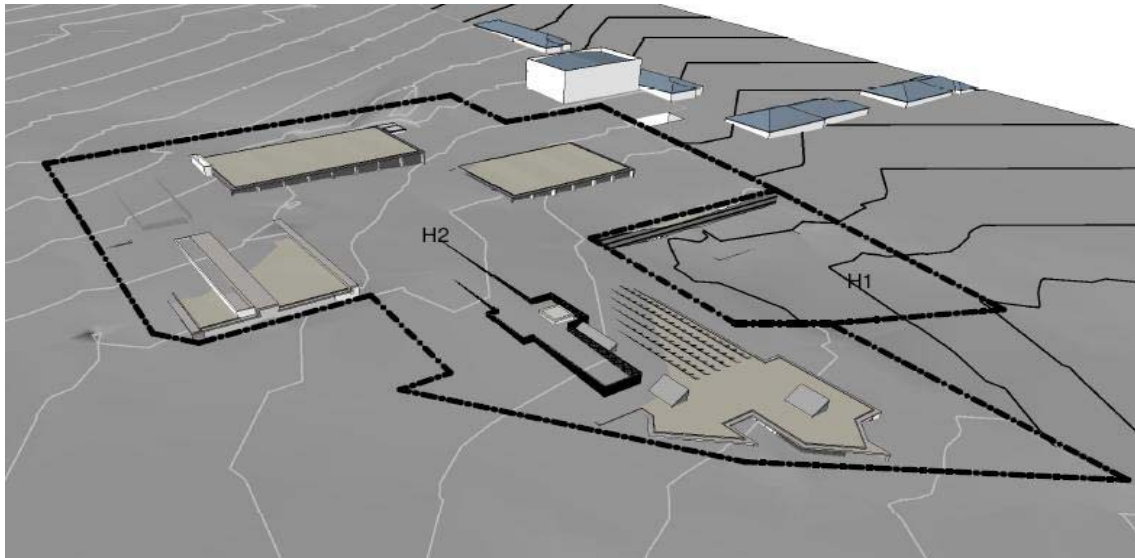
The proposed development is consistent with the provisions of the following State Environmental Planning Policies (SEPP’s):

- SEPP No. 65 - Design Quality of Residential Flat Buildings;
- SEPP (Infrastructure) 2007;
- SEPP (Building Sustainability Index: BASIX) 2004; and
- SEPP No. 55 - Remediation of Land.

Based on the above assessment, the development qualifies to be considered for a variation to the Building Height Built Form Control.

## Building Height

The development does not comply with the Building Height Built Form Control to all buildings with the exception to the proposed two (2) townhouses which are located within the H2 locality. Whilst all four buildings (i.e. Buildings A, B, C, and D) do not comply with the height control requirement for the H2 locality, it should be noted that the extent of non-compliances does not relate to the entire length of the buildings. For example, there are significant parts of the buildings where the height is below the 11m height limit. The diagram below (submitted by the applicant and checked by Council’s Urban Designer for accuracy) represents an accurate reflection of parts of the buildings that exceed the 11m height projection.



An assessment of the variation for each individual building against the merit considerations of the Building Height Built Form Control, are as follows:

### **Building A**

Standard	Permitted	Proposed	Compliant
<b>Building Height</b>	Not to exceed 3 storeys nor 11 metres	<b>Building A</b> 11.2m - 14.2m 4 storeys	<b>No*</b>

### **Ensure that development does not become visually dominant by virtue of its height and bulk.**

The extent of the non-compliance is limited to the eastern part of Building A, noting that as a result of the land falling away from Lawrence Street, the built form represents 3 storeys fronting Lawrence Street and 4 storeys internally. The higher built form, is setback within the centre of the site, achieving a maximum height of 14.2m to Building A fronting the public plaza (internally to the subject site). In cross section the non-complying elements are limited to services (plant room) which are not visually dominant in terms of height and bulk. Accordingly, the extent of the non-compliance with the Building A is consistent with the above mentioned objective.

### **Preserve the amenity of surrounding land.**

The proposed height in relation to Building A will not adversely impact on the amenity of surrounding residential properties. An appropriate built form responding to an envelope established by appropriate building setbacks, having regard to the surrounding development, has been achieved that maintains residential amenity. Further, by maintaining the street level of Lawrence Street and excavating within the site, the development minimises its potential impact upon the streetscape by visually maintaining a relatively low-rise built form which, in turn minimises the impact of overshadowing onto the public domain.

The incorporation of the pedestrian mall off Albert Street will provide an additional area within the centre of the precinct for community interaction.

### **Ensure that development responds to site topography and minimises excavation of the natural landform.**

The development proposes an excavation of 10.4m at the western edge of the site shallowing out to 3.5m at the boundary of Albert Street to provide for the stormwater detention tank. The main part of the excavation is required to provide for the two basement level car parks and to accommodate the service infrastructure.

The ground floor of the development is situated above the basement car park area and 3.5m below the western boundary. The excavation shallows out to the street level at Albert Street.

The existing street levels are retained which results in a visual maintenance of the topography around the site and the excavation proposed is acceptable given the nature of the proposed development.

**Provide sufficient area for roof pitch and variation in roof design rather than a flat roof.**

The development incorporates flat roof forms throughout. However, given the variable building heights and the use of roof top screening to conceal plant rooms and lift overruns and the like it is considered that sufficient variation to the overall built form is provided.

**Building B**

Standard	Permitted	Proposed	Compliant
<b>Building Height</b>	Not to exceed 3 storeys nor 11 metres	<b>Building B</b> 12.1m - 13.5m 4 storeys	<b>No*</b>

**Ensure that development does not become visually dominant by virtue of its height and bulk.**

Building B is not readily visible from the public domain as it is located within the centre of the site. It is considered that the part 4 part 5 storey building does not visually dominant the surrounding spaces by virtue of its height or bulk, especially when viewed within the existing context providing for good articulation and visual interest. The existing 6 storey Telstra building remains the dominant structure within this locality.

**Preserve the amenity of surrounding land.**

Building B is sufficiently setback from the residential properties along Marmora Street to maintain visual and acoustic privacy. In addition, because the development is situated to the south of Marmora Street no overshadowing will occur over existing residential land.

**Ensure that development responds to site topography and minimises excavation of the natural landform.**

As indicated above, the proposed development includes excavation into the site to provide two (2) of basement carparking, however it is considered that the built form design to minimise bulk and scale to surrounding properties by locating the tallest building within the centre of the site. Building mass has been stepped to follow the site topography, especially along the street boundaries.

**Provide sufficient area for roof pitch and variation in roof design rather than a flat roof.**

The development incorporates flat roof forms throughout. However, given the variable building heights and the use of roof top screening to conceal plant rooms and lift overruns and the like it is considered that sufficient variation to the overall built form is provided.

**Building C**

Standard	Permitted	Proposed	Compliant
<b>Building Height</b>	Not to exceed 3 storeys nor 11 metres	<b>Building C</b> 11.2m - 12.5m 4 storeys	<b>No*</b>



**Ensure that development does not become visually dominant by virtue of its height and bulk.**

The overall building height of Building C being 12.5m does not comply with the Control, it is however noted that the location of Building C is such (being behind Building B) that it will not be readily visible from the street. Furthermore, the upper level is sufficiently setback to provide articulation and relief from the architectural scale of the development.

As a result, the development is not considered to be visually dominant and, due to its location as well as the modulation and articulation used throughout. The extent of non-compliance will therefore not dominate the streetscape through excessive building bulk or scale.

**Preserve the amenity of surrounding land.**

The non-complying elements in relation to Building C are considered not to cause any adverse impact on surrounding properties by way of overshadowing and privacy and are appropriately setback from the side boundary so as not to visually dominate the existing church.

**Ensure that development responds to site topography and minimises excavation of the natural landform.**

As indicated above, the proposed development includes excavation into the site to provide two (2) levels of basement carparking, however it is considered that the built form was located on site so as to minimise bulk and scale to surrounding properties by locating the tallest building within the centre of the site. Building mass has been stepped to follow the site topography, especially along the street boundaries.

**Provide sufficient area for roof pitch and variation in roof design rather than a flat roof.**

The development incorporates flat roof forms throughout. However, given the variable building heights and the use of roof top screening to conceal plant rooms and lift overruns and the like it is considered that sufficient variation to the overall built form is provided.

**Building D**

Standard	Permitted	Proposed	Compliant
Building Height	Not to exceed 3 storeys nor 11 metres	Building D 9.5m – 13.5m 3 storeys	No*

**Ensure that development does not become visually dominant by virtue of its height and bulk.**

The maximum non-compliance occurs to the eastern part of Building D fronting Albert Street. The perceived bulk as seen from the street is reduced by the greater setback provided from Albert Street. Further, the non-compliance does not cause an adverse impact on the streetscape by virtue of its height and bulk.

**Preserve the amenity of surrounding land.**

The proposed height in relation to Building D will not adversely impact on the amenity of surrounding residential properties, given its spital separation from the residential development along Marmora Street.

**Ensure that development responds to site topography and minimises excavation of the natural landform.**

Due to the excavation of the western half of the site to achieve an accessible level to Albert Street the non-compliance is only evident internally as the ground floor is physically situated below the footpath level of Lawrence Street. As such, when viewed from the Lawrence Street alignment, the development appears as a three storey development.

**Provide sufficient area for roof pitch and variation in roof design rather than a flat roof.**

The development incorporates flat roof forms throughout. However, given the variable building heights and the use of roof top screening to conceal plant rooms and lift overruns and the like it is considered that sufficient variation to the overall built form is provided.

## **GENERAL PRINCIPLES OF DEVELOPMENT CONTROL**

The following General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan 2000 are applicable to the proposed development;

<b>General Principal</b>	<b>Applies</b>	<b>Comments</b>	<b>Complies</b>
CL38 Glare & reflection	YES	<p>The proposed external finishes include timber and metal batten screens, natural concrete, cement render finishes, stacked and cladded stonework as well metal cladding and colourbond roofs. The schedule of external finishes submitted with the application indicates that the proposed external colours and finishes including the roof colours will be dark and earthy tone, consistent with the requirement of this Clause.</p> <p>If the application is approved, a condition could be included in the consent to ensure that the reflectivity index of external glazing for windows, walls or roof finishes of the proposed development is to be no greater than 20%.</p>	<p>Yes (subject to condition)</p>
CL39 Local retail centres	NO	No Comment	Not Applicable
CL40 Housing for Older People and People with Disabilities	NO	No Comment	Not Applicable
CL41 Brothels	NO	No Comment	Not Applicable
CL42 Construction Sites	YES	<p>The potential exists for the construction of the proposed development to have an adverse impact upon the amenity of nearby residential properties in terms of traffic, noise, dust, parking, accessibility, sediment and the safety of pedestrians given the nature of the works and length of time for construction. These matters are generally covered in the Construction Management Plan. If the application is approved a condition of consent could be included to require compliance with this requirement. Issues to be addressed in the Construction Management Plan include pedestrian movements and safety, stormwater and wastewater disposal, waste management, tree protection, hours of demolition and excavation, air quality, noise management and truck parking.</p>	<p>YES (subject to conditions)</p>

