

## COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	PPSSNH-208
<b>DA Number</b>	DA92/21
<b>LGA</b>	North Sydney
<b>Proposed Development</b>	Demolition of existing buildings, excavation, and construction of a five storey shop top housing (mixed use) development with apartments on the upper levels, with commercial/retail tenancies below and basement parking.
<b>Street Address</b>	12-14 Waters Road, Neutral Bay
<b>Applicant/Owner</b>	Applicant: CE Waters Pty Ltd Owners: SP68360, SP75048, SP88483, Hari Om Investment Pty Ltd
<b>Date of DA lodgement</b>	12 April 2021
<b>Total number of Submissions</b>	• 12
<b>Number of Unique Objections</b>	• 12
<b>Recommendation</b>	<b>Approval</b>
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)</b>	Capital Investment Value (CIV) of the original scheme exceeds \$30 Million
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• SREP (Sydney Harbour Catchment) 2005</li> <li>• SEPP (Infrastructure) 2007</li> <li>• SEPP (State and Regional Development) 2011</li> <li>• SEPP No. 55 – Remediation of Land and draft Remediation SEPP</li> <li>• SEPP No.65 – Design Quality of Residential Apartment Development)</li> <li>• SEPP (Building Sustainability Index – BASIX) 2004</li> <li>• SEPP (Vegetation in Non-Rural Areas) 2017</li> <li>• Draft SEPP (Environment)</li> <li>• North Sydney Local Environmental Plan 2013</li> <li>• North Sydney Development Control Plan 2013</li> <li>• Apartment Design Guide</li> <li>• Sydney Harbour Foreshores and Waterways Area DCP 2005</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• Architectural Plans and Landscape Plans</li> <li>• Recommended Conditions of Consent – <b>Appendix 1</b></li> <li>• Clause 4.6 Written Variation – <b>Appendix 2</b></li> </ul>
<b>Clause 4.6 requests</b>	<ul style="list-style-type: none"> <li>• The Local Environmental Plan (LEP) the clause 4.6 application relates to maximum building height (Clause 4.3 of the LEP)</li> </ul>
<b>Summary of key submissions</b>	<ul style="list-style-type: none"> <li>• Traffic and parking impacts</li> <li>• Amenity impacts</li> <li>• Construction/excavation impacts.</li> </ul>
<b>Report prepared by</b>	<b>Robin Tse, Senior Assessment Officer</b>
<b>Report date</b>	19 October 2021

### Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

**Yes**

### Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

**Yes**

*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

### Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

**Yes**

### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

**Not applicable**

### Conditions

Have draft conditions been provided to the applicant for comment?

*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*

**Yes**

## EXECUTIVE SUMMARY

This development application seeks consent for the demolition of existing commercial buildings, excavation, and construction of five (5) storey shoptop housing/mixed use building containing 36 apartments, retail tenancies along the street frontages and basement parking for 100 cars.

The proposed shop top housing/mixed use development is a permissible form of development within a B4 (Mixed Use) zone.

The development application has been assessed against the North Sydney LEP 2013 and North Sydney DCP 2013, SEPP 65 – Design Quality of Residential Apartment Development and the Apartment Design Guide and found to be generally satisfactory.

This report has considered a written request submitted by the applicant seeking a variation to Clause 4.3 in North Sydney LEP concerned with the height of buildings pursuant to Clause 4.6 of the LEP. It is considered that the variation to the building height development standard could be supported because the building elements in breach of the LEP building height development standard would not cause material impacts on the amenity of the adjoining properties nor upon the character of the locality.

The applicant has amended the original design of the proposed mixed use building to provide a more compliant five (5) storey built form as well as revisions to the retail/commercial tenancies in order to address the comments raised by the Design Excellence Panel and Council's Officers. These amendments are considered to be generally acceptable.

In addition, deferred commencement conditions have been recommended requiring design modifications to the layout of the roof top areas to provide more suitable communal areas and changes to the design of four (4) apartments on two upper levels to provide additional building separation and to improve access to daylight and natural ventilation within the lightwell.

The issues raised in the submission have been addressed in this assessment report.

Having regard to the merits of the proposal, the application is recommended for deferred commencement approval subject to appropriate deferred commencement conditions, site specific and standard conditions.

## DESCRIPTION OF PROPOSAL

This application seeks approval for the following works:

Demolition of existing commercial buildings and construction of a five (5) storey shop top housing (mixed-use) development comprising:

- 36 apartments comprising:
  - 6 x 1 Bedroom
  - 14 x 2 Bedroom
  - 16 x 3 Bedroom
- The provision of non-residential floor spaces (totalling 2,020sqm) including retail tenancies on the ground level and a large retail tenancy within Basement Level 1;
- Construction of four (4) basement levels (Basement Levels 2-5) for 100 car parking spaces (40 spaces residential/visitors and 60 spaces commercial) with vehicular access off Waters Road;
- The provision of a loading dock off Waters Lane, and;
- Provision of rooftop private and communal outdoor space.

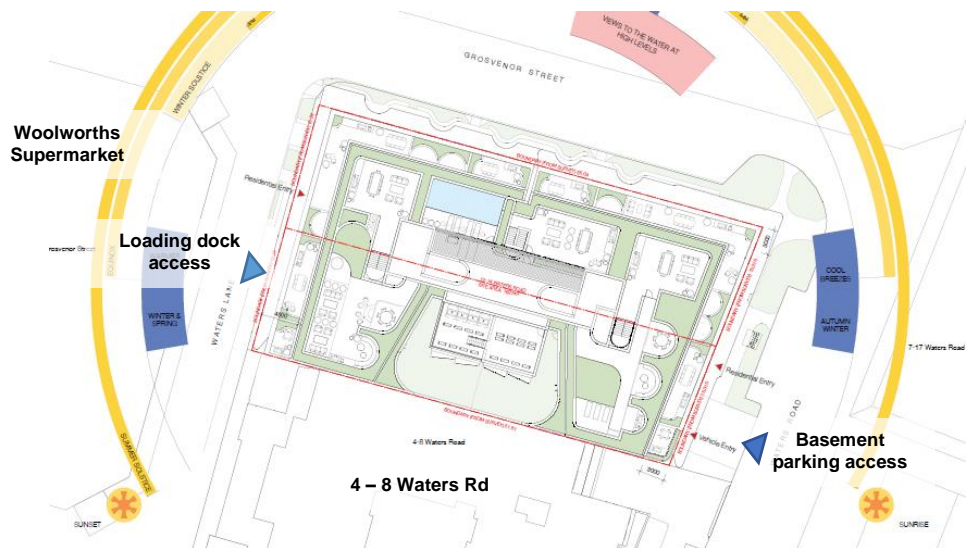
Landscaping works and associated public domain works are also proposed.



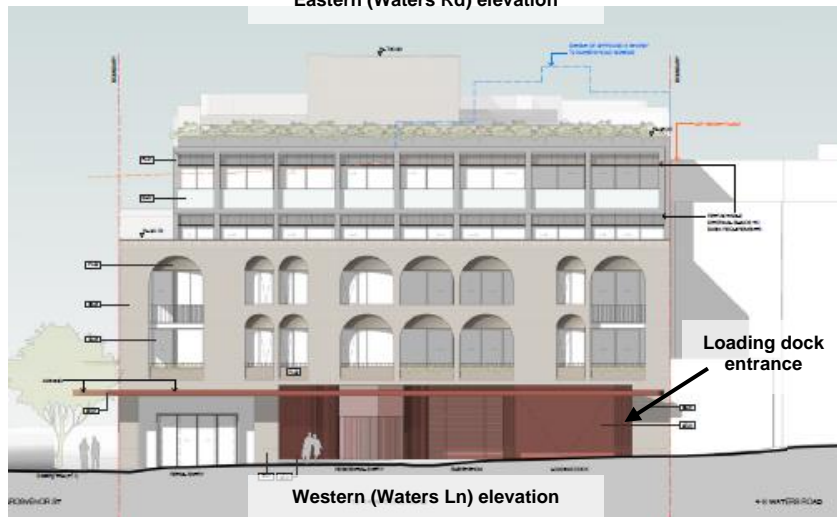
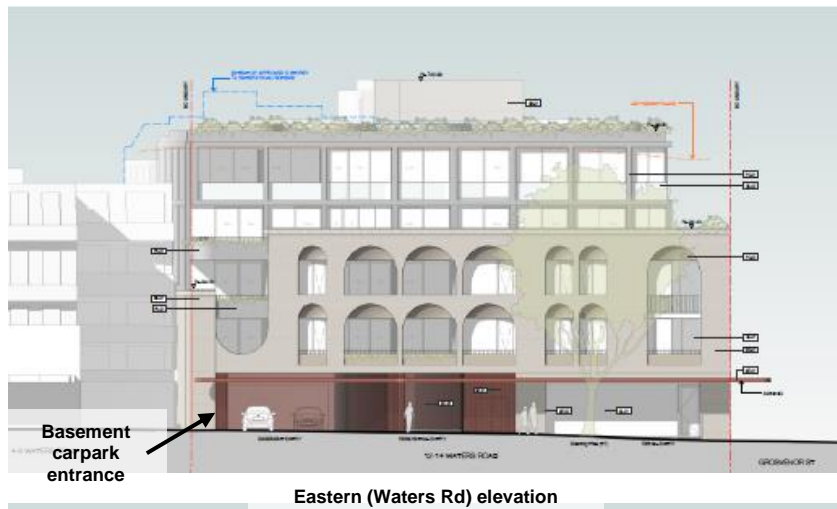
**Figure 1: Photomontage: Corner of Waters Road & Grosvenor Street**