General Principal	Applies	Comments	Complies
CL43 Noise	YES	<p>Clause 43 states that development is not to result in noise emission which would unreasonably diminish the amenity of the area and is not to result in noise intrusion which would be unreasonable to the occupants.</p> <p>The retail/commercial use and the residential uses are consistent with surrounding land uses and as such will not result in noise emissions which are unreasonable in the locality in which they are located.</p> <p>In relation to the acoustic requirement on the residential component of the proposed development, an acoustic report prepared by Renzo Tonin &amp; Associates (ref No. TE750-1F02- Rev 2) dated 4 May 2010 was submitted with the application. The report examines the effect of external noise intrusion on the proposed development from the following:</p> <ul style="list-style-type: none"> <li>• Traffic noise associated with Albert and Lawrence Streets;</li> <li>• Noise emission from retail and commercial premises, including the Loading Dock and mechanical plant;</li> <li>• Buses utilising Albert and Lawrence Streets;</li> <li>• General urban noise associated with the Freshwater village; and</li> <li>• Substation noise.</li> </ul> <p>The report concludes that the proposed site is capable of complying with all relevant acoustic criteria through means of standard acoustic treatment and management.</p> <p>Accordingly, It is considered that the proposed development is capable of complying with the requirements of Clause 43 subject to conditions to be imposed requiring that the recommendation of the acoustic report be adopted in the design of the proposed development and that all noise emissions to be carried out in accordance with Environment Protections Authority guidelines for noise emissions from construction/demolition works.</p>	YES (subject to conditions)
CL44 Pollutants	YES	The normal operation of the development will not result in the emission of atmospheric or other pollutants which would unreasonably diminish the amenity of adjacent properties.	YES
CL45 Hazardous Uses	NO	No Comment	Not Applicable
CL46 Radiation Emission Levels	NO	No Comment	Not Applicable
CL47 Flood Affected Land	NO	The site is not identified as flood affected.	Not Applicable
CL48 Potentially Contaminated Land	YES	<p>Clause 48 states that the consent authority must not consent to the carrying out of development on land unless;</p> <ul style="list-style-type: none"> <li>• It has considered whether the land is contaminated, and</li> <li>• If the land is contaminated, it is satisfied that the land is suitable in its contaminated state</li> </ul>	YES

General Principal	Applies	Comments	Complies
		<p>for the purpose for which the development is proposed to be carried out, and</p> <ul style="list-style-type: none"> <li>• If the land requires remediation to be made suitable for the development proposed to be carried out, it is satisfied that the land will be remediated before the development is carried out.</li> </ul> <p>These issues have been addressed in detail under 'State Environmental Planning Policy No.55 - Remediation of Land' in this report. The site has been found to be suitable for the proposed use in its current state.</p>	
CL49 Remediation of Contaminated Land	NO	No Comment	Not Applicable
CL49a Acid Sulfate Soils	NO	The site is not within an acid sulphate soils area on Council's Acid Sulphate Soils Hazard Map. The requirements of Clause 49a are not therefore applicable to the proposed development.	Not Applicable
CL50 Safety & Security	YES	<p>An assessment of the proposal using the Crime Prevention through Environmental Design (CPTED) principles (surveillance, access control, territorial reinforcement and space management) under 'Safety' in the Residential Flat Design Code table of this report has found that the opportunities for crime have been minimised.</p> <p>NSW Police have provided comments and recommendations in support of the application, as assessed under CPTED and included within the recommendation of this report.</p>	YES (subject to conditions)
CL51 Front Fences and Walls	YES	<p>No front fence is proposed to the retail/commercial building (Buildings A and D). The proposed development will include a front fence to Marmora Street, which will consist of low stone cladded walls with piers and metal infill panels with a max height of 1.2m.</p> <p>The proposed front fence is compatible with the existing streetscape (Marmora Street) and allows for casual surveillance. The requirement of this Clause has therefore been satisfactory addressed.</p>	YES
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	NO	No Comment	Not Applicable
CL53 Signs	NO	No signage is proposed.	Not Applicable
CL54 Provision and Location of Utility Services	YES	<p>A certificate from Sydney Water has been submitted with the application, which confirms that the site is able to satisfy the requirement of this Clause at Construction Certificate stage.</p> <p>The proposed development also includes the provision of 2 new substations. The application was referred to Energy Australia. Energy Australia has raised no objection to the provision of the substations. Whilst the location of the substation has not been</p>	YES (subject to conditions)

General Principal	Applies	Comments	Complies
		<p>nominated, a condition has been included within the recommendation of this report to ensure that the substations are located within the subject site.</p> <p>Conditions could be imposed if the application was approved requiring connection to all utility services including an approved telecommunications provider, energy, water and sewerage.</p>	
CL55 Site Consolidation in 'Medium Density Areas'	NO	The site is not situated within a 'medium density area' in accordance with WLEP 2000.	Not Applicable
CL56 Retaining Unique Environmental Features on Site	NO	The site does not contain any unique environmental features.	Not Applicable
CL57 Development on Sloping Land	YES	<p>Clause 57 states that on sloping land, the height and bulk of development, particularly on the downhill side, are to be minimised and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. The clause also states that excavation of the landform is to be minimised.</p> <p>The site falls approximately 4.3m along Lawrence Street towards the east and approximately 4m along Albert Street towards the north east.</p> <p>The proposed development has been designed that response to the topography of the land. Accordingly, the proposed development has been design to achieve compliance with the requirement of this Clause.</p>	YES
CL58 Protection of Existing Flora	YES	<p>The development will result in the removal of number of trees from the site. However, these trees are not considered to be significant vegetation which is worthy of retention.</p> <p>Council's Landscape Officer has reviewed the proposed development and raised no objection to the proposed tree removal subject to a number of conditions which requires replacement planting.</p>	YES (subject to conditions)
CL59 Koala Habitat Protection	NO	No Comment	Not Applicable
CL60 Watercourses & Aquatic Habitats	NO	No Comment	Not Applicable
CL61 Views	YES	<p>Clause 61 states that development is to allow for the reasonable sharing of views.</p> <p>One (1) specific objection was received in relation to view loss; however the complete proposal was assessed in relation to view loss. In determining significant view loss the principles outlined within the Land and Environment Court Case <i>Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140</i>, have been used. In this case, the Land and Environment Court outlined four (4) planning principles to be used in the assessment of view loss.</p>	YES

General Principal	Applies	Comments	Complies
		<p>These principles and an assessment of the proposed development against the principles are outlined as follows:</p> <p><i>The first step is to assess the nature of the views to be affected, water views are valued more highly than land views, iconic views (such as of the Opera House, the Sydney Harbour Bridge or North Head) are valued more highly than views without those icons, and whole views are valued more highly than partial views. For example, a water view in which the interface between the water and the land is visible is more valuable than one in which it is obscured.</i></p> <p>16 Oliver Street – The objector states that potential view loss will be of the ocean and will as direct result of the proposed Building B. From the site inspection, it was revealed that due to the topography of the street, the view from this property is a district view and not ocean views.</p> <p><i>The second step is to consider from what part of the property affected the views are obtained. In this regard it is more difficult to protect views obtained across side boundaries than the protection of views from front and rear boundaries. Also, whether the view is obtained from a standing or sitting position may also be relevant. Sitting views being more difficult to protect. The Senior Commissioner noted that the expectation to retain side or sitting views is often unrealistic.</i></p> <p><b>Comment:</b> The above view is obtained mostly from a standing position through the front of the property.</p> <p><i>The third step is to assess the extent of the impact. This needs to be done for the whole of the property, and not just to that part of it from where the views are affected. The views from living areas (including kitchen areas) are more significant than from bedrooms or service areas. Whilst the impact could be assessed quantitatively, it is more useful to look at the issue in a qualitative sense and ask whether the view loss is negligible, minor, moderate, severe or devastating.</i></p> <p><b>Comment:</b> The proposed development has a maximum height which exceeds the maximum heights under the H2 locality. However, the development has been designed in the form of 4 separated buildings that allow for view corridors between the buildings. The view loss can be described as being minor.</p> <p><i>The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all relevant planning controls would be considered more reasonable than one that breaches them. Importantly, the Senior Commissioner said that “where an impact on views arises as a result of non-compliance</i></p>	

General Principal	Applies	Comments	Complies
		<p><i>with one or more planning controls, even a moderate impact may be considered unreasonable". Where a development complies with the planning controls, the question is whether a more skilfully designed proposal could provide the same development potential whilst reducing the impact to neighbours. In that situation the view impact of a complying development would probably be considered acceptable, and the view sharing reasonable.</i></p> <p><b>Comment:</b> The proposed development does not comply with the building height controls for the H2 locality. As discussed elsewhere in this report, the variations to the controls are considered reasonable and acceptable having regard to the context of the site, the streetscape and compatibility with adjoining development.</p> <p>On balance, the development is considered reasonable with respect to view loss and does not warrant the amendment of the refusal of the application.</p>	
CL62 Access to sunlight	YES	<p>Clause 62 states that development is not to unreasonably reduce sunlight to surrounding properties. Sunlight to at least 50% of the principal private open space is not to be reduced to less than 2 hours between 9am and 3pm on June 21 and where overshadowing by existing structures and fences is greater than this, sunlight is not to be further reduced by the development by more than 20%.</p> <p>The shadow diagrams submitted with the application demonstrate that the proposed development will achieve compliance with the requirement of this Clause.</p> <p>As such, the proposed development complies with the requirements of Clause 62.</p>	YES
CL63 Landscaped Open Space	YES	<p>The area of landscaped open space on the site is of a sufficient area to enable the establishment of appropriate plantings to maintain and enhance the streetscape.</p> <p>A detailed Landscape Plan has been submitted which clearly shows the type of plants proposed in each location. A variety of tree and shrub sizes are proposed.</p> <p>The landscaping proposed adequately addresses the requirements of Clause 63.</p>	YES
CL64 Private open space	YES	<p>In accordance with Clause 64 of WLEP 2000 apartment style housing is to be provided with a minimum of 10 square metres of private open space with minimum dimensions of 2.5 metres.</p> <p>Each unit has access to an area of private space from the living room that complies with the minimum area requirement of 10 square metres. The private open space of each unit</p>	YES

General Principal	Applies	Comments	Complies
		<p>also complies with the minimum dimension requirement of 2.5 square metres.</p> <p>Pursuant to Clause 64 of WLEP 2000 dwellings located at ground level are to have a total of 35sqm of private open space with minimum dimensions of 3 metres. The private open space is to be directly accessible from a living area of the dwelling and capable of receiving not less than 2 hours of sunlight between 9am and 3pm on June 21 over at least 50% of the private open space area.</p> <p>The proposed 7 townhouses have access to an area of private space from the living room that complies with the minimum area requirement of 35 square metres. The private open space of each unit also complies with the minimum dimension requirement of 3m.</p> <p>Accordingly, the proposal is satisfactory with regards to the requirement of Clause 64.</p>	
CL65 Privacy	YES	<p>Clause 65 requires that development is not to cause unreasonable direct overlooking of habitable rooms and principal private open spaces of other dwellings. In particular the windows of one dwelling are to be located so they do not provide direct and close views (i.e. from less than 9 metres away) into the windows of other dwellings.</p> <p>The development has been designed to minimise the privacy impacts of the proposed development on the adjoining properties. In particular, the following measures have been incorporated into the design to minimise the visual privacy impacts:</p> <ul style="list-style-type: none"> <li>• The windows of the proposed townhouse fronting Marmora Road is located so they do not provide direct and close views (i.e. from less than 9 metres away) into the windows of No 28-32 Albert Street;</li> <li>• the proposed balcony of units D1.03 &amp; D1.07 are directed towards the east and provides 16m separation between No 28 Albert Street; and</li> <li>• Planter boxes, louvre screens, balcony design and the like are used to screen a minimum of 50% of the principal private open space of a lower apartment from overlooking from an upper apartment.</li> </ul> <p>Further, as detailed in the SEPP 65 assessment the building separation provided between the proposed buildings ensure that no unreasonable privacy impacts occurs within the proposed development.</p> <p>The proposed development is considered to satisfactorily address the requirements of Clause 65 Privacy.</p>	YES
CL66 Building Bulk	YES	<p>Clause 66 requires buildings to have a visual bulk and an architectural scale consistent with structures on adjoining or nearby land.</p>	YES



General Principal	Applies	Comments	Complies
		<p>Buildings are not to visually dominate the street or surrounding spaces, unless the applicable Locality Statement provides otherwise.</p> <p>In particular, the clause requires that:</p> <ul style="list-style-type: none"> <li>Side and rear setbacks are to be progressively increased as wall height increases,</li> <li>Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief, and</li> <li>Appropriate landscape plantings are to be provided to reduce the visual bulk of new buildings and works.</li> </ul> <p>The bulk of the proposed development is considered to be acceptable for the following reasons;</p> <ul style="list-style-type: none"> <li>The building has been stepped at several points in response to the topography of the site which has the effect of breaking down the building mass.</li> <li>A variety of compatible colours and materials has been used to contribute to the visual interest of the facade and therefore reduce the apparent building mass.</li> <li>Adequate setbacks have been proposed to the building to allow for a 'tiered' landscape design to be implemented which is capable of softening views of the building from the public domain.</li> </ul>	
CL67 Roofs	YES	<p>Clause 67 requires roofing to complement the local skyline.</p> <p>A variety of roof forms have been provided within the Harbord Village and Freshwater Beach localities. Pitched and flat roofs are the predominant roof form of the surrounding residential development.</p> <p>The proposed development consistent of flat and low pitched roof forms used in the various buildings.</p> <p>The roof forms proposed are appropriate for the types of development proposed and are compatible with other development in the locality. Accordingly, the proposal is consistent with the requirement of Clause 67.</p>	YES
CL68 Conservation of Energy and Water	YES	<p>BASIX Certificate has been submitted for the residential component of the development. The development achieves the target for water, thermal comfort and energy use. If the application is approved conditions of consent will be required to ensure compliance with the BASIX commitments specified on the certificate. Additionally, conditions should be included in the consent to ensure the commitments identified on the BASIX certificate are implemented.</p>	YES (subject to conditions)