**Figure 2: Photomontage: Corner of Grosvenor Street & Waters Lane**



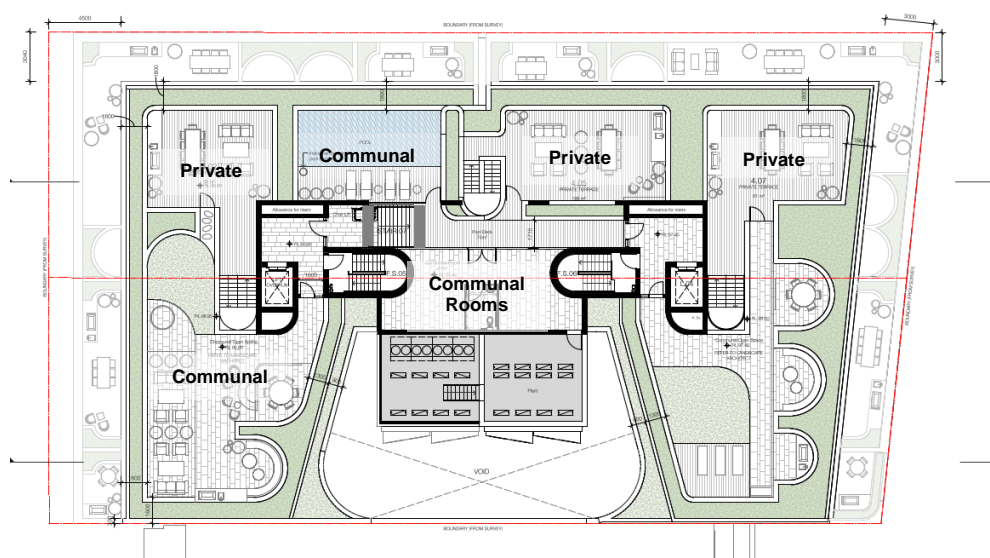
**Figure 3: Site plan**







**Figures 4 – 7: Proposed Development (Elevations)**



**Figure 8: Roof Plan**

## STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning – B4 (Mixed Use)
- Item of Heritage – No
- In Vicinity of Item of Heritage – No
- Conservation Area - No

Environmental Planning & Assessment Act 1979 (as amended)

SREP (Sydney Harbour Catchment) 2005

SEPP (Infrastructure) 2007

SEPP (State and Regional Development) 2011

SEPP No. 55 – Remediation of Land and draft Remediation SEPP

SEPP No.65 – Design Quality of Residential Apartment Development)

SEPP (Building Sustainability Index – BASIX) 2004

SEPP (Vegetation in Non-Rural Areas) 2017

Draft SEPP (Environment)

Local Development

## POLICY CONTROLS

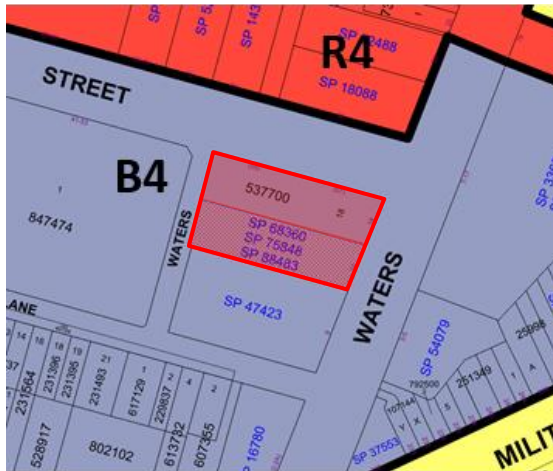
North Sydney DCP 2013

- Section 1 – Residential Development (for the proposed dwellings)
- Section 10 – Car Parking and Transport
- Section 11 – Traffic Guidelines for Development
- Section 13 – Heritage and Conservation (Heritage Impact Statement to address)
- Section 14 – Contamination and Hazardous Building Materials
- Section 18 – Stormwater Management
- Section 19 – Waste Minimisation and Management

Apartment Design Guide

Sydney Harbour Foreshores and Waterways Area DCP 2005

North Sydney Local Infrastructure Contribution Plan 2020



**Figure 9: Land Zoning Map**



**Figure 10: Building Height Map**

## DESCRIPTION OF LOCALITY

The site comprises two (2) properties known as Nos 12 and 14 Waters Road and is legally described as :

- SP68360
- SP75048
- SP88483
- Lot 18 DP537700

The subject site has an approximate site area of 1627sqm that is rectangular in shape. The site is bounded by Grosvenor Street to the north, Waters Road to the east and Waters Lane to the west. An existing mixed-use development is located at No.4-8 Waters Road that adjoins the subject site on its southern boundary.

The site has a fall of approximately 2.5m towards the west (Waters Lane).

Currently, the properties at Nos 12 & 14 Waters Road are occupied by a four (4) commercial buildings and a three (3) storey commercial building respectively. The property at No.14 Waters Road is also known as Nos 55 – 57 Grosvenor Street given that it has a northern street frontage to Grosvenor Street.



**Figure 11: Subject site: Corner of Waters Road & Grosvenor Street**



**Figure 12: Subject site: Corner of Grosvenor Street & Waters Lane**

The subject site is located on the eastern edge of the Neutral Bay Town Centre and is surrounded by other commercial/mixed use buildings with varying heights between one and five storeys.

Immediately adjoining the subject site to the south is a four (4) storey mixed use/shop top housing development at No. 8 Waters Road.

To the east of the subject site across Waters Road is a four (4) storey mixed use development at No.7-17 Waters Road. Across Waters Lane to the west of the subject site is a supermarket (Woolworths) with a basement/under floor car park.

The property across Grosvenor Street to the north of the subject site is occupied by a three (3) storey apartment building at No.82 Grosvenor Street.





**Figure 13: Aerial photo of the locality**

## RELEVANT HISTORY

Previous Applications:

**7 October 2020** – North Sydney Local Planning Panel granted development consent DA104/20 for a shop top housing development at No.12 Waters Road only.

The approved development involves demolition of existing commercial building and the construction of a five storey mixed use/shop top housing development containing sixteen (16) apartments on the upper levels, retail/commercial tenancies on ground and basement levels and a part 3/4 level basement parking for 25 cars.

Current Application:

**12 April 2021** – The subject application (DA92/21) was lodged with Council for a shop top housing development at Nos 12 and 14 Waters Road.

The original proposal involved a six (6) storey shop top housing development comprising 44 apartments, commercial tenancies on two levels and basement parking for 107 cars. The six storey building height of the original DA proposal was based on the findings of Council's Future Directions Planning Study for Neutral Bay Town Centre.

The applicant was advised that the proposal was not supported due to the proposed non-compliance with the LEP maximum building height development standard of 20m (5 storeys).

**11 May 2021** – The original proposal was considered by Council's Design Excellence Panel (DEP) that indicated that the height variation could not be supported by the Panel.

**5 July 2021** – The applicant submitted an amended proposal with the deletion of one (1) residential level resulting a reduction in the number of apartments from 44 to 36 and parking from 107 to 92 spaces as well as various design changes as shown on the architectural plans.

**13 July 2021** – The amended proposal was considered by Council's Design Excellence Panel (DEP).

**16 September 2021** – The applicant submitted additional information and updated architectural plans in response to the comments made by the DEP and Council officers with



some adjustments to the building design/layout on the roof level, a new communal area on Level 1 and basement parking for 100 cars.

## **CONSENT AUTHORITY**

As this proposal has a Capital Investment Value (CIV) of greater than \$30 million, the consent authority for the development application is the Sydney North Planning Panel. The CIV of the original proposal was \$40 million. The CIV of the amended proposal is \$29.9 million due to the reduction in the height of the development by one (1) storey and other design changes.

## **EXTERNAL REFERRALS**

### **TfNSW**

The application was referred to Transport for NSW (TfNSW) for comment in accordance with clause 104 of the *State Environmental Planning Policy (Infrastructure) 2007* and the following comment was provided after a review of the proposal:

*TfNSW has reviewed the submitted application and raises no objection to the application as it is unlikely to have a significant impact on traffic flows to/from the classified road network.*

### **Ausgrid**

The following advice was provided by Ausgrid following a review of the proposal:

*Ausgrid does not have any objections for the proposed development. The applicant/developer should note the following comments below regarding any proposal within the proximity of existing electrical network assets.*

#### ***Underground Cables***

*Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area.*

*Safework Australia – Excavation Code of Practice, and Ausgrid’s Network Standard NS156 outlines the minimum requirements for working around Ausgrid’s underground cables. Should ground anchors be required in the vicinity of the underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable.*

### **Comment:**

A condition is recommended requiring compliance with Ausgrid requirements (**Condition C47**).

### **Sydney Water**

The application was referred to Sydney Water and the following advice was provided:

#### ***Water and Wastewater Servicing***

- *The servicing requirements for the proposed development are to be delivered under the Notice of Requirements for the S73 application that the proponent has already lodged with us – CN 192375. Or any future Notice of Requirements.*

## Comment:

Notwithstanding this, a condition requiring the submission of a S73 application is recommended in order to include any changes to water/wastewater service requirements (**Condition C48**).

## INTERNAL REFERRALS

### Design Excellence Panel (DEP)

The amended application was considered by Council's Design Excellence Panel (DEP) at its meeting of 13 July 2021. The Panel provided qualified support for the proposal, subject to the identified issues being satisfactorily addressed:

- *The dual vehicular entry is considered to be unsatisfactory to be amended to a single entry.*
- *The north-western corner on ground level should be better addressed with a fine grain use rather than the proposed retail entrance.*
- *The lightwell at the rear is small and does not provide adequate amenity and the width should be increased to improve amenity particularly privacy.*
- *A deeper planter should be provided at the base of the lightwell to facilitate improved planting.*
- *Improved ventilation for the bathrooms is required.*
- *Height of the southern courtyard wall should be reduced to improve access to natural light.*
- *The size/length of the central north facing apartment should be reduced to improve ventilation.*
- *The pedestrian entrance off Waters Road should be re-designed to provide better access.*
- *The roof top communal rooms should be re-designed to allow better access to sunlight for these rooms.*
- *The northern private roof terraces should be for communal use.*

## Comment:

The applicant subsequently revised the plans and provided additional information to address the following issues:-

- North-western retail corner:

The applicant has provided further information demonstrating how the area adjacent to the north-western ground floor retail entrance can be used for finer grain retail (such as a florist or kiosk style retail). It is considered that the applicant has adequately addressed the issue.

- Lightwell improvements
- The central north facing apartments have been reduced in length (depth) to improve ventilation

The concerns raised by the DEP are generally concurred with and echoed by Council's Senior Strategic Planner (Urban Design) as detailed later in this report. It is therefore recommended that the depth of the central units on Levels 3 and 4 (Units 3.04, 3.05, 4.04 and 4.05) be reduced to 18m as measured from the northern building line to provide additional building separation with a setback of 9m from the southern wall of the lightwell to maintain visual privacy, natural ventilation/air circulation and access to daylight within the lightwell. (**Condition AA2**).

- Deeper planter at the base of the lightwell

The applicant has amended the design and provided additional soil depth of 1.2m and 2m for planters at the base of the lightwell.

- Height of southern lightwell wall

The applicant has proposed to maintain the height of the southern wall of the lightwell given that the wall would provide additional visual and acoustic screening for plant and other building elements along the southern property boundary.

It is noted that the proposed lightwell would be adjacent to plant areas on the roof of the adjoining mixed-use building at Nos.4-8 Waters Road. The southern wall of the lightwell would not be visible from any residential units within the building at Nos.4-8 Waters Road and the public domain.

Therefore, no objection is raised to maintaining the height of the southern wall of the proposed lightwell.

- Waters Road pedestrian entrance

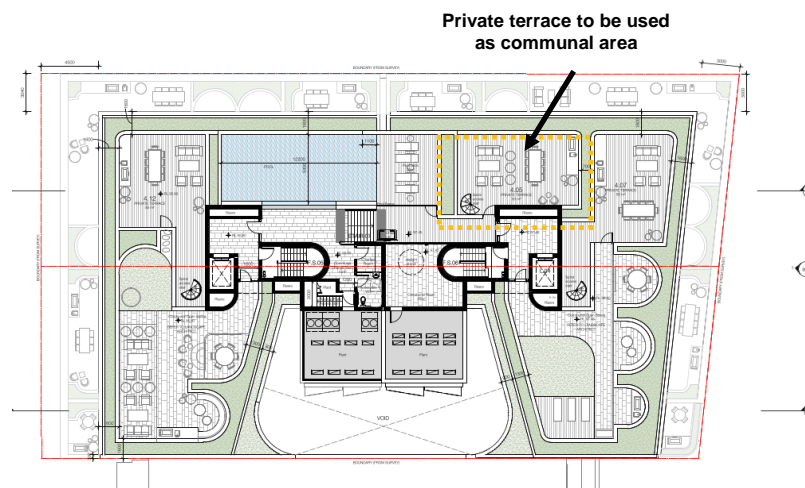
The applicant has indicated that the re-design of the Waters Road pedestrian building entrance would require the re-configuration of the lift core and additional earthworks. Whilst the DEP's suggestions are likely to further enhance pedestrian access to the ground floor lift foyer, the proposed design is considered to be acceptable in terms of providing a good level of safety/security and a sense of address along the Waters Road frontage.

- Roof top communal areas

The applicant has simplified the northern elevation of the roof top communal rooms to allow additional daylight access to the communal areas.

In addition, the applicant has increased the size of the communal area around the proposed swimming pool in response to the DEP comments. It is considered that the northern side of the roof level is still dominated by two large private terraces.

It is recommended that the design of the roof level be modified with the deletion of the private terrace for unit 4.05 and the area be used as a communal space in order to ensure good amenity for the communal areas on the northern side of the building (**Condition AA1**).



**Figure 14: Proposed changes to roof top communal areas**

- Single vehicular entry

The applicant has indicated that a single vehicular entry from Waters Road is likely to reduce retail spaces along the Waters Road and Grosvenor Street frontages due to the additional space and clearance levels required from a loading dock off the driveway ramp.

In addition, no objection has been raised to the dual entry design by Council's Development Engineer and Traffic and Transport Engineer on engineering and traffic safety grounds.

The proposed separate entry design for basement car park and the loading dock is considered to be acceptable.

It is considered that the issues identified by the DEP have been addressed and a referral back to the DEP is not necessary.

## **STRATEGIC PLANNING/URBAN DESIGN**

The application was referred to Council's Strategic Planning Division because the subject site is located within the study area of Council's Military Road Corridor Planning Study. The following is a summary of comments provided by Council's Senior Strategic Planner (Urban Design) with regard to the amended proposal for a 5 storey mixed use building:

*The Development Application is in-line with the following controls proposed under the Military Road Corridor Planning Study (MRCPS) Stage 1 Future Directions Report:*

- *A minimum non-residential FSR increase from 0.5:1 to 1.2:1*
- *A 1.5m whole of building setback to Waters Lane*
- *A 3m upper level setback above a 3 storey podium to Waters Lane, Grosvenor Street and Waters Road*
- *Active street frontages along Waters Lane, Grosvenor Street and Waters Road*

*It is however noted that the proposed development will have a maximum height of 21.3m, representing a 33% (5.3m) variation to the North Sydney LEP maximum building height control. The applicant indicated that the non-complying building elements are located at the centre of the roof level and used as communal areas and/or building services including lifts overrun and fire stairs.*

Council's Senior Strategic Planner (Urban Design) has recommended the following:

- *The proposed public domain upgrade design along Waters Lane be included in the DA. The setback zone along Waters Lane and the footpaths along Grosvenor Street and Waters Road should read as continuous public space.*
- *It is recommended to that the depth of the units located at the middle section of the building should be reduced to a maximum of 18m which would increase building separation to 9m. This would ensure compliance with ADG's building separation and cross ventilation requirements whilst improving visual privacy, natural ventilation and solar access to the units.*