General Principal	Applies	Comments	Complies
CL69 Accessibility – Public and Semi-Public Buildings	YES	<p>Clause 69 requires that the sitting, design and construction of the premises available to the public are to ensure an accessible continuous path of travel, so that all people can enter and use the premises. Such access is to comply with the requirement of the Disability Discrimination Act 1992 (DDA Act 1992) and with Australian Standard AS 1428.2 - 1992.</p> <p>An Accessibility report (prepared Morris - Goding Accessibility Consulting –dated 27 April 2010) has been submitted with the application. The report notes that a continuous path of travel is available from the street to the retail component of the development. The report also notes that the proposed development (as a whole) has demonstrated a reasonable degree of accessibility subject to number of recommendations which can readily be achieved without changing the design of the proposed development.</p> <p>The main recommendations that have arisen from the access report include:</p> <ul style="list-style-type: none"> <li>• Ensure wheelchair access to retail tenancies is in compliance with AS1428:1 and DDA premises standard.</li> </ul> <p>Based on the advice of the Access Consultant, the proposal is considered to comply with the requirements of Clause 69 subject to conditions.</p>	YES (subject to conditions)
CL70 Site facilities	YES	<p>Clause 70 states that site facilities including garbage and recycling enclosures, mailboxes and clothes drying facilities are to be adequate and convenient for the needs of users and are to have minimal visual impact from public places.</p> <p>The applicant has indicated that the garbage and recycling bin are provided as follows:</p> <p><b>Retail</b> – A garbage storage area is provided in the retail basement car park (Level B2) adjoining the loading dock.</p> <p><b>Residential</b> – A separate garbage room has been provided for the residential component of the development in the basement car park. The proposed three (3) townhouses off Marmora Street will have their own garbage and recycling bins at the street address.</p> <p>Council's Waste officer has reviewed the proposal and has raised no objection subject to conditions.</p>	YES (subject to condition)
CL71 Parking facilities (visual impact)	YES	<p>All car parking is to be provided in two basements with exception of the three (3) townhouses off Marmora Street. The parking spaces for the three (3) townhouses are provided in the form of single garage, are integrated with the design of the dwellings.</p> <p>Accordingly, the car parking will not dominate the street frontage or other public places.</p>	YES

General Principal	Applies	Comments	Complies
CL72 Traffic access & safety	YES	Vehicular access to the site will be provided from Albert Street. Traffic and pedestrian conflicts have been minimised through the provision of only one vehicular crossing. Council's Traffic Engineer has reviewed the proposed development and raised no objections on the grounds of traffic access and safety subject to conditions, which addressed the concerns raised by the RTA in relation to the safety of the driveway. Accordingly, the proposed development is considered satisfactory with regards to this Clause subject to conditions as recommended by Council's Traffic Engineer and the RTA.	YES (subject to Conditions)
CL73 On-site Loading and Unloading	YES	<p>Clause 73 states that facilities for the loading and unloading of service, delivery and emergency vehicles are to be approximate to the size and nature of the development.</p> <p>Adequate area has been provided within basement 1 for loading and unloading operations to ensure servicing of the retail use and the manoeuvring of service vehicles.</p> <p>The service area provides 5 service bays with one designed to accommodate an 8.8 metre long medium rigid truck; two bays for small rigid truck and two for vans.</p> <p>Council's Traffic Engineer and the RTA have raised no objection to the loading and unloading facilities for the development.</p>	YES
CL74 Provision of Carparking	YES	<p>Clause 74 stipulates that adequate off-street car parking is to be provided to serve a development and that the application must be assessed against the provisions of Schedule 17.</p> <p>Refer to 'Schedule 17 – Car parking provision' in this report for an assessment of compliance with the requirements of Clause 74. In summary, the number of car parking spaces for the retail component of the development does not comply with the provision of Schedule 17 but found to be acceptable as the development provides surplus car parking spaces for the residential development.</p>	No
CL75 Design of Carparking Areas	YES	Council Traffic Engineer has indicated that both the residential and commercial basement car parks comply with the internal manoeuvring and parking space and aisle dimension requirements of AS2890.1:2004. Conditions have been included within the recommendation of this report to ensure compliance is achieved.	YES (subject to conditions)
CL76 Management of Stormwater	YES	Council's Development Engineers have reviewed the stormwater management plans submitted with the application and raised no objections subject to a number of conditions. All recommended conditions have been included within the recommendation of this report.	YES (Subject to conditions)

General Principal	Applies	Comments	Complies
CL77 Landfill	YES	Clause 77 states that landfill is not to have any adverse impacts on the built or natural environment. From the plans submitted with the application, It is evident that the proposed development will not require an excessive level of fill.	YES
CL78 Erosion & Sedimentation	YES	Appropriate conditions associated with management of erosion and sedimentation can be included on the consent if the application is approved.	YES (subject to conditions)
CL79 Heritage Control	NO	The site is not identified as a heritage item nor is it located within a conservation area.	Not Applicable
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	NO	No Comment	Not Applicable
CL81 Notice to Heritage Council	NO	No Comment	Not Applicable
CL82 Development in the Vicinity of Heritage Items	YES	<p>The subject site is located in the vicinity of a Heritage item specified under the Warringah LEP 2000. The following Heritage items of local significance are within this locality:</p> <ul style="list-style-type: none"> <li>• Harbord Literary Institutes (located at the cnr of Lawrence Street and Oliver Street, Harbord; and</li> <li>• Early childhood Health Centre (Located 29 Lawrence Street, Harbord.</li> </ul> <p>Council's Heritage consultant has reviewed the proposal and has raised no objection subject to conditions. All recommended conditions have been included within the recommendation of this report.</p>	YES (subject to condition)
CL83 Development of Known or Potential Archaeological Sites	NO	The subject site is not located within the vicinity of any known or potential archaeological sites.	Not Applicable

## SCHEDULES

### Schedule 8 - Site analysis

The application was accompanied by a detailed site analysis that satisfies the requirements of Schedule 8.

### Schedule 15 - Statement of Environmental Effects

Under Clause 15 of WLEP 2000, there are specific provisions relating to Category 3 development. The components that trigger the Category 3 process include the basement car parking, access ramp to the basement car park, and switch room, all of which are associated with the higher density residential development and retailing, proposed in the H2 locality. Housing (not on ground floor) and shops are both identified as Category 3 within the H1 locality.

There is no retail or shop-top housing proposed in the H1 locality, given the integrated nature of the proposal, the elements of the proposed development (being basement car parking, access ramp to the basement car park, and switch room) will be ancillary or shared by the entire development.

Pursuant to Clause 15 of WLEP 2000, consent may be granted to development classified as Category Three only if the consent authority has considered a Statement of Environmental Effects that includes the items in Schedule 15.

The applicant has submitted a Statement of Environmental Effects which addresses the items listed in Schedule 15 of WLEP 2000. An assessment of Category 3 elements of the proposal only against the provisions of Schedule 15 is provided below:

(1) Summary of the statement of environmental effects	<p>A Statement of Environmental Effects has been submitted with the application.</p> <p><b>Comment:</b> It is considered that the statement submitted adequately addresses the proposal's consistency with all relevant planning controls.</p>
(2) Consistency of the proposal with the desired future character statement and general principles of development control established by the plan	<p>The applicant has addressed the consistency of the proposal with the desired future character statements for the H1 and H2 localities and the general principles of development control in the Statement of Environment Effects. In summary, the applicant has concluded that the proposal is consistent with DFC statements for both the H1 and H2 localities and the development is also consistent with the general principles as contained in Part of the WLEP 2000.</p> <p><b>Comment:</b> An assessment of the proposal with all relevant controls in WLEP 2000 is detailed in this report. The assessment has found that the proposal (is consistent with the relevant planning controls.</p>
(3) Objectives of the proposed development	<p>The applicant has advised that the primary objectivities of the proposed development are to:</p> <ul style="list-style-type: none"> <li>• Realise a design which provides an excellent social and public outcome;</li> <li>• Enhance the Freshwater retail precinct through the introduction of a plaza which is accessible to the public;</li> <li>• Design a built form which is appropriate in scale and respectful of adjoining properties and the broader context;</li> <li>• Use high quality materials and being respectful in the use of natural resources, energy and water;</li> <li>• Incorporating a high quality landscape solution; and</li> <li>• Provide the end users with a strong sense of ownership, safety and security.</li> </ul> <p><b>Comment:</b> The objectives of the development are considered to have been sufficiently discussed and documented. Having regard to the Category 3 elements of the proposed development, these objectives are concurred with.</p>
(4) An analysis of feasible alternatives including the consequences of not carrying out the development and the reasons justifying the carrying out of the development.	<p>The applicant has provided the following comments in regard to the possibility of feasible alternatives;</p> <p><b>(a) Consequences of not carrying out the development</b></p> <p><i>The consequences of not carrying out the development include the lost opportunity:</i></p> <ul style="list-style-type: none"> <li>• <i>For consolidation on site as an "small village" currently in fragmented ownership;</i></li> <li>• <i>To provide consolidated parking;</i></li> <li>• <i>To improve access and pedestrian safety by minimise access points on Lawrence Street; and</i></li> <li>• <i>To improve retail along Lawrence and Albert Streets.</i></li> </ul> <p><b>(b) Justification for the development</b></p> <p><i>The proposed development would make an efficient and economic use of the existing sit with minimal environmental impact.</i></p> <p><i>The proposed development provides a built form which strengthens the neighbourhood's sense of identity, and improves legibility and visual appearance of the centre. This includes the opportunity to reduce the visual impact of the Telstra building, currently the most prominent building of the centre and create a more cohesive visual appearance of the village centre.</i></p>

	<p><i>The classification of the site at State level reinforces the development potential of the site which will assist in achieving its status as a “small village” capable of supporting the surrounding neighbourhood and attainment of the housing targets.</i></p> <p><i>Increases densities within the village make these places more vibrant and provides much needed housing choice in general and also for the aging and changing population. Redevelopment of this unique will assist in achieving the desired regional objectives for Freshwater village and especially contribute to the housing targets set by the Draft North East Subregional Strategy.</i></p> <p><b>Comment:</b> The applicant's comments in regard to the possibility of feasible alternatives for the Category 3 component of the development are concurred with.</p>
(5) Development and context analysis	<p>The applicant has provided details of the proposed development and context analysis within SEE.</p> <p><b>Comment:</b> The SEE has provided an appropriate description of the development and an analysis of the context of the site.</p>
(6) The reasons justifying the carrying out of the development in the manner proposed having regard to the biophysical, economic and social considerations and the principles of ecologically sustainable development	<p>The proposal is unlikely to have any significant impact on the biophysical, economic and social environment. The completion of the building will facilitate the orderly and economic use of the land. Thus the proposal is considered to be consistent with the principles of ecologically sustainable development.</p>
(7) Measures to mitigate any adverse effects of the development on the environment	<p>The applicant has advised that the following measures have been taken to mitigate any adverse effects of the development on the environment.</p> <ul style="list-style-type: none"> <li>• <i>Noise – acoustic barrier to closest residential receiver;</i></li> <li>• <i>Demolition and Construction Management Plan to mitigate impacts during the demolition and construction;</i></li> <li>• <i>Safe demolition (asbestos) and excavation (SEPP 55 assessment);</i></li> <li>• <i>Archaeological assessment prior to Construction Certificate to assess the significance of remains (if any) and likelihood of preservation;</i></li> <li>• <i>Management of stormwater through on-site detention;</i></li> <li>• <i>Maintaining amenity to adjoining residential properties – privacy, overshadowing and bulk and scale are all addressed under the general principle (Section 3.4.4 of the SEE) and measures introduced through design including building orientation and separation between buildings, landscape screens planting and adequate setbacks all contribute to no adverse impacts;</i></li> <li>• <i>Accessibility – ensure wheelchair access to all retail tenancies in accordance with AS1428.1 and DDA; and</i></li> <li>• <i>Loading and Unloading management for services area-Deliveries should be restricted to between the hours of 7am to 6pm Monday to Saturday and 8am to 6pm Sundays to allow for deliveries to only occur during the day period.</i></li> </ul> <p><b>Comment:</b> The measures proposed to mitigate any adverse impacts on the environment are considered satisfactory. Conditions have been included within the recommendation of this report to minimise the adverse effects of the development on the environment.</p>
(8) Other approvals required	<p>The Roads and Traffic Authority (RTA) and Energy Australia were consultant in relation to the proposed development in accordance with the requirements of SEPP (Infrastructure) 2007.</p> <p>The comments received from the above external approval bodies have been addressed under the heading “SEPP (Infrastructure) 2007” of this report.</p>