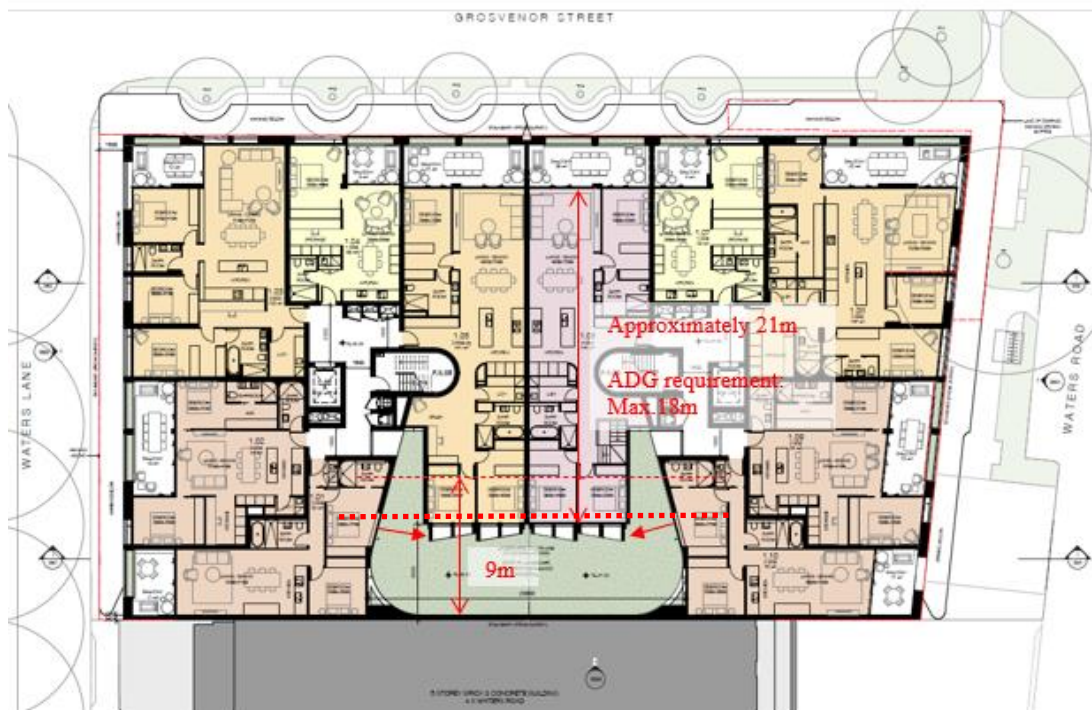
### **Comment:**

The comments and recommendations from Council's Senior Strategic Planner (Urban Design) are noted and generally concurred with.

The applicant has included the public works within the landscaped plan. Council's Landscape Development Officer has raised no in-principle objection to the submitted landscape plan subject to the imposition of appropriate conditions.



The recommendation for the reduction in the depth of the central units (the elongated three (3) bedroom units orientated north-south) is supported. It is recommended that the depth of the middle units on Levels 3 and 4 (Units 3.04, 3.05, 4.04 and 4.05) be reduced to 18m as measured from the northern building line to provide additional building separation for these upper level units adjacent to the lightwell that is likely to enhance visual privacy, improve natural ventilation/air circulation and promote improved access to daylight arising from the lightwell as well as the lower level units on Levels 1 and 2 (**Condition AA2**).



**Figure 15: Proposed design modifications for central units**

## Traffic Engineers

Council's Traffic Engineers have reviewed the amended application and provided the following comments:

*It is noted that:*

1. The provision for retail and commercial parking has been increased to 60 parking spaces which is 9 spaces (or 13%) less than the maximum allowable provision.
2. Visitor parking spaces would remain as 6 spaces provided that the site are well connected to high quality public transport services.
3. SIDRA analysis has incorporated the revised traffic generation and indicates no apparent impact on the operation on the surrounding road network.

*Based on the information provided, no objection is raised to the amended proposal.*

*It is recommended that the following conditions be imposed:*

1. That all aspects of the carpark comply with the Australian Standard AS2890.1 Off-Street Parking.
2. That all aspects of the bicycle parking and storage facilities comply with the Australian Standard AS2890.3.
3. That all aspects of parking spaces for people with disabilities comply with the Australian Standard AS 2890.6.

4. *The driveway to the site must be designed to maintain sight lines for pedestrian safety as per Figure 3.3 of AS 2890.1.*
5. *That a Demolition and Construction Management Program be prepared and submitted to Council for consideration by the North Sydney Traffic Committee and approval by Council prior to the issue of a Construction Certificate. Any use of Council property Shall require appropriate separate permits/ approvals.*

## **Development Engineers**

Council's Senior Development Engineer responded with no objection subject to imposition of appropriate engineering conditions including several key conditions requiring a construction management program, a detailed geotechnical report, geotechnical stability during construction, dilapidation reports, and substantial engineering construction bonds (**Conditions B1, C1, C4, C5, C22 and E6**).

## **Environmental Health**

Council's Environmental Health Team Leader provided the following comments:

*In summary, the noise criteria that must be achieved has been identified by the applicant's acoustic report.*

*An acoustic consultant should be consulted at the detailed design phase to ensure that the development complies with the subject noise criteria and to ensure that all the necessary noise intrusions and emissions are considered and satisfactorily addressed and the consultants recommendations adopted.*

A number of conditions have been recommended to ensure the amenity of the surrounding properties including compliance with the findings and recommendations of the acoustic report and the submission of a construction noise management plan be submitted to the Principle Certifier in order to achieve the specified noise levels. (**Conditions C2 and C40**).

## **Landscape Development Officer**

Council's Landscape Development Officer did not object to the proposed removal of an existing street tree (T6 *Lophostemon confertus*) located within Waters Road Council verge subject to replacement planting and the proposed public domain improvements. The submitted landscape plan was also found to be generally acceptable.

The Landscape Development Officer recommended a number of conditions relating to tree bonds, tree protection, and landscaping (**Conditions C24, C25, C27, C28 and G21**).

## **Building**

The proposed works being the subject of this application have not been assessed in accordance with compliance with the National Construction Code (NCC), and a condition requiring compliance is recommended (**Condition F1**). This would need to be undertaken prior to the issue of a Construction Certificate. Should significant changes be required to achieve compliance with NCC standards, a Section 4.55 application would be necessary.

## **SUBMISSIONS**

### **Original Proposal:**

The original proposal was notified between 23 April and 7 May 2021. A total of 7 submissions have been received objecting to the original proposal. The submissions raised the following issues:

- Construction noise and traffic.
- Insufficient community benefit to justify additional building height.
- Excessive building height, bulk and scale, overdevelopment.
- Objection to underground retail space.
- Loss of amenity and screening due to the removal of an established street tree and seating area on Waters Road.
- Excessive traffic generation and parking and inappropriate location of the basement parking entrance off Waters Road.
- Increased demand for parking within the locality.
- Excessive excavation and impacts on the structural integrity of nearby properties.
- The original proposal for a non-complying 6 storeys building is not justified without a master plan for the locality.
- Applicant's traffic assessment findings questionable requiring more detailed analysis.

### **Amend proposal:**

The amended proposal was notified between 16 and 30 July 2021. A total of 4 submissions have been received objecting the amended proposal. The submissions raised the following issues:

- Loss of amenity and screening due to the removal of an established street tree and the seating area on Waters Road.
- Excessive traffic generation and inappropriate location of the basement parking entrance off Waters Road.
- Excessive excavation and impacts on the structural integrity of the nearby properties.
- Traffic/pedestrian safety concerns relating to the location of the proposed loading dock off Waters Lane.
- Findings of the revised traffic assessment are questionable.
- Non-compliance with the ADG building separation requirements from Waters Lane.

A further submission was received relating to the additional information received from the applicant dated 16 September 2021. The submitter reiterated that the issues raised in a previous submission still stand particularly concerns raised in relation to the proposed loading dock off Waters Lane.

Full copies of all submissions received for this application will be made available for perusal by the Panel.

## **CONSIDERATION**

### **Environmental Planning and Assessment Amendment Act 1979**

The relevant matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended), are assessed under the following headings:

#### **Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

Having regard to the SREP (Sydney Harbour Catchment) 2005 and the Sydney Harbour Foreshores and Waterways Area DCP 2005, the proposed development is not considered to be detrimental to the Harbour and will not unduly impose upon the character of the foreshore given given the subject site is not visible from the Harbour as the site is far enough away from the foreshores of Sydney Harbour as to have no impacts on the Harbour and its foreshores.. As such, the development is acceptable having regard to the provisions contained within SREP 2005 and the Sydney Harbour Foreshores and Waterways DCP 2005.

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

The application was referred to Ausgrid in accordance with Clause 45(2)(a) of the SEPP. Ausgrid raised no objections to the proposal, subject to a condition (**Condition C47**).

## **State Environmental Planning Policy No. 55 – Remediation of Land/Draft SEPP (Remediation of Land)**

The provisions of SEPP 55 require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site. The subject site has been used for residential purpose until the construction of the existing commercial buildings in the 1960s (No.14 Waters Road) and 1980s (No.12 Waters Road). Therefore, the subject site is unlikely to contain any contamination and the requirements of SEPP 55 and the Draft SEPP have been satisfactorily addressed.