## Schedule 17 – Carparking Provision

Schedule 17 of WLEP 2000 stipulates parking requirements for various land uses. For the proposed development Schedule 17 sets out the following requirements:

### Retail

Schedule 17 requires that retail parking should be calculated on Gross Leasable Floor Area (GLFA) and has adopted the average RTA retail parking rates for various sized shopping centres contained in the Authority's 'Guide to Traffic Generating Developments V2.2'. As a guide the authority suggests that  $GLFA = 75\% \times GFA$ . The approach used in the RTA guideline in relation to calculating the GLFA is consistent with WLEP 2000.

Retail GFA	GLFA	Rate	Required	Provided	Compliant
3550.36m <sup>2</sup>	2,663m <sup>2</sup>	6.1 spaces per 100m <sup>2</sup>	163 spaces	156 spaces	No (-7 spaces)

Based on the above calculations 163 spaces are required for retail component of the development. A total of 156 spaces are provided in the basement car park (Basement 01) resulting in a shortfall of seven (7) spaces.

The car parking shortfall of seven (7) spaces relates to the retail component of the development only. However, it should be noted that the proposed development provides surplus car parking for the residential component of the development. Notwithstanding, an assessment of the shortfall in the car parking for retail component of the development is assessed against the following objectives of Clause 74 of WLEP 2000:

- **The land use;**

**Comment:** The proposed development a for mixed used development, which comprises residential and retail. The retail parking provided in the development is available for use by the whole of the centre and therefore the parking requirement has been based on a cumulative basis. The Applicant's Traffic report (Prepared by Colston Budd Hunt & Kefes T/L) submitted with the application has provided the following justifications for the shortfall and it is concurred with:

*"The RTA guideline specifies a lower rate for retail parking having regard for different floor area types. The model specifies a rate of 4.2 spaces per 100m<sup>2</sup> for large fruit stores and supermarkets and 4.5 spaces per 100m<sup>2</sup> for specialty shops which result in only 150 spaces required for the retail component. The proposed 156 spaces for retail component represent a parking provision of 4.6 spaces per 100m<sup>2</sup>. In this respect the proposed development provides in excess of that which is required for the retail component pursuant to the RTA guideline and is considered appropriate.*

*Thus using the RTA rates the proposed development would require 150 retail spaces and the proposed development satisfies this requirement. The whole of Freshwater Village (including the proposed development) would comprise some 11,000m<sup>2</sup> of retail and commercial development. Furthermore, the higher density of development and better access to public transport for Freshwater Village would suggest greater opportunities to reduce parking".*

- **The hours of operation;**

**Comment:** The hours of operation for the retail component have not been nominated by the applicant. A condition has been included within the recommendation of this report which restricts the hours of operation of the retail development from 7am to 7pm seven days a week.

- ***The availability of public transport;***

**Comment:** Public transport is provided by way of buses, which operate along Albert Street through Harbord Village seven days a week. Bus stops are located in Albert Street near the site. Overall, the site has good access to regular public transport services.

- ***The availability of alternative car parking; and***

**Comment:** It is acknowledged that there is limited parking on the streets surrounding the subject site. However, there is parking available in the nearby retail buildings (roof top parking) as alternative if required. Overall, it is considered that the proposed parking provision represents an improvement on the existing situation where minimal on site parking is provided for the existing development.

- ***The need for parking facilities for courier vehicles, delivery/services vehicles and bicycles.***

**Comment:** There is adequate space available for loading and unloading and service vehicles and bicycles within the basement levels of the development.

For the above reasons, it is considered that the shortfall of 7 spaces for the retail component of the development is not significant and the argument put forward by the applicant's Traffic Consultant is concurred with. Furthermore, it is worth noting that the proposed parking provision represents an improvement from the existing situation where minimal on site parking is provided for the exiting development on the subject site.

## Residential

Schedule 17 of WLEP 2000 requires car parking to be provided for residential use at the following rate:

Rate	Unit Provision	Required	Provided	Compliant
1 space/1 bedroom unit	40	40 spaces		
1.2 spaces/2 bedroom unit	51	62 spaces		
1.5 spaces/3 bedroom unit	0*	0		
1 visitor space/5 units	91	19 spaces		
2 spaces/detached style dwelling	7 townhouses	14 spaces		
		<b>135 spaces</b>	<b>182 spaces*</b>	Yes (+47 spaces)

**Note:** Three (3) spaces are located with the townhouses.

Based on the above calculations 135 spaces are required for the residential component of the development. A total of 178 residential spaces are provided within the basement car park (Basement 02) in addition to three (3) spaces which are provided in the form of single garages fronting Marmora Road to service townhouses TH.05 – TH.07. Therefore a total of 182 spaces are provided for the residential component of the development resulting in a car parking surplus of 47 spaces.

## **POLICY CONTROLS**

### **Warringah Section 94A Development Contributions Plan**

The proposal is subject to the application of Council's Section 94A Development Contributions Plan. The following monetary contributions are required to provide for additional infrastructure generated from this development:



Warringah Section 94A Development Contributions Plan		
Contribution based on total development cost of:		<b>\$52,924,601.00</b>
Contribution - all parts Warringah	Levy Rate	Contribution Payable
Total S94A Levy	0.95%	502,783.71
S94A Planning and Administration	0.05%	26,462.30
<b>Total</b>	<b>1.0%</b>	<b>\$529,246</b>

If the application is approved a condition of consent can be included to ensure the required contributions are paid prior to the issue of the Construction Certificate.

## MEDIATION

Mediation was not requested throughout the notification and assessment process.

## CONCLUSION

The site has been inspected and the application assessed having regard to the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy (Infrastructure) 2007, State Environmental Planning Policy No.55 – Remediation of Land, Warringah Local Environmental Plan 2000, Warringah Development Control Plan and the relevant codes and policies of Council.

The proposed development represents a large mixed-use development on eight separate allotments in the Freshwater area. The proposal results in a number of significant physical changes to streetscapes, the changes to the levels of activity and intensity of land use on the site, the levels of accessibility through and around the site, the increased levels of onsite carparking and traffic on adjoining streets, the temporary disruptions associated with a lengthy construction period and the public interest in the development.

The development is submitted pursuant to the provisions of WLEP 2000 and must be assessed in accordance with the current planning controls applying to the site. In this regard, the application involves a number of variations to the planning controls which largely revolve around the issue of building height for the H2 locality. In this case, the non-compliances are not considered to create such impacts that will justify a refusal of the application as the resultant built form is assessed as being compatible with surrounding development and suitable on the subject site. Other non-compliances such as the variation to the Housing density (within the H1 locality), has been supported as the proposed density does not detract from the visual appearance of the development from the street and is consistent with the Desired Future Character statement by maintaining, through its variable building heights and setback alignments, the visual pattern and predominant scale of detached style housing in the locality and there not considered significant in the overall context of the site.

With respect to the Category 3 matters relating to this proposal, consideration has been given to the existing commercial land uses on the site, the permissibility of a commercial development over much of the subject site, the objectives of the DFC for the H2 Locality and the relationship of the Category 3 uses to surrounding development. In summary, it is found that the proposed Category 3 uses (namely, the basement car parking, access ramp to the basement car park, and switch room), all which are associated with the higher density residential development and retailing, proposed in the H2 locality, are compatible with the existing residential use of the land (noting that no retail or shop top housing is proposed with the H1 locality) and are incorporated into the development in such a way as to ensure that the overwhelming character and appearance of the development is primarily residential as required by the DFC for the H1 locality. In this regard, the frontage to Marmora Street will be largely residential.

The site is acknowledged as being a transitional site between the H2 locality, which is a commercially orientated locality, and the H1 locality, which is a residentially orientated locality. The existing and permissible uses within these localities reflect its position and status as a transitional site and uses that are of a commercial nature are suitable provided and therefore the H1 locality remains primarily a residential area. Accordingly, the proposal is assessed as being consistent with the DFC.

The proposed development has been assessed as being consistent with the design quality principles of State Environmental Planning Policy No. 65 and the 'Rules of Thumb' in the Residential Flat Design Code. The development has also been found to be consistent with the aims and objectives of the zones under the provisions of Draft WLEP 2009.

In relation to the residents concerns, the main issues of character of the Village, traffic impacts, construction impacts and non-compliance with the provisions of WLEP 2000 have been assessed and it is concluded that these objections should not carry determining weight. However, where appropriate the residents concerns have been addressed by appropriate conditions of consent, particularly in relation to noise, traffic management, pollution, construction impacts, goods deliveries and garbage collection. It should be noted that conditions have also been included within the recommendation of this report with regards to the vehicular access arrangements and related traffic infrastructure and the final design of the proposed roundabout; this will require a final approval from Warringah Traffic Committee.

Therefore, it is considered that the proposal has adequately addressed and satisfied the planning controls and objectives applying to the site under WLEP 2000 and other relevant legislation and is a suitable and appropriate development for the site and the locality.

Accordingly, subject to the conditions of consent attached to this report, the application is recommended for approval.

## RECOMMENDATION

That the Joint Regional Planning Panel (JRPP) for the Sydney East Region as the consent authority approve the Development Application No: DA2010/1446 for the demolition of existing buildings and the construction of a mixed-use retail and residential development at Lot 1, DP 830423, No. 22-26 Albert Street, Lot 9, DP 10321, No. 18 Marmora Street, Lot 10, DP 10321, No. 20 Marmora Street, Lot 11, DP 10321, No. 22 Marmora Street, Lot 2, DP 581226, No. 21 Lawrence Street, Lot CP, SP 1172, No. 15 Lawrence Street, Lot A, DP 356986, No. 9 Lawrence Street, and Lot 394, DP 752038, Nos. 5 and No. 5A Lawrence Street Freshwater subject to the following conditions:

### GENERAL CONDITIONS

### CONDITIONS THAT IDENTIFY APPROVED PLANS

#### 1. Approved Plans and Supporting Documentation

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

Architectural Plans - Endorsed with Council's Stamp		
Drawing No.	Dated	Prepared By
A-0102 (12) Site Plan - Proposed	09/06/10	SJB Architects
A-0200 (12) Basement 02	09/06/10	SJB Architects
A-0201 (12) Basement 01	09/06/10	SJB Architects
A-0202 (12) Ground Floor Plan	09/06/10	SJB Architects

<b>Architectural Plans - Endorsed with Council's Stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
A-0203 (12) Level 1	09/06/10	SJB Architects
A-0204 (12) Level 2	09/06/10	SJB Architects
A-0205 (12) Level 3	09/06/10	SJB Architects
A-0206 (12) Level 4	09/06/10	SJB Architects
A-0207 (12) Roof Plan	09/06/10	SJB Architects
A-0208 (12) Townhouses Marmora St	09/06/10	SJB Architects
A-0209 (12) Apartment Typology 1	09/06/10	SJB Architects
A-0210 (12) Apartment Typology 2	09/06/10	SJB Architects
A-0211 (12) Apartment Typology 3	09/06/10	SJB Architects
A-0212 (12) Apartment Typology 4	09/06/10	SJB Architects
A-0213 (12) Adaptable Units	09/06/10	SJB Architects
A-0501 (12) Elevations – Sheet 1	09/06/10	SJB Architects
A-0502 (12) Elevations – Sheet 2	09/06/10	SJB Architects
A-0503 (12) Elevations – Sheet 3	09/06/10	SJB Architects
A-0601 (12) Sections – Sheet 1	09/06/10	SJB Architects
A-0602 (12) Sections – Sheet 2	09/06/10	SJB Architects
A-0603 (12) Sections – Sheet 3	09/06/10	SJB Architects
A-0604 (12) Section Details – Sheet 1	09/06/10	SJB Architects
A-0605 (12) Section Wall Details – Sheet 2	09/06/10	SJB Architects
A-0606 (12) External Material Finishes	09/06/10	SJB Architects
A-0700 (01) Acoustic Screen Barrier	09/06/10	SJB Architects

<b>Reports / Documentation</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Report	26/04/10	Elephant's Foot Waste Compactors Pty Ltd
Construction Management Plan	April 2010	Southern Cross Constructions
Access Review	07/09/10	Morris-Goding Accessibility Consulting
Acoustic Report	03/09/10	Renzo Tonin & Associates (NSW) Pty Ltd
Preliminary Environmental Assessment	March 2010	Environmental Investigation Services
Any documentation submitted (and endorsed by Council) to satisfy a Deferred Commencement Condition requirement is to be fully complied with.		