## **SEPP (Vegetation in Non-Rural Areas) 2017**

The State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) works together with the Biodiversity Conservation Act 2016 and the Local Land Services Amendment Act 2016 to create a framework for the regulation of clearing of native vegetation in NSW.

The SEPP will ensure the biodiversity offset scheme (established under the Land Management and Biodiversity reforms) will apply to all clearing of native vegetation that exceeds the offset thresholds in urban areas and environmental conservation zones that does not require development consent. The proposal meets the objectives of the SEPP because subject site is located within the Neutral Bay Town Centre and there would be no clearance of native vegetation or any materials impacts on bushland (if any) in the vicinity of the subject site.

## **SEPP (Building Sustainability Index: BASIX) 2004**

A valid BASIX Certificate (No. 1170679M\_05) has been submitted with the application to satisfy the Aims of the SEPP. (**Condition No. C45 and G19**)

## **Draft Environment SEPP**

This draft SEPP proposes to integrate the provisions of seven (7) SEPPs/SREPs including SREP (Sydney Harbour Catchment) 2005. The majority of the current provisions of SREP (Sydney Harbour Catchment) 2005 would be transferred to the draft SEPP with necessary updates and some amendments. The proposal would not offend the relevant provisions of the draft SEPP due to the nature of the proposed development as a dwelling not highly visible from the Harbour and negligible impacts on the scenic quality and the ecology of Sydney Harbour and its foreshores.

## **SEPP No. 65 (Design Quality of Residential Flat Development)**

Clause 28(2) of SEPP 65 states that *“in determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):*

- (a) *the advice (if any) obtained from the design review panel, and*
- (b) *the design quality of the development when evaluated in accordance with the design quality principles, and*
- (c) *the Apartment Design Guide.*

In respect of Clause 28(2)(a) of SEPP 65, the application has been considered by the Design Excellence Panel (DEP) who generally supported the proposal as detailed in their comments earlier within this report.



In respect of Clause 28(2)(b) of SEPP 65, the proposal is assessed below against the design quality principles in SEPP 65:-

***Principles 1 and 2: Context, Built Form and Scale***

The subject site is located within a B4 (Mixed Use) zone and the proposal for a mixed use/shop top housing style development would generally be suitable for the site context and be compatible with the desirable future character within the Neutral Bay Town Centre.

The proposed five storey building, as amended by the applicant, generally responds to the height controls for the area and the scale of the proposed building would be consistent with similar mixed use/shop top housing developments along Military Road.

The proposal, as amended by the applicant, adopts a built form which generally complies with the relevant development controls relating to height, FSR and setbacks. The overall built form of the proposed building is also generally consistent with other similar developments within the locality.

***Principle 3: Density***

The subject site is located in close proximity to public transport, shops and services. A total of thirty-six (36) apartments on the site is considered acceptable as each will receive reasonable levels of internal amenity.

***Principle 4: Sustainability***

A valid BASIX Certificate was submitted with the application. The proposed development also incorporates a sustainable design such as the central lightwell to improve cross ventilation and access of natural light to the apartments.

***Principle 5: Landscape***

The subject site is located within Neutral Bay Town Centre and the footprint of the proposed building would occupy the entire site. The applicant has proposed soft landscaping on the rooftop terrace and communal areas in addition to planting at the base of the proposed lightwell to enhance the landscaping quality within the proposed development.

***Principle 6: Amenity***

All apartments comply with the ADG requirements to ensure reasonable levels of internal amenity. The building is appropriately designed and sited to minimise any adverse amenity impacts in terms of the loss of privacy, solar access or views for adjoining properties.

***Principle 7: Safety***

The proposal would provide secured pedestrian entrances to the lift foyers of the upper level apartments via ground floor entrances off Waters Road and Waters Lane. The entrances to the development on Waters Road and Water Lane would be easily identifiable and provide a good sense of address for the development. Furthermore, the proposed commercial tenancies on the ground level would activate the street frontages and improve security along Waters Road and Waters Lane. Furthermore, the living room balconies above the street level would provide additional natural surveillance.

***Principle 8: Housing Diversity and Social Dimensions***

The proposed development is located within an area with good access to public transport and amenities within Neutral Bay Town Centre and along Military Road.

The proposal provides a mixture of 1, 2 and 3 bedroom apartments to provide a wider range of housing choice for the local community. The higher proportion of 2 and 3 bedroom apartments (38% and 44% respectively) will respond to a demand for certain demographic groups such as owner occupiers, empty nesters, downsizers and the like. The proposal is likely to improve the overall imbalance in the supply of larger units within the locality that has a higher number of smaller units.

The proposed development provides apartments which are generous in terms of their size and the proposed amenity with ample storage areas and accessible facilities. The rooftop communal facilities will encourage social interaction amongst residents and visitors to promote social cohesion

### ***Principle 9: Aesthetics***

The DEP considered that the building materials and overall design are of a high standard and ultimately supported by the Panel.

The original proposal has been significantly amended to a five (5) storey building in response to the comments previously made by the DEP. Furthermore, the design of the retail tenancies has been revised to enhance activation along the Grosvenor Street frontage.

It is concluded that the proposed development is found to be generally consistent with the key SEPP 65 design principles and therefore is supported.

### **APARTMENT DESIGN GUIDE (ADG)**

The proposal has also been assessed against the relevant provisions within the ADG as follows:

Amenity	Design Criteria	Comment	Compliance
<b>2F - Building Separation</b>	<p><i>Minimum separation distances for buildings are: Up to four storeys (approximately 12m):</i></p> <ul style="list-style-type: none"> <li><i>12m between habitable rooms/balconies (6m to boundary)</i></li> <li><i>9m between habitable and non-habitable rooms (4.5m to boundary)</i></li> <li><i>6m between non-habitable rooms (3m to boundary)</i></li> </ul>	<p><i>Front (northern) Elevation</i></p> <p>The separation between the proposed building and the existing apartment building across Grosvenor Street would be in excess of 20m.</p>	Yes
		<p><i>Side (eastern) Elevation</i></p> <p>The separation between the proposed building and the existing mixed use building across Waters Road would be in excess of 20m.</p>	Yes
		<p><i>Side (western) Elevation</i></p> <p>The western elevation of the proposed building would overlook an existing supermarket development on the western side of Waters Lane.</p>	No (acceptable on merit)
		<p>The proposed building would be setback 1.5m from the Water Lane property boundary or 5m from the centre of the laneway. Whilst this does not strictly comply with the ADG 6m building separation requirement, the proposal matches the setback for the adjoining mixed use building to the south (Nos.4-8 Waters Road) and would have no material impacts on the amenity of the surrounding properties.</p> <p><i>Rear (southern) Elevation</i></p> <p>There is a non-compliance with the building separation on the southern elevation where there is a 0m setback between the proposal and neighbouring mixed use building to the south. This building is relatively recent and is built to its northern boundary.</p> <p>This aspect of the proposal is considered to be acceptable because there would be no windows on the rear elevation of the proposed development.</p> <p>The southern edges of the Level 3 terrace above the podium would provide a complying 6m separation from the northern façade of the mixed use building to the south.</p> <p>The proposal is therefore considered to be acceptable in this regard.</p>	No (acceptable on merit)
<b>3D- Communal Open Space</b>	<p><i>Communal open space has a minimum area equal to 25% of the site.</i></p>	<p>The applicant has proposed a complying communal area on the rooftop level of the proposed mixed use building.</p> <p>The rooftop terrace would receive good solar access in excess of the minimum 2 hours requirement during mid-winter.</p>	Yes (via condition)

	<p><i>Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)</i></p> <p><i>Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting</i></p> <p><i>Communal open space is designed to maximise safety</i></p>	<p>However, the northern side of the roof level is still dominated by two large private terraces.</p> <p>It is recommended that the layout of the roof level be amended with the deletion of a private terrace, an increased setback for the communal area from the southern property boundary and the provision of additional communal area on the northern side of the roof top to ensure good amenity for the communal areas and the protection of the amenity for the adjoining mixed use building to the south (<b>Condition AA1</b>).</p>	
<b>3E – Deep Soil Zones</b>	<p><i>Deep soil zones are to meet the following minimum requirements:</i></p> <ul style="list-style-type: none"> <li><i>• 3m minimum width</i></li> <li><i>• Minimum 7% of the site area</i></li> </ul>	<p>The proposed development does not provide deep soil zone for substantial planting. The proposal is considered to be acceptable having regard to the location of the subject site within Neutral Bay Shopping Centre and on land zoned B4 (mixed use) which permits developments with minimal boundary setbacks.</p> <p>The applicant has submitted a landscape plan to provide new plantings with increased soil depth at the base of the lightwell and on the roof top terrace.</p> <p>The proposal is considered to be acceptable under the site circumstances.</p>	No (acceptable on merit)
<b>3F - Visual privacy</b>	<p><i>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</i></p> <p><i>6m (between habitable rooms and balconies to boundaries)</i>  <i>3m (between non-habitable rooms)</i></p>	<p>As mentioned above in relation to building separation, the proposed development would provide adequate building separation to minimise any visual privacy impacts for the adjoining properties along Grosvenor Street, Waters Road and Waters Lane.</p> <p>Despite the zero setback from the rear (southern) property boundary, there would be no windows on the walls along such boundaries.</p> <p>In addition, the southern edges of the Level 3 terrace above the podium would provide a complying 6m separation from the northern façade of the mixed use building to the south.</p> <p>Furthermore, the applicant has proposed a lightwell at the rear of the proposed building. As mentioned earlier in this report, it is recommended that the depth of the central units on Levels 3 and 4 (Units 3.04, 3.05, 4.04 and 4.05) be reduced to 18m as measured from the northern building line to provide addition building separation and to enhance visual privacy, to promote better access to natural ventilaton and improved</p>	<p>Yes</p> <p>No (acceptable on merit)</p> <p>Yes</p> <p>Yes (via condition)</p>



		<p>accesst to daylight within the lightwell and the lower level units on Levels 1 and 2 (<b>Condition AA2</b>).</p> <p>The proposal is therefore considered to be acceptable subject to conditions.</p>	
<b>3G – Pedestrian Access &amp; Entries</b>	<p><i>Building entries and pedestrian access connects to and addresses the public domain</i></p> <p><i>Access, entries and pathways are accessible and easy to identify</i></p>	The proposal would provide secured pedestrian entrances to the lift foyers for the upper level apartments from pedestrian entrances off Waters Road and Water Lane.	Yes
<b>3H – Vehicle Access</b>	<p><i>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes</i></p>	The vehicular access driveway would be located on Waters Road. Council's Development Engineer and Traffic Engineer have raised no in-principle objection to the proposal subject to the imposition of appropriate conditions of consent.	Yes (via condition)
<b>3J – Bicycle and Car parking</b>	<p><i>For development in the following locations:</i></p> <ul style="list-style-type: none"> <li><i>on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or</i></li> <li><i>on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less</i></li> </ul> <p><i>The car parking needs for a development must be provided off street</i></p> <p><i>Parking and facilities are provided for other modes of transport</i></p>	The applicant has proposed one hundred (100) car parking spaces and bicycle parking facilities within the basement parking area. The proposal is considered to be generally satisfactory in this regard.	Yes

<b>4A - Solar and daylight access</b>	<i>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas</i>	27 of 36 apartments (75%) will receive the required 2 hours of direct solar access to living spaces and balconies.	Yes
<b>4B - Natural ventilation</b>	<p><i>All habitable rooms are naturally ventilated.</i></p> <p><i>The layout and design of single aspect apartments maximises natural ventilation.</i></p> <p><i>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents – At least 60% of apartments are naturally cross ventilated</i></p>	The proposed apartments have their main frontages to Grosvenor Street, Waters Road or Waters Lane for improved amenity. The proposed central lightwell would facilitate cross ventilation for 24 of 36 apartments (67%).	Yes
<b>4C - Ceiling Heights</b>	<i>Ceiling height achieves sufficient natural ventilation and daylight access - Minimum 2.7m (habitable rooms), 2.4m for second floor where it does not exceed 50% of the apartment area.</i>	2.7m (minimum)	Yes
<b>4D 1 - 3 - Apartment size and layout</b>	<p><i>Apartments are required to have the following minimum internal areas:</i> 50m<sup>2</sup> (1B), 70m<sup>2</sup> (2B), 90m<sup>2</sup> (3B)</p> <p>All bedrooms have a minimum area of 10 m<sup>2</sup></p> <p>All secondary bedrooms have a minimum width of 3m</p> <p>Living rooms have a minimum width of 3.6m (S and 1B) and 4m (2B and 3B)</p> <p>The maximum habitable room depth is 8m from a window</p>	<p>1B: 58m<sup>2</sup> - 61m<sup>2</sup> 2B: 76m<sup>2</sup> - 113m<sup>2</sup> 3B: 119m<sup>2</sup> - 158m<sup>2</sup></p> <p>All master bedrooms are suitably sized in excess of 10 m<sup>2</sup></p> <p>The secondary bedrooms comply with the minimum width of 3m.</p> <p>1B – 3.7m 2B/3B - 4m</p> <p>All habitable areas would be within 8m from windows.</p>	<p>Yes Yes Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes Yes</p> <p>Yes</p>
<b>4E - Private open space and balconies</b>	<p><i>All apartments are required to have primary balconies as follows:</i></p> <p><i>Studio apartments - 4m<sup>2</sup></i></p>	N/A	N/A

	1 bedroom apartments - 8m <sup>2</sup> , minimum depth 2m	1B – 8m <sup>2</sup> - 9m <sup>2</sup>	Yes
	2 bedroom apartments 10m <sup>2</sup> minimum depth 2m	2B – 10m <sup>2</sup> - 27m <sup>2</sup>	Yes
	3+ bedroom apartments 12m <sup>2</sup> minimum depth 2.4m	3B – 12m <sup>2</sup> - 82m <sup>2</sup> (incl. private roof terrace)	Yes
	The minimum balcony depth to be counted as contributing to the balcony area is 1m	Depth of balconies in excess of 1m	Yes
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m <sup>2</sup> and a minimum depth of 3m	The applicant has proposed complying balconies for apartments on Levels 1 and 2 as detailed earlier in this compliance table.	Yes
<b>4F - Common circulation and spaces</b>	The maximum number of apartments off a circulation core on a single level is eight	A maximum of four (4) apartments served by each circulation core on all residential levels.	Yes
<b>4G -Storage</b>	Studio apartments- 4m <sup>3</sup> 1 bedroom apartments- 6m <sup>3</sup> 2 bedroom apartments- 8m <sup>3</sup> 3+bedroom apartments- 10m <sup>3</sup>	Satisfactory storage areas are provided within the apartments as well as within the basement levels.	Yes

The proposal is considered satisfactory having regard to the design criteria specified in the ADG. As detailed in the table above, where strict compliance is not achieved the non-compliances are considered minor and unlikely to materially compromise the amenity of the apartments.

## **NORTH SYDNEY LEP 2013**

### **1. Permissibility within the zone**

The land affected by the proposed development is zoned B4 (Mixed Use) pursuant to the North Sydney LEP 2013, and development for the purpose of “shop top housing” is permissible in the zone with the consent of Council. The proposed mixed use development is considered to be a form of shop top housing making it a form of development permissible within the B4 (mixed Use) zone with consent from Council.

### **2. Zone Objectives**

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

The objectives of the B4 – Mixed Use zone are expressed as follows:

- To provide for provide a mixture of compatible land uses.

- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.
- To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses on the lower levels and residential uses above those levels.

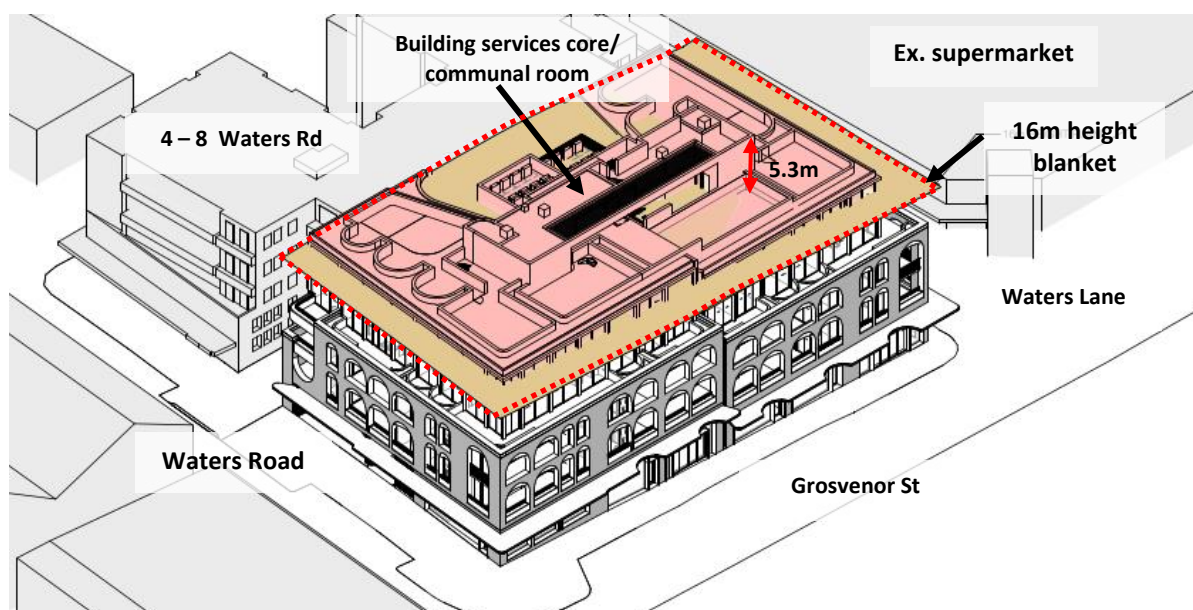
The proposed mixed use development is generally consistent with the above objectives of the B4 (Mixed Use) zone as detailed throughout this report.