No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.

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

<b>Engineering Plans - Endorsed with Council's Stamp</b>		
<b>Drawing Number</b>	<b>Dated</b>	<b>Prepared By</b>
H-01(D) Stormwater Drainage Plan	11/10/10	AKY Civil Engineering
H-02(D) Stormwater Drainage Plan	11/10/10	AKY Civil Engineering
H-03(D) Stormwater Drainage Long Sections	11/10/10	AKY Civil Engineering
H-DA-00(C) Cover Sheet, Legend & Details	08/09/10	ITM Design
H-DA-02(C) Upper Basement Stormwater Drainage	08/09/10	ITM Design
H-DA-03(C) GF/Site Stormwater Drainage	08/09/10	ITM Design
H-DA-04(C) Catchment Area Calculations	08/09/10	ITM Design

<b>Landscape Plans - Endorsed with Council's Stamp</b>		
<b>Drawing Number</b>	<b>Dated</b>	<b>Prepared By</b>
10 008 L01(H) Landscape Plan	06/09/10	Habitation
10 008 L02(H) Landscape Plan	07/09/10	Habitation
10 008 L03(G) Landscape Sections	06/09/10	Habitation
10 008 L04(H) Landscape Sections	06/09/10	Habitation
10 008 L05(G) Landscape Character	06/09/10	Habitation

**Reason:** To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

## 2. Compliance with External Department, Authority or Service Requirements

The development must be carried out in compliance with the following:

<b>External Department, Authority or Service</b>	<b>E-Services Reference</b>	<b>Dated</b>
Sydney Regional Development Advisory Committee	Response SRDAC Traffic Impact referral	09/11/2010
NSW Police Service	Response NSW Police Service Referral	11/10/2010

**(Note:** For a copy of the above referenced document/s, please see Council's 'E-Services' system at [www.warringah.nsw.gov.au](http://www.warringah.nsw.gov.au) )

**Reason:** To ensure the work is carried out in accordance with the determination and the statutory requirements of External Department, Authority or Bodies. (DACPLB02)

## 3. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

- A. the name of the owner-builder, and
- B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

**Reason:** Legislative Requirement. (DACPLB09)

#### **4. General Requirements**

- (a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

7.00 am to 5.00 pm inclusive Monday to Friday

8.00 am to 1.00 pm inclusive on Saturday,

No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

- (e) Prior to the release of the Construction Certificate payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) Smoke alarms are to be installed throughout all new and existing portions of any Class 1a building in accordance with the Building Code of Australia prior to the occupation of the new works.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy. )
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Number of Bicycle parking spaces and the required security level shall be provided in accordance with Austroads Part 14.
- (l) All vehicular movements shall be forward in and forward out of the site.
- (m) The largest vehicle permitted into the site shall be a Medium Rigid Vehicle of 8.8m length.
- (n) A speed hump in accordance to AS2890.1 shall be provided on the entry ramp prior to the dock entry to slow incoming vehicles and increase road safety

**Reason:** To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

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

### 5. Section 94A Contributions

The Section 94A Contributions are required to be paid for this development. This amount has been calculated using the Warringah Section 94A Development Contributions Plan. The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index).

The basis for the contributions is as follows:

Warringah Section 94A Development Contributions Plan		
Contribution based on total development cost of:		
	\$	52,924,601.00
Contribution - all parts Warringah	Levy Rate	Contribution Payable
Total S94A Levy	0.95%	502,783.71
S94A Planning and Administration	0.05%	26,462.30
<b>Total</b>	<b>1.0%</b>	<b>\$529,246</b>

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

**Reason:** To retain a level of service for the existing population and to provide the same level of service for the population resulting from new development. (DACPLC01)

## 6. Provisions of Substation

Prior to the issue of any Construction Certificate details shall be submitted to the Certifying Authority demonstrating that any substations required shall be located wholly within the subject site.

**Reason:** So that any substation is not located within the public domain.

## 7. Compliance with Standards

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

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

**Reason:** To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

**Advice to Applicants:** At the time of determination in the opinion of Council, the following (but not limited to) Australian Standards are considered to be appropriate:

- (a) AS2601.2001 - Demolition of Structures\*\*
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings\*\*
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting\*\*
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) \*\*
- (e) AS 4970 - 2009 'Protection of trees on development sites'\*\*\*
- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking\*\*
- (g) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities\*\*
- (h) AS 2890.3 - 1993 Parking facilities - Bicycle parking facilities\*\*
- (j) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities\*\*
- (k) AS 1742 Set - 2010 Manual of uniform traffic control devices Set\*\*
- (l) AS 1428.1 - 2009\* Design for access and mobility - General requirements for access - New building work\*\*
- (m) AS 1428.2 - 1992\*, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities\*\*
- (n) AS 4674, Design, Construction and Fit Out of Food Premises.

**\*Note:** The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website  
[http://www.humanrights.gov.au/disability\\_rights/buildings/good.htm](http://www.humanrights.gov.au/disability_rights/buildings/good.htm)

**\*\*Note:** the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to.

## 8. Construction Management Program

A Construction Management Program shall be prepared which includes the following:

- (a) The proposed method of access to and egress from the site for demolition, excavation and construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
- (b) The proposed method of loading and unloading, demolition, excavation and construction machinery, excavation and building materials, formwork and the erection of

any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site; and

- (c) The location and operation of any on site crane.

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

**Reason:** To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community. (DACPLC13)

## **9. Geo-Technical Report**

A Geo-Technical Report and certificate shall be prepared by an appropriately qualified Geo-technical Engineer certifying that the existing rock formations and substrate on the site are capable of withstanding:

- (a) the proposed loads to be imposed;
- (b) the extent of the proposed excavation, including any recommendations for shoring works that may be required to ensure the stability of the excavation;
- (c) protection of adjoining properties;
- (d) the provision of appropriate subsoil drainage during and upon completion of construction works.

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

**Reason:** To ensure the structural integrity of the subject site and adjoining sites during the excavation process. (DACPLC14)

## **10. Structures Located Adjacent to Council Pipeline or Council Easement**

All structures are to be located clear of any Warringah Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Policy Building Over or Adjacent to Constructed Council Drainage Systems and Easements. Structural details prepared by a suitably qualified Civil Engineer demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

**Reason:** Protection of Council's Infrastructure.

## **11. Soil & Water Management Program**

Sediment & Erosion must be controlled on site in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) until the works are completed.

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

## **12. Landscaping within the overland flow path along the western and northern sides of the development**

The proposed landscaping is to be amended to remove any trees or shrubs and steps within the proposed drainage easement benefiting Council and replaced with grass and batters only.

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

**Reason:** To provide adequate access to Council's future drainage pipeline and adequate overland flow provisions through the development. (Special condition)



### 13. Vehicle Guard Rail Compliance Certification

The provision of a vehicle guard rail for the full width along the eastern side of Lawrence Street car park. The guard rail is to be located behind the existing kerb alignment.

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

**Reason:** To protect against property damage. (Special condition)

### 14. Open Concrete Channel Compliance Certification

The provision of an open concrete channel located along the western boundary of the development in accordance with the concept drawing by AKY Civil Engineering, drawing number 10013, H-01 to H-03 dated 8 September 2010. The design must include the following details:

- a) Minimum clear width of the open concrete channel is to be 1.2 metres
- b) Open style pool type fencing is to be provided along the western side of the open concrete channel adjacent the Lawrence Street car park to allow overland flows to enter the channel from the car park
- c) "Green wall" screening with steel support structures and safety handrail are to be provided along the full length on the eastern side of the channel, as per the architectural drawing number 4673 A-0605, Revision 12
- d) The open concrete channel must be located wholly within the development site
- e) Top walls of open channel are to be minimum 300mm above the maximum 1 in 100 year ARI water surface level as detailed in the stormwater drainage report prepared by AKY Civil Engineering, Revision A, dated September 2010 and drawing number H-03, Revision D, dated 11 October 2010 prepared by AKY Civil Engineering
- f) Security gates are to be provided at both ends of the open concrete channel

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

**Reason:** To provide appropriate management of the 1 in 100 year ARI overland flows through the development. (Special condition)

### 15. Waterproofing/Tanking of Basement Level

The basement area is to be permanently tanked or waterproofed. Details of the waterproofing/ tanking are to be prepared by a suitably qualified Engineer.

Where dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the Department of Environment, Climate Change and Water NSW. The bore license must be obtained prior to commencement of dewatering works. All requirements of the Department of Environment, Climate Change and Water NSW are to be complied with and a copy of the approval must be submitted to the Certifying Authority.

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

**Reason:** To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements. (DACENC14)

## 16. Overland Flow

In order to protect occupants from overland flow inundation the following is required:

(a) Minimum Floor Level – units C.G.07 and C.G.08

The finished floor level to the area annotated on the approved plans as C.G.07 and C.G.08 is to be Reduced Level = 17.20 m AHD (Minimum 300 mm above the predicted 1 in 100 year water surface level for the site and public drainage system).

(b) Minimum Floor Level – units TH.01 to TH.04

The finished floor level to the area annotated on the approved plans as TH.01 to TH.04, inclusive, is to be Reduced Level = 17.20 m AHD (Minimum 500 mm above the predicted 1 in 100 year water surface level for the site and public drainage system).

(c) Flood Proof Wall

Provision of a concrete or reinforced infill blockwork permanent barrier to protect building from overland flows from the Oliver Street car park. The top of the wall is to be minimum 800mm above the surrounding ground surface levels. All new building works and services shall be designed to withstand the hydraulic forces of the floodwaters up to the flood planning level.

(d) Flood Protection

All new building works and services shall be designed to withstand the hydraulic forces of the floodwaters up to the flood planning level. Buoyancy (particularly in relation to cars in the ground floor car park), flowing water with debris, wave action, the flood compatibility of materials and waterproofing shall be addressed. Structural details for the construction for all elements including the building, air-conditioning units and waste and recycling bins are to be prepared by a suitably qualified Engineer.

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

**Reason:** To protect the building from flooding in accordance with Council and NSW Government policy. (Special condition)

## 17. Bonds

(a) Security Bond

A bond (determined from cost of works) of \$20,000.00 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

A Bond of \$325,000.00 as security against any damage or failure to complete the construction of stormwater drainage works as part of this consent.

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

A Bond of \$100,000.00 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter and any footpath works required as part of this consent.

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

A Bond of \$10,000.00 as security to ensure that there is no transmission of material, soil etc off the site and onto the public road and/or drainage systems.

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

A bond of \$10,000.00 as security against damage to Council's road(s) fronting the site caused by the transport and disposal of materials and equipment to and from the site.