### Principal Development Standards

Principal Development Standards – North Sydney Local Environmental Plan 2013			
Site Area – 1,627m <sup>2</sup>	Proposed	Control	Complies
Clause 4.3 – Heights of Building	21.3m	<b>16m</b>	NO – Clause 4.6 Variation submitted
Clause 4.4a – Non residential FSR	1.24:1	<b>0.5:1 (min.)</b>	YES

### 3. Building Heights

Clause 4.3(2) of the LEP 2013 and the LEP building height map specify a maximum building height of 16m for the subject site. The building elements in breach of the LEP building height limit primarily relate to the upper section of Level 5, the roof slab including planters, a communal swimming pool, communal/private terraces and a structure housing the building services cores (2 x lift overruns/fore stairs and a 25sqm communal room). The building services and communal room structure is located at the centre of the roof level with the top of this structure reaching a maximum height of 21.3m with breaches the LEP maximum building height limit by a maximum of 5.3m. The non-complying building elements are shown in red in **Figure 16** below.



**Figure 16: Proposed Development and the LEP Maximum Building Height**



#### **4. Clause 4.6 Exceptions to Development Standards**

Clause 4.6 of LEP 2013 specifies that the consent may be granted for development that contravenes a development standard imposed by an environmental planning instrument, in circumstances, where compliance with the standard is unreasonable or unnecessary in the circumstances, and there are sufficient environmental planning grounds to justify contravening the standard.

Given that the proposal involves building elements in breach of the LEP maximum building height development standard, the applicant has submitted a written request for a variation to this development standard pursuant to Clause 4.6(2) of the LEP.

Consideration has been given to the following building height objectives under Clause 4.3(1) of the LEP 2013 and the written request submitted by the applicant seeking variation to the maximum building height development standard.

***(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,***

**Comment:**

The subject site has a 2.5m fall towards the western (Waters Lane) boundary and the design of the proposed development generally respects the landform with a stepped built form on the western side of the proposed building.

***(b) to promote the retention and, if appropriate, sharing of existing views,***

**Comment:**

Consideration has been given to the likely view impacts of the proposed development on nearby properties.

***No. 82 Grosvenor Street***

This property to the north of the subject site across Grosvenor Street is a three (3) storey apartment building at No.82 Grosvenor Street. Notwithstanding this, the district and skyline views as seen from this apartment building towards the north would not be affected by the proposed development because of the southerly aspect of the subject site.

***No.43-53 Grosvenor Street (Supermarket site)***

This single storey building with basement parking to the west of the subject site across Waters Lane is for retail (supermarket) use only.

***Nos 3-5 Waters Road & Nos. 7-17 Waters Road***

The proposed development would have no material impacts on outlook/views towards the south, east and north as seen from these adjoining properties because of the westerly aspect of the proposed development relative to these adjoining properties.

***No.7-17 Waters Road:***

The westerly view/outlook from the retirement village at Nos 7-17 Waters Road is unlikely to be materially affected because the subject site is located to the south of the district views towards the north or north-west as seen from this adjoining property.

### *Nos.3-5 Waters Road:*

Further consideration will be given to the potential outlook/views towards the west as seen from the mixed use building at Nos 3-5 Waters Road as detailed below in this report.

### **No.4-8 Waters Road**

The proposal would have no material impacts on the views/outlook as seen from windows/balconies on the eastern, southern and western elevations of the adjoining mixed use building to the south at Nos.4 - 8 Waters Road because of the orientation of these openings away from the proposed development.

The proposed development may affect the views/outlook currently seen from windows/balconies on the northern elevation of No.8 Waters Road and further consideration will be given in the following view assessment in accordance with the Tenacity view assessment principle.

### **Tenacity Planning Principle**

An assessment of the impacts of the proposal in accordance with the principles of view sharing established by the Land and Environment Court in *Tenacity Consulting v Warringah* [2004] NSWLEC 140 has been detailed below.

### **The Four Step Test in respect of Views**

The following view assessment has been undertaken in accordance with the four (4) step process adopted by Commissioner Roseth of the NSW Land and Environment Court centering around *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140.

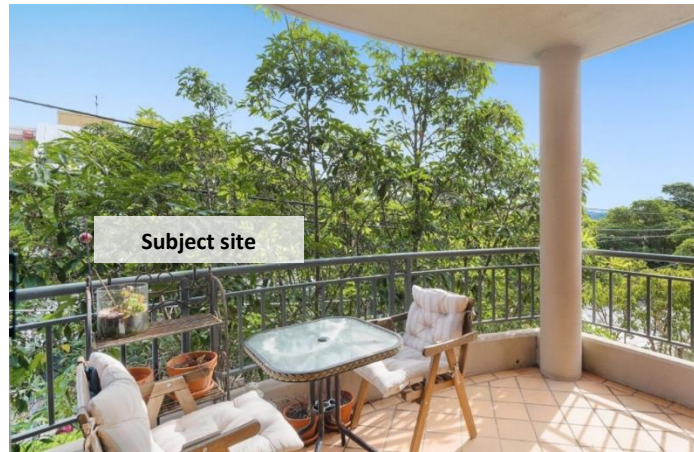
- ***Assessment of views to be affected; and***
- ***Consider from what part of the property the views are obtained.***

The views most affected by the development and the location of where these views are obtained are detailed below:

### **Nos.3-5 Waters Road**

The mixed use development at Nos.3-5 Waters Road contains a number of apartments on the upper levels with an outlook across the street and the subject site. The outlook contains primarily nearby buildings, view to the sky and district views towards the north (**Figures 17 & 18**).





**Figures 17 & 18: Outlook from a kitchen window and a living room balcony on a second floor apartment at Nos 3-5 Waters Road**

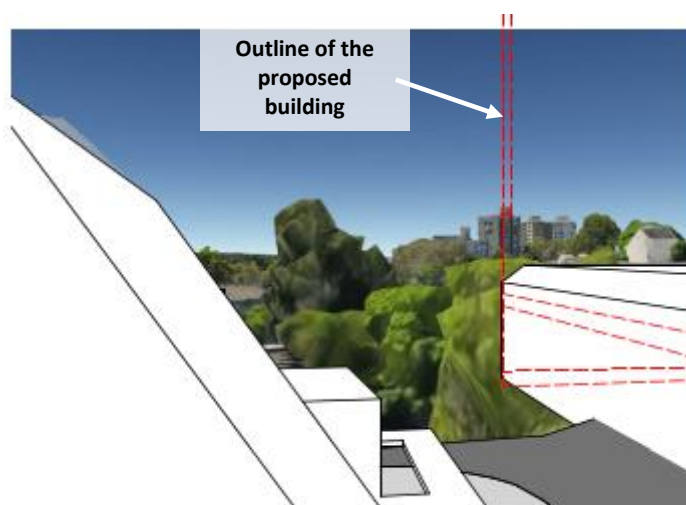
#### **Nos.4-8 Waters Road**

There are a number of north facing windows within the apartments at the north-eastern and north-western corners the adjoining mixed use building at Nos.4-8 Waters Road.

North-eastern:

The views from the windows on the northern elevation of the top level (Level 5) apartment located at the north-eastern corner of Nos.4-8 Waters Road contains nearby buildings and vegetation as well as the skyline towards the north-east as illustrated in **Figure 19**. It is noted that these are secondary windows on the northern wall of the living room. The living room has a main full height glazed doors on the eastern wall to a balcony with views of nearby buildings/vegetation and the eastern skyline.

It is also noted that the views obstructed by the proposed development would be caused by complying building elements under the maximum building height limit as seen from the secondary living room windows. The proposal would have impacts on the views/outlook towards the east as seen from the main full height glazed doors and the balcony on the eastern elevation of the building.