(f) Construction, Excavation and Associated Works Bond (Maintenance for Drainage Works)

The developer/applicant must lodge with Council a Maintenance Bond of \$50,000.00 for the construction of drainage pipeline diversion and open concrete channel works. The Maintenance Bond will only be refunded on completion of the Maintenance Period, if work has been completed in accordance with the approved plans and to the satisfaction of Council.

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

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

**Reason:** To ensure adequate protection of Council infrastructure. (DACENC01)

**18. Submission of Engineering Plans – drainage pipeline diversion works between Oliver Street car park and Marmora Street and open concrete channel along the western boundary of the development**

Engineering plans are to be submitted to the Certifying Authority for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of drainage pipeline diversion works between Oliver Street car park and Marmora Street and the open concrete channel along the western boundary of the development which are to be generally in accordance with the civil design approved with the Development Application, drainage plans prepared by AKY Civil Engineering, drawing number 10013 H-01 to H-03, Revision D, dated 11 October 2010 and Council's specification for engineering works - AUS-SPEC #1 and or Council's Minor Works Policy.

The engineering plans are to be amended to comply with the following:

- (a) The applicant is to amend drawing No. H-02: Stormwater Drainage Plan to reflect the following:
  - (i) The centreline of the existing inlet pipe at pit 60 should line up with the centreline of the proposed 675mm diameter outlet pipe.
  - (ii) Existing pit 10 should be replaced with a suitably sized junction pit with grate.
  - (iii) All existing private connections to Council's existing pipeline should be reconnected into the new pipeline.
  - (iv) The existing pipeline within the development site is to be removed. The existing pipeline located outside of the development site to be abandoned is to be capped off with a concrete plug at the upstream end and a concrete plug with a subsoil connection from the invert of the abandoned pipe into pit 10 at the downstream end.
  - (v) Drawing no. H-02 shows a proposed 450mm diameter pipeline connecting from proposed pit 60 to proposed pit 70 crossing the sewer pipeline with insufficient cover. Pit 70 is to be re-located to the northern side of the sewer main.
  - (vi) Size of lintel of pit No. 60 and 70 to be increased to minimum 5.5 metres.
  - (vii) Benching is to be provided in pit No. 30 to minimise hydraulic losses.
  - (viii) Fences built across Council's pipeline and along the boundaries are to be open style pool type fences (or similar) to allow unimpeded overland flows and to be removable for facilitate access to Council's pipeline.
  - (ix) Minimum 3 metres wide gates are to be provided at both ends of the landscaped area to facilitate Council's access to the proposed pipeline.

- (x) Grass verge in Marmora Street is to be re-graded to allow overland flows to drain to Marmora Street.
- (xi) The existing pit No. 140 in the Lawrence Street car park is to be re-constructed with a minimum 1.8m extended kerb inlet.
- (b) The applicant is to amend drawing No. H-03 – Stormwater Drainage Long sections to reflect the following:
  - (i) Minimum pipe cover of 500mm
  - (ii) Step irons are to be installed in all pits greater than 1.2 metres deep
  - (iii) Steps are to be replaced with batters of maximum gradient of 1V : 4H

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

**Reason:** To ensure compliance with Council's specification for engineering works. (DACENC08)

## **19. Vehicle Crossings Application - Formwork Inspection**

An application for street levels shall be made with Council subject to the payment of fee applicable at the time of payment. The fee includes all Council inspections relating to the driveway construction and must be paid.

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

**Reason:** To facilitate suitable vehicular access to private property. (DACENC12)

## **20. Structural Adequacy and Excavation Work**

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

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

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

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

**Reason:** Safety. (DACENC19)

## **21. On-site Stormwater Detention Compliance Certification**

Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Warringah Council's "On-site Stormwater Detention Technical Specification" and the concept drawing by itm design, drawing number 09/142 H-DA-00 to 04, revision C, dated 8 September 2010.

The drainage plans are to be amended to comply with the following:

- a) 375mm diameter orifice plate is to be provided for the high level outlet in the OSD tank.
- b) Size of high level outlet pipe is to be 450mm diameter

- c) A structural false ceiling or void chamber is to be constructed between the habitable floors above and OSD tank below to prevent damage by water inundation or condensation to stored goods and materials

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

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

## **22. Submission of Engineering Plans for Civil Works in the Public Road Reserve**

Engineering plans are to be submitted to Council for approval under the provisions of Section 138 of the Roads Act 1993. The submission is to include four (4) copies of Civil Engineering plans for the design of drainage pipeline diversion works within Oliver Street car park and Marmora Street, which are to be generally in accordance with the Development Application and Council's specification for engineering works – AUS-SPEC #1 and or Council's Minor Works Specification.

The engineering plans are to be amended to comply with the following:

- a) Drawing no. H-02 shows a proposed 450mm diameter pipeline connecting from proposed pit 60 to proposed pit 70 crossing the sewer pipeline with insufficient cover. Pit 70 is to be re-located to the northern side of the sewer main.
- b) Size of lintel of pit No. 60 and 70 to be increased to minimum 5.5 metres.
- c) Benching is to be provided in pit No. 30 to minimise hydraulic losses.
- d) Grass verge in Marmora Street is to be re-graded to allow overland flows to drain to Marmora Street.
- e) The existing pit No. 140 in the Lawrence Street car park is to be re-constructed with a minimum 1.8m extended kerb inlet.

The Fee Associated with the assessment and approval of the plans is to be in accordance with Council's Fees and Charges.

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

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

## **23. Waste/Recycling Requirements to comply with Policy**

Details demonstrating compliance with Warringah Council's Policy Number PL 850 - Waste, including the required 'Waste Management Plan' are to be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

**Note:** If the proposal, when compliant with Warringah Council's Policy Number PL 850 - Waste, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans a modification(s) to the development may be required.

**Reason:** To ensure adequate and appropriate waste and recycling facilities are provided.

## **24. Traffic roundabout and median**

- a) Prior to the issue of a construction Certificate, the provision of the proposed roundabout at Albert Street and Moore Road and associated medians in Albert Street/traffic facilities will be subject to Council's consideration and approval via the Warringah Traffic Committee, which includes a representative of the Roads and Traffic Authority of NSW. In this regard the applicant shall submit a traffic modelling/analysis of the development traffic on the intersection of the proposed access driveway and Albert Street with and without a median on Albert Street to limit access to left turn in and out only.

- b) The applicant shall submit to Council (for consideration of the Warringah Traffic Committee) appropriate design plans detailing the roundabout and all associated traffic control facilities including any proposed changes to traffic facilities. The design of the roundabout shall include and provide for the following matters.
- i) A detailed engineering design plan for the roundabout at a scale of 1:200 including all associated traffic control facilities and proposed changes to same.
  - ii) The design diameter of the circulating carriageway shall cater for the Medium Rigid Vehicle (MRV) approaching from the north to perform a U turn on the roundabout to access the site driveway.
  - iii) The swept path of the MRV shall be shown on the roundabout plan using Autoturn.
  - iv) The design of the roundabout shall be suitable for articulated buses currently turning left from Moore Road into Albert Street and right from Albert Street to Moore Road.
  - v) The existing raised wombat crossing (marked foot crossing) in Moore Road shall be relocated and reconstructed to Council's satisfaction. Any required adjustments including adjustments to street lighting for the relocated marked footcrossing shall be undertaken at no cost to Council.
  - vi) The left and right turns at the roundabout shall be suitable for a Large Rigid Vehicle (HRV) in accordance with Austroads "Guide to Traffic Engineering Practice".
  - vii) Adequate design deflection shall be provided on all approaches to the roundabout to achieve a maximum design speed of 40km/h.
  - viii) The roundabout is offset too far to the east (into Moore Road) and should be more centrally located by moving it to the west. The adjacent footpath will need to be adjusted and appropriate nature strip width will be maintained. Dedication of land as public road may be required to achieve this requirement. Any required dedication of land as public road will be at no cost to Council.
- c. The applicant shall submit to Council (for consideration of the Warringah Traffic Committee) an appropriate design plans detailing the proposed median in Albert Street. In this regard the design will include the following matters:
- i) The proposed access driveway shall be located and designed to allow the proposed median to be generally centrally located in the Albert Street carriageway.
  - ii) The design of the median is to allow for a suitable southbound travel lane width and preserve the existing parallel parking on the eastern side of Albert Street. A minimum width of 6.0m will need to be maintained from the edge of the median to the face of kerb.

**Reason:** Traffic safety

## **25. Provision of sight-triangle**

A pedestrian sight distance triangle at in accordance with the Australian Standard AS 2890.1-2004 is to be provided at the intersection of the proposed driveway and Albert Street.

Details showing compliance are to be provided on plans accompanying an application for the Construction Certificate.

**Reason:** Traffic safety

**26. Vertical clearance over driveway**

The vertical clearance over the proposed driveway up and manoeuvring areas near the loading bay is to be a minimum of 4.5m in accordance with the Australian Standards AS 2890.2-2002 Part 2: Off-street commercial vehicle facilities.

Details showing compliance are to be provided on plans accompanying an application for the Construction Certificate.

**Reason:** To enable commercial vehicle access.

**27. Design of loading dock and driveway**

The proposed driveway and loading dock shall be designed to suit a Large Rigid Truck in accordance with Australian Standard AS 2890.2-2002 Part 2: Off-street commercial vehicle facilities.

Details showing compliance are to be provided on plans accompanying an application for the Construction Certificate.

**Reason:** To enable commercial vehicle access.

**28. Width of driveway**

The design width of the proposed access driveway shall comply with the Australian Standards AS 2890.2-2002 Part 2: Off-street commercial vehicle facilities and take into account the proposed median in Albert Street.

Details showing compliance are to be provided on plans accompanying an application for the Construction Certificate.

**Reason:** To enable commercial vehicle access.

**29. Provision of a traffic calming scheme**

In the event a median is to be provided in Albert Street to limit access to the site to left in and out the applicant shall provide a traffic calming scheme in Soldiers Avenue to ameliorate the impact of traffic on Soldiers Avenue. The traffic calming scheme shall be developed for Soldiers Avenue in consultation with local residents and Council and shall consist of at least two raised thresholds or similar devices. In this regard the applicant is to liaise with Council's Traffic Management Team in respect to the location and design of the scheme. Once a suitable location and plan is developed in consultation with the Traffic Engineer, the applicant is to notify and invite comments on the plan from Soldiers Avenue residents. The results of the consultation shall be submitted to Council with the engineering plans. The proposed traffic devices are to be constructed at the applicant cost.

Details showing compliance are to be provided on plans accompanying an application for the Construction Certificate.

**Reason:** Traffic safety

## CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

### 30. Traffic work zone

An application for a work zone in Lawrence Street and or Albert Street in front of the site is to be lodged for Council's consideration and approval. (The provision of a work zone will require approval from Warringah Traffic Committee. Applications forms for work zones are available on Council's web site or Customer Service and should be lodged at least 4 weeks prior to work commencing).

**Reason:** To ensure efficient traffic management.

### 31. Public Liability Insurance - Works on Public Land

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

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

## CONDITIONS THAT MUST BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

### 32. Survey Certificate

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

**Reason:** To determine the height of buildings under construction comply with levels shown on approved plans. (DACPLE01)

### 33. Property Boundary Levels

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

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

**Reason:** To maintain the existing profile of the nature strip/road reserve. (DACENE01)



### 34. Trees Condition

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

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

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

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

**Reason:** Protection of Trees. (DACLAEO3)

### 35. Requirement to Notify about New Contamination Evidence

Any new information revealed during demolition works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.

**Reason:** To protect human health and the environment. (DACHPE01)

### 36. Off-site disposal of contaminated material

Any contaminated material removed from the site must be disposed of at a waste facility that can lawfully receive that waste and must be done in accordance with:

- a) *Protection of the Environment Operations Act 1997 (NSW); and*
- b) *Environment Protection Authority's Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes (1999).*

Copies of all test results and disposal dockets must be retained for at least 3 years and be made available to authorised Council officers on request.

**Reason:** For protection of environment and human health and to ensure compliance with the legislation.

### 37. Dewatering

Any water being discharged from the site to stormwater must not cause pollution and must comply with the ANZECC 2000 guidelines and meet the following requirements:

- a) Suspended sediment must be less than 50mg/L
- b) Turbidity must be less than 150 NTU
- c) Oil & Grease must be less than 10mg/L
- d) BOD 5 must be less than 30
- e) pH must be between 6.5 -8.5

Prior to any discharge, and weekly thereafter, any discharged water must be analysed by an independent NATA accredited laboratory and records of water quality discharge must be kept on site. Water must be discharged in a manner that does not cause safety nuisances.

**Reason:** Environmental Protection

### **38. Property Boundary Levels**

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

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

**Reason:** To maintain the existing profile of the nature strip/road reserve. (DACENE01)

### **39. Progress Certification (Drainage)**

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

- (a) Silt and sediment control facilities
- (b) Laying of stormwater pipes and construction of pits
- (c) Sub-grade trimmed and compacted \*\*
- (d) Base-course laid and compacted \*\*
- (e) Landscaping and vegetation
- (f) Clean-up of site, and of adjoining Council roadway and drainage system.

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

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

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

### **40. Stormwater Pipeline Construction**

The applicant shall construct the pipeline in accordance with Council's specification for engineering works (see [www.warringah.nsw.gov.au](http://www.warringah.nsw.gov.au)) and shall reconstruct all affected kerb and gutter, bitumen reinstatements, adjust all vehicular crossings for paths, grass verges and household stormwater connections to suit the kerb and gutter levels. All works shall be undertaken at the applicant's cost, and upon completion certified by an appropriately qualified and practicing Civil Engineer.

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

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

### **41. Vehicle Crossings – Albert Street frontage**

The provision of one vehicle crossing in accordance with Warringah Council Drawing No A4-3330/1 N and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

**Reason:** To facilitate suitable vehicular access to private property. (DACENE05)

**42. Vehicle Crossings – Marmora Street frontage**

The provision of three vehicle crossing 3.0 metres wide in accordance with Warringah Council Drawing No A4-3330/1 N and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

**Reason:** To facilitate suitable vehicular access to private property. (DACENE05)

**43. Civil Works Supervision**

All civil works approved in the Construction Certificate are to be supervised by an appropriately qualified and practising Civil Engineer.

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

**Reason:** To ensure compliance of civil works with Council's specification for engineering works. (DACENE06)

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

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

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

**Reason:** To protect the environment from the effects of sedimentation and erosion from development sites. (DACPLE02)

**45. Layback Construction – Albert Street frontage**

A layback is to be constructed in accordance with Warringah Council Drawing No A4-2276 and specifications.

**Reason:** To ensure suitable vehicular access to private property. (DACENE08)

**46. Layback Construction – Marmora Street frontage**

Three laybacks 3.0 metres wide each layback (excluding the wings) are to be constructed in accordance with Warringah Council Drawing No A4-2276 and specifications.

**Reason:** To ensure suitable vehicular access to private property. (DACENE08)

**47. Maintenance of Road Reserve**

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

**Reason:** Public Safety. (DACENE09)

#### **48. Notification of Inspections**

Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

- (a) Installation of Silt and Sediment control devices
- (b) Prior to backfilling of pipelines
- (c) Prior to pouring concrete for stormwater gully pits

**Note:** Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification. Council approval or acceptance of any stage of the work must be obtained in writing, and will only be issued after completion of the work to the satisfaction of Council and receipt of the required certification.

**Reason:** To ensure new Council infrastructure is constructed to Council's requirements. (DACENE10)

#### **49. Traffic Control During Road Works**

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

**Reason:** Public Safety. (DACENE11)

#### **50. Footpath Construction**

The applicant shall construct full width concrete pavers in accordance with the pavement requirements for the Harbord Village Revitalisation works along the Lawrence Street and Albert Street frontages. The works shall be in accordance with the following:

- (a) All footpath works are to be constructed in accordance with the pavement requirements for the Harbord Village Revitalisation works.
- (b) Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Council's specification for footpath.
- (c) All redundant crossings and associated tactile pavers for the visually impaired are to be re-instated with the pavement requirements for the Harbord Village Revitalisation works.
- (d) Tactile ground surface indicators adjacent to new vehicle crossing fronting Albert Street are to be installed in accordance with AS/NZS 1428.4.

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

**Reason:** To ensure compliance of footpath works with Council's specification for engineering works. (Special condition)

#### **51. Archaeological Survey**

An archaeological survey shall be conducted of the site. This survey shall be carried out by an appropriately qualified person (Heritage Planner or Consultant, Archaeologist or the like) and shall identify the likelihood of remains and/or artefacts, whether European or Aboriginal, being present on site.

If this report identifies that such items are likely to be on site, then demolition, earthworks and excavation shall be undertaken under the direct supervision of the Consultant Archaeologist and both Council and the Accredited Certifier (if any) involved in the issue of the Construction Certificate shall be informed.

In the event that remnants or artefacts are found during the progression of works on the site, all works are to cease until the full requirements of this condition have been addressed.

Remnants and artefacts discovered during demolition, earthworks or excavation shall be photographed, catalogued by location and description and stored and preserved in an appropriate place.

Disposal of the remnants and artefacts shall only occur in consultation with, and subject to the agreement of, Council.

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

**Reason:** To ensure the proper management of historical artefacts and ensure their heritage preservation. (DACHEC02)

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

### 52. Consolidation of Lots

Lot 1, DP 830423, No. 22-26 Albert Street, Lot 9, DP 10321, No. 18 Marmora Street, Lot 10, DP 10321, No. 20 Marmora Street, Lot 11, DP 10321, No. 22 Marmora Street, Lot 2, DP 581226, No. 21 Lawrence Street, Lot CP, SP 1172, No. 15 Lawrence Street, Lot A, DP 356986, No. 9 Lawrence Street and Lot 394, DP 752038, Nos. 5 and No. 5A Lawrence Street Freshwater must be consolidated as one (1) allotment and registered on a survey plan (prepared and signed by a Registered Surveyor) with the NSW Land & Property Information Service (NSW Department of Lands).

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

**Reason:** To ensure development is not constructed over property boundaries. (DACPLF02)

### 53. Intercom

An intercom system must be provided in a convenient location adjacent to the visitor parking entry to enable easier and safe access to visitor parking.

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

**Reason:** To ensure convenient access is available for visitors to the building. (DACPLF05)

### 54. Undergrounding of Telecommunications Services

Arrangements are to be made for the provision of underground telecommunications services to the building.

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

**Reason:** Provision of telecommunication facilities in a manner that facilitates the future underground provision of cable services. (DACPLF06)

## 55. Sydney Water

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

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

**Reason:** To ensure compliance with the statutory requirements of Sydney Water. (DACPLF08)

## 56. Works as Executed Data

The Civil Engineer responsible for the supervision of the civil works shall certify that the completed works have been constructed in accordance with this consent and the approved Construction Certificate. Works as Executed Data certified by a registered surveyor prepared in accordance with Councils - Guideline for preparing works as executed data for Council stormwater assets'. Full details of the information to be submitted to Council, as part of the Works as Executed Data, are to be obtained from Council (available on Council's website or from Council's Natural Environment Unit) and verified by the Principal Certifying Authority prior to submission of any documentation.

The Works as Executed Data is to include but not be limited to the following:

- a) Works As Executed (WAE) plan,
- b) a Spreadsheet Schedule of all stormwater asset attributes and
- c) a CCTV Report of the completed pipeline

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

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

## 57. Required Planting

Species	Location	Minimum Pot Size
All trees nominated	As indicated on the approved Landscape Plan	As indicated on the approved Landscape Plan

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

**Reason:** To maintain environmental amenity. (DACLAF01)

## **58. Structures Located Adjacent to Council Pipeline or Council Easement**

All structures are to be located clear of any Warringah Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Policy Building Over or Adjacent to Constructed Council Drainage Systems and Easements. A statement of compliance with this condition is required by the Certifying Authority prior to the issue of the Occupation Certificate.

**Reason:** Protection of Council's Infrastructure

## **59. Positive Covenant for Overland Flow paths**

Drawing No. H-01 - shows a 0.9m wide proposed concrete overland flow channel located within the subject property. This structure is to be owned and maintained by the property owner.

Drawing No. H-02 shows a 3.0m wide overland flow path within the subject property. A positive covenant is to be created to:

- (a) ensure the formalised overland flow paths are maintained and fit for purpose
- (b) outline the restrictions of use within these areas

The Positive Covenant is to be prepared by the Applicant using terms acceptable to, and which are available from Warringah Council at the Applicant's expense. The positive covenant is to be endorsed by Council prior to its lodgement with the 'NSW Land and Property Information Department'. The Applicant is to liaise with Council's Assets Officer - Drainage with regards to the creation and endorsement of the Positive Covenant.

**Reason:** To identify encumbrances on land.

## **60. Environmental Site Assessment Certification**

Written certification from a suitably qualified person(s) shall submit to the Principal Certifying Authority and Warringah Council, stating that all the recommendations in the Preliminary Environmental Site Assessment Report prepared by EIS dated March 2010 have been complied with.

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

**Reason:** To ensure compliance with standards. (DACHPF04)

## **61. Separate Commercial and Residential Garbage and Recycling Rooms**

Physically separated commercial and residential waste storage rooms that are designed so they are easy to clean, suitably ventilated and managed to prevent pests shall be provided within the premises for the storage of all garbage bins and recycling containers and all other waste and recyclable material generated by this premises. All internal walls of the garbage storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning. The commercial and residential garbage rooms must be adequately labelled.

**Reason:** To prevent pollution of the environment and to protect the amenity of the area.

## **62. Acoustic Certification**

Prior to occupation certificate provide certification from a suitably qualified acoustic consultant certifying that the recommendations in the Acoustic Assessment Report prepared by Renzo Tonin & Associates dated September 2010 and that all sound producing plant, equipment, machinery or fittings do not emit noise exceeding 5 dB(A) above the background level (LA90) when measured at the nearest property boundary and complies with the Industrial Noise Policy (NSW 2000).

**Reason:** To ensure that noise generated from the development does not result in offensive noise to any other party.

## **63. Easement to Drain Water - Floodway**

An easement to drain water shall be created in favour of Council over the floodway to encompass the 1 in 100 year recurrence frequency predicted water surface level, including a 500mm freeboard and a 500mm minimum margin in plan. The easements are to be detailed on the title.

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

**Reason:** To identify flood affected areas on the property title. (Special condition)

## **64. Structures Located Adjacent to Council Pipeline or Council Easement**

All structures are to be located clear of any Warringah Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Policy Building Over or Adjacent to Constructed Council Drainage Systems and Easements. A statement of compliance with this condition is to be submitted to the Certifying Authority prior to the issue of the Occupation Certificate.

**Reason:** Protection of Council's Infrastructure.

## **65. Works as Executed**

The Civil Engineer responsible for the supervision of the civil works shall certify that the completed works have been constructed in accordance with this consent and the approved Construction Certificate. Works as Executed Data certified by a registered surveyor prepared in accordance with Councils - Guideline for preparing works as executed data for Council stormwater assets'. Full details of the information to be submitted to Council, as part of the Works as Executed Data, are to be obtained from Council (available on Council's website or from Council's Natural Environment Unit) and verified by the Principal Certifying Authority prior to submission of any documentation.

The Works as Executed Data is to include but not be limited to the following:

- a) Works As Executed (WAE) plan,
- b) a Spreadsheet Schedule of all stormwater asset attributes and
- c) a CCTV Report of the completed pipeline

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

**Reason:** To ensure compliance of drainage works with Council's specification for engineering works. (DACENF06)



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

The original completed request forms (Department of Lands standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineer's certification and Compliance Certificate issued by an Accredited Certifier in Civil Works.

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

**Reason:** To create encumbrances on the land. (DACENF01)

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

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

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

**Reason:** To identify encumbrances on land. (DACENF02)

**68. Reinstatement of Kerb**

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

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

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

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

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

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

**Reason:** To ensure modification to the on-site stormwater detention structure is carried without Council's approval. (DACENF04)

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

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

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

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

#### **71. Positive Covenant for the Maintenance of Stormwater Pump-out Facilities**

A Positive Covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the property title to ensure the on-going maintenance of the stormwater pump-out facilities on the property being developed.

Warringah Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Warringah Council's delegate shall sign these documents prior to the submission to the Land & Property Information Department.

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

**Reason:** To ensure adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard. (DACENF11)

#### **72. Positive Covenant for On-site Stormwater Detention**

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

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

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

#### **73. Creation of Positive Covenant and Restriction as a User**

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

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

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

**Reason:** To identify encumbrances on land. (DACENF14)

#### **74. Restriction as to User (Drainage Structures)**

A restriction as to user is to be created on the title over the flood proof wall and open concrete channel and associated works, restricting any alteration or additions to the systems. The terms of such restriction are to be prepared to Council's requirements, which are available from Warringah Council. Warringah Council shall be nominated as the sole authority empowered to release, vary or modify such restriction.

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

**Reason:** To ensure no modification of the flood proof wall and open concrete channel and associated works without Council's approval. (Special condition)

## **75. Easement to Drain Water – Council Pipeline**

An easement to drain water minimum 3 metres wide and variable width in accordance with Council's "Building Over or Adjacent to Constructed Council Drainage system and Easements" Policy, PAS-PL 130, shall be created in favour of Council over the Council's pipeline and any private drainage pipelines diverted from the old Council pipeline into the new Council pipeline. The easement is to be detailed on the title.

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

**Reason:** To identify encumbrances on the property title. (Special condition)

## **76. Easement for Drainage**

A 3.0m wide easement for drainage (under the provisions of Section 88B of the Conveyancing Act) is to be created to ensure all drainage infrastructure is located within the appropriate easement(s) in accordance with Council's "Building Over or Adjacent to Constructed Council Drainage system and Easements" Policy, PAS-PL 130. The Applicant is to liaise with Council's Assets Officer - Drainage with regards to the creation of the drainage easement.

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

**Reason:** Council's standards and statutory requirements of the Conveyancing Act 1919.

## **77. Positive Covenant for Overland Flow paths**

Drawing no. H-01 – shows a 1.2m wide proposed concrete overland flow channel located within the subject property. This structure is to be owned and maintained by the property owner.

Drawing no. H-02 shows a 3.0m wide overland flow path within the subject property. A positive covenant is to be created to:

- (a) ensure the formalised overland flow paths are maintained and fit for purpose
- (b) outline the restrictions of use within these areas

The Positive Covenant is to be prepared by the Applicant using terms acceptable to, and which are available from Warringah Council at the Applicant's expense. The positive covenant is to be endorsed by Council prior to its lodgement with the 'NSW Land and Property Information Department'. The Applicant is to liaise with Council's Assets Officer - Drainage with regards to the creation and endorsement of the Positive Covenant.

**Reason:** To identify encumbrances on land.

## **78. Loading Dock Management Plan**

A Loading Dock Management Plan (LDMP) shall be prepared to Council's satisfaction and shall incorporate appropriate measures to prevent a vehicle entering the site when the loading area is fully occupied. In addition, the LDMP shall outline measures to minimise conflict between trucks and other vehicles. The LDMP shall be submitted for approval, prior to the release of the Final Occupation Certificate.

**Reason:** Traffic management and safety.

## **79. Positive Covenant for Waste Services**

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

**Reason:** To ensure ongoing access for servicing of waste facilities

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

## **80. Visitor Car parking**

Visitor car parking must be permanently available, freely accessible and clearly marked / signposted. The visitor car parking spaces area not to be allocated to individual units/tenancies.

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

**Reason:** To ensure visitor carparking is available at all times and is clearly identified. (DACPLG02)

## **81. Vehicle Egress Signs**

Appropriate sign(s) shall be provided and maintained within the site at the point(s) of vehicular egress to compel all vehicles to come to a complete stop before proceeding onto the public way.

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

**Reason:** To ensure pedestrian safety. (DACPLG03)

## **82. Visitors Sign**

A sign, legible from the street, shall be permanently displayed to indicate that visitor parking is available on the site and the visitor car parking spaces shall be clearly marked as such.

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

**Reason:** To ensure that visitors are aware that parking is available on site and to identify those spaces to visitors. (DACPLG04)

## **83. Parking Enclosure**

No parking spaces or access thereto shall be constrained or enclosed by any form of structure such as fencing, cages, walls, storage space, or the like, without prior consent from Council.

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

**Reason:** To ensure that minimum dimensions for parking spaces are not reduced or that vehicle manoeuvring is compliant with relevant standards. (DACPLG05)

#### **84. Maintenance period for civil works**

A Maintenance Period of six (6) months shall apply to the design of drainage pipeline diversion works between Oliver Street car park and Marmora Street works and open concrete channel along the western boundary of the development, after it has been completed and approved in writing by Council. In that period the applicant shall be liable for any part of the work which fails to perform in the manner outlined in Council's specifications, or as would be reasonably be expected under the design conditions.

**Reason:** To ensure works are appropriately constructed and repaired where defective.  
(Special condition)

#### **85. Vehicle Light System**

A vehicle actuated flashing light system shall be provided at the dock entry to the loading area to warn incoming vehicles to improve road safety.

**Reason:** Traffic safety and management.

#### **86. Hours of Operation**

The shops/business and office uses shall operate only between the following hours:

- 7am to 7pm Monday to Sunday

**Reason:** Information to ensure that amenity of the surrounding locality is maintained and hours of operation are consistent with those in surrounding locality.

#### **87. Separate Development Application for other uses**

This consent relates to the occupation of all Shops, Offices, and Business Premises as defined under the Warringah Local Environmental Plan 2000.

Any other proposed uses that are not in accordance with Schedule 1 – Exempt development or Complying Development requirements of the Warringah Local Environmental Plan 2000 shall be the subject of a separate Development Application.

**Reason:** To ensure the use of the building is consistent with the given consent.

#### **88. Allocation of Spaces**

Car parking spaces provided shall be provided, made accessible and maintained at all times. The spaces shall be allocated as follows:

182	-	Residential
156	-	Retail/Commercial

Car-parking provided shall be used solely in conjunction with the uses contained within the development. Each car parking space allocated to a particular unit / tenancy shall be line marked and numbered or signposted to indicate the unit / tenancy to which it is allocated.

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

**Reason:** To ensure that adequate parking facilities to service the development are provided on site. (DACPLG01)

## CONDITIONS IMPOSED BY ENERGY AUSTRALIA

### 89. Physical Security

- a) In order to provide a security and radiant heat barrier between the substation and the proposed development a wall with a minimum height of 4.5m measured from the level of the substation yard along the length of the eastern substation boundary is to be installed to the satisfaction of Energy Australia. This wall must be of a solid fire rated construction and comply with the current security standards and earthing requirements associated with the substation.
- b) An anti climbing topping treatment is to be installed to the masonry wall. The final topping material is to be agreed with Energy Australia.
- c) Vegetation or other features which might aid climbing must not be allowed to grow or be installed on the wall and must not impact on the effectiveness of the wall.

The applicant must prepare amended plans and documentation demonstrating compliance with the above conditions and such plans and documentation are to be submitted and approved by the Certifying Authority and Energy Australia prior to the issue of a Construction Certificate.

**Reason:** Energy Australia requirements.

### 90. Fire Mitigation

- (a) With respect to the western façade of Building B (on grid A and for the zone between grids 4 and 6) the following risk mitigation measures are required:
  - (i) No openings above a height approximately 1.5m below the top of the boundary fire/security wall – or if openings cannot be eliminated, then these must be screened from direct line of sight by fire resistant radiant heat shields attached but offset to the building façade;
  - (ii) The structure and façade in this zone shall have a minimum fire rating of FRL 180/180/180 and -/180/180 respectively.
- (b) With respect to the western façade of Building B (on grid A and for the zone between grids 6 and 8) the following risk mitigation measures are required:
  - (i) Open screening of access walkway (screening to continue to grid 10);
  - (ii) With respect to the northern façade of block B, the balcony of Unit 1 is to have operable screening in order to prevent the possibility of debris falling onto the substation site.

Amended plans and documentation demonstrating compliance with the fire mitigation measures above are to be submitted and approved by the Certifying Authority and Energy Australia prior to the issue of an Occupation Certificate.

**Reason:** Energy Australia requirements.

## **91. Minimising risks to the electricity substation during construction**

- (a) Construction works, temporary structures and plant and equipment must not compromise the physical security of the substation. A Work Place Methodology Statement is to be prepared to the satisfaction of Energy Australia and should include construction plans and techniques for safe construction in proximity to the substation.
- (b) The Construction Management Plan must include details as to how the following risks are to be mitigated;
  - (i) Breach of electrical safety clearances to equipment;
  - (ii) Undermining the existing switchyard;
  - (iii) Vibration and risk overturning of piling the rig with the retaining structure along the common boundary;
  - (iv) Overturning collapse of mobile or fixed cranes in the vicinity of the substation; and
  - (v) Damage of buried services, if any.

An amended Construction management Plan and a Work Place Methodology Statement demonstrating compliance with the above conditions are to be submitted and approved by Energy Australia prior to the issue of a Construction Certificate.

**Reason:** Energy Australia requirements.

## **92. EMF and noise**

Prior to the issue of a Construction certificate, the applicant must provide the Certifying Authority and Energy Australia with documentation that demonstrates that the design of any buildings meet any relevant Australian Standards for EMF and noise levels assuming the substation to be in continuous operation.

**Reason:** Energy Australia requirements.

## **93. Covenant**

The applicant shall prepare at its expense and register on title a public positive covenant under section 88E of the Conveyancing Act 1919 in favour of the Council and Energy Australia prior to the issue of the first subdivision certificate relating to any part of the property.

The terms of the covenant are to be approved by Energy Australia and Council.

The terms of the covenant must be drafted so as to require the works referred to in Conditions 81 and 82 above to be maintained in perpetuity and as designed and installed in accordance with this development consent at the sole cost of the landowner.

**(Note:** All of the above works are to be designed, constructed and maintained at no cost to Energy Australia. In addition, any standby personnel required on site to ensure safety and security of the substation during construction activities would be at the developers cost).

**Reason:** Energy Australia requirements.

## CONDITIONS IMPOSED BY ROADS AND TRAFFIC AUTHORITY - RTA

### 94. Conditions imposed by the Roads and Traffic Authority

- a) Safety concerns are raised with regard to the bottom of the street access driveway ramp where the residential car park, retail car park and service area accesses all intersect. Appropriate measures (including signage, vehicle actuated warning lights and convex mirrors) should be devised to improve sight distance and the safety of all vehicles at this location to the satisfaction of Council.
- b) The traffic report indicates that the largest vehicle to enter the site would be an 8.8m Medium Rigid Vehicle (MRV) which is smaller than the 12.5m Large Rigid Vehicle (LRV) proposed in an earlier submission.

Council should be satisfied that a MRV will satisfy the demands of the development. Council should also include a condition that prohibits entry to vehicles larger than an 8.8m MRV in the development consent.

- c) Swept path analyses shall be provided to the RTA and Council demonstrating that a MRV can:
  - i) Travel through the proposed roundabout at the intersection of Lawrence Street/Albert Street;
  - ii) Enter and exit the site in a forward direction; and
  - iii) Enter and exit the loading area in a forward direction while all other docks are occupied and not encroaching onto the other side of the driveway ramp.

Any Construction Certificate shall not be issued until the swept path analysis has been endorsed by the RTA and Council.

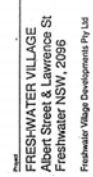
- d) A Loading Dock Management Plan (LDMP) shall be prepared to Council's satisfaction and shall incorporate appropriate measures to prevent a vehicle entering the site when the loading area is fully occupied. In addition, the LDMP shall outline measures to minimise conflict between trucks and other vehicles. The LDMP shall be submitted for approval, prior to the release of the Occupation Certificate.
- e) The layout of the proposed parking areas associated with the proposed development (including driveway, ramp grades, aisle widths, aisle lengths, parking bay dimensions, sight distances and loading bays) shall be designed in accordance with AS 2890.1 – 2004 and AS 2890.2 – 2002 for heavy vehicle usage.
- f) All works associated with the proposed development shall be at no cost to the RTA.

**Reason:** Requirements of the Roads and Traffic Authority - RTA





FOR APPROVAL	
Rev	By
Date	Date



## Context Elevations

Date	Scale	Sheet Size
09/06/10	1 : 500	A1
Proj No.	Drawn	Cks.
	JT/HH	JP
Job No.	Drawing No.	Revision
4673	A-0103	12