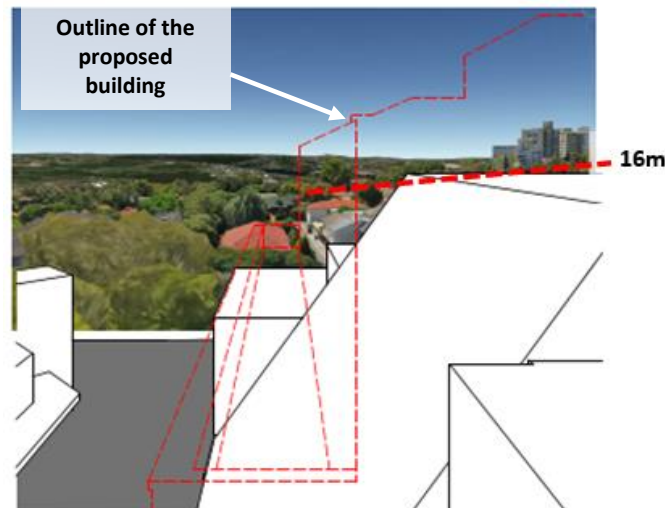


**Figure 19: Views from Level 5 window on the northern elevation**

North-western:

The views from the terrace of the top level (Level 5) apartment located at the north-western corner of Nos.4-8 Waters Road contains nearby buildings and vegetation as well as a wide district and skyline views towards the north, north-east and north-west as illustrated in Figures 20 and 21.

The proposed development would cause partial obstruction of the skyline view to the north-east, however, the district and skyline views towards the north and north-west as seen from the terrace in Figure 21 would be retained.



**Figure 20: View analysis for a terrace on the top level (Level 5) at north-western corner of Nos.4-8 Waters Road (Looking north/north-east)**



**Figure 21: View from the terrace on the top level (Level 5) at north-western corner of Nos.4-8 Waters Road (Looking north and north-west)**

- **Assess the extent of the impact in qualitative terms as negligible,**
- **minor, moderate, severe or devastating.**

### **Nos.3-5 Waters Road**

The proposed development would cause some obstructions to the outlook to the sky, however, this obstruction would be caused by building elements along the property boundary which comply with the LEP building height limit and DCP setback requirements and the more significant distant district views towards the north and north-west would be retained. Therefore, the impact is considered to be minor.

### **Nos.4-8 Waters Road**

The proposed development would cause partial obstructions to the district views to the north. It is however noted that the view impacts would be partly caused by complying building elements when viewed across the side property boundary. Furthermore, the distant district views towards the north and north-west would be retained. The view impact from this window is considered to be minor.

- ***Assess the reasonableness of the proposal that is causing the impact.***

The building elements causing the view impacts are generally compliant with the building height control in Clause 4.3 in NSLEP 2013 and the DCP setback controls. The proposed design with additional building setbacks above the podium would facilitate view sharing including the retention of district views towards the east as seen from the north-eastern corner and district views to the north and north-west as seen from the north-western corner of the mixed use building at Nos.4-8 Waters Road.

It is considered that the proposed development is generally well designed as commended by the Design Excellence Panel and view impacts across the side boundaries are more difficult to protect as outlined in the Tenacity Principle as well as Section 1.3.6 in Part B of NSDCP 2013.

### **Conclusion**

The proposed development is considered to be reasonable and view impacts to the adjoining properties are considered to be acceptable in the site circumstances.

- (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,***

#### **Comment:**

An examination of the solar access diagrams submitted with the application has indicated that the shadows caused by the building elements in breach of the LEP building height development standard would generally fall within the subject site and/or on the roof of the adjoining mixed use building to the south (Nos.4-8 Waters Road). It is therefore considered that the shadowing from the proposed development would have no material impacts on the adjoining properties.

- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,***

#### **Comment:**

As mentioned earlier in this report, the building elements in breach of the LEP maximum height limit include the upper section of the roof slab, the communal areas, the communal rooms/lift overrun and two private terraces for the Level 5 apartment on the eastern building.

The communal area is unlikely to cause material privacy impacts on the residential properties at Nos.4-8 Waters Road because of the need for the additional setback of the communal areas

from the property boundary to the south (**Condition AA1**). The private terraces are considered to be acceptable in terms of privacy impacts because they would be for private use and they have been reduced in scale (**Condition AA1**). The planters along the perimeter of the terraces would act as a further privacy buffer from adjoining properties.

The proposed communal area/air conditioning units on the roof level are unlikely to cause noise nuisance for the residents of surrounding properties because of the screening provided by the solid roof over parapet walls and the proposed screens around the air conditioning units on the roof top. Appropriate conditions have also been recommended to minimise noise impacts from plant equipment on the roof top.

- (e) to ensure compatibility between development, particularly at zone boundaries,***
- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.***

**Comment:**

The height, bulk and scale of the proposed shop top housing development would generally be consistent with other similar developments within the Neutral Bay Town Centre.

The building elements in breach of the building height development standard relate to the rooftop communal room and the roof over the parapet walls. The rooftop communal room is setback from the street frontages and the rear property boundaries and would not be highly visible from the public domain. Therefore, it is considered that these building elements above the LEP building height limit would be appropriate in scale and would not contribute to the density of the proposed development.

***That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and***

Strict compliance with the building height control is considered to be unreasonable and unnecessary as the elements in breach of the height control will not have any material impacts on the streetscape or the amenity of adjoining properties.

It has been demonstrated above that the communal area/communal room, the plant areas and private terraces above the LEP height limit will not be easily discernible from the public domain or result in unacceptable loss of significant views, overshadowing or privacy impacts. A five storey built form on this site is considered to be generally consistent with the B4 Mixed Use zoning and relevant planning controls.

***That there are sufficient environmental planning grounds to justify contravening the development standard.***

The proposed communal area and plant areas are provided amenity for the future residents and to support essential building services. These building elements are setback from the side property boundaries in order to minimise the bulk and scale and amenity impacts on the adjoining properties.

These building elements would not be highly visible from surrounding properties and the public domain because of the setbacks proposed from the property boundaries.

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

The written justification as submitted by the applicant seeking variation to Clause 4.3(2) in NSLEP 2013 is considered to be well founded in the site circumstances. Compliance with the maximum building height control is therefore considered to be unreasonable and unnecessary



in the circumstances, as the objectives of the zone and the control are achieved despite the non-compliance.

## **5. Non-Residential Floor Space Ratio (FSR)**

The proposal would contain commercial/retail tenancies on the ground and lower ground levels with a total floor space area of 2020 sqm with a FSR of 1.24:1 which complies with the Clause 4.4A(2) of North Sydney LEP 2013 requiring a minimum non-residential FSR of 0.5:1.

The applicant has adopted a design approach that provides the commercial/retail floorspace on the ground (street) level (951sqm) and lower ground level (1069sqm). The design of the proposed mixed use building featuring a dual service cores containing entrance foyers, lifts and staircases and a loading dock on the ground level has reduced the scope of commercial/retail floorspace on the ground level.

Notwithstanding this, the retail tenancies on the street level have been proposed along Grosvenor Street and Waters Road frontages. Furthermore, the main entrance to the lower ground floor major retail tenancy on the lower ground floor would be located at the north-western corner with frontages to Grosvenor Street and Waters Lane. It is considered that the location of the proposed retail tenancies and the main retail entrance would promote activity at street level.

Furthermore, the proposal has been assessed against the objectives of the non-residential FSR pursuant to Clause 4.4A(1):

*(1) The objectives of this clause are as follows—*

- (a) to provide for development with continuous and active street frontages on certain land in Zone B1 Neighbourhood Centre, Zone B4 Mixed Use and Zone SP2 Infrastructure,*
- (b) to encourage an appropriate mix of residential and non-residential uses,*
- (c) to provide a level of flexibility in the mix of land uses to cater for market demands,*
- (d) to ensure that a suitable level of non-residential floor space is provided to promote employment and reflect the hierarchy of commercial centres.*

### **Comment:**

- (a) The proposed commercial/retail tenancies would provide activities on the street frontages of Grosvenor Street, Waters Road and Waters Lane;
- (b) The non-residential uses within the proposed development would encourage an appropriate mix of residential and non-residential uses;
- (c) The proposed design with a mixture of large and small tenancies would provide a level of flexibility in the mix of land uses to cater for market demands; and
- (d) The proposed non-residential floor space within the proposed development would promote employment and reflect the hierarchy of commercial centres.

The proposal is considered to be acceptable having regard to Clause 4.4A of NSLEP 2013.

## **6. Earthworks**

Clause 6.10 of the LEP 2013 specifies that the consent authority must consider the following matters before granting consent for earthworks:

- (a) The likely disruption of, or any detrimental effects on:*
  - (i) Drainage patterns and soil stability in the locality of the development, and*
  - (ii) Natural features of, and vegetation on, the site and adjoining land,*
- (b) The effect of the development on the likely future use or redevelopment of the land;*
- (c) The quality of the fill or the soil to be excavated, or both*
- (d) The effect of the development on the existing and likely amenity of the adjoining properties;*

- (e) The source of any fill materials and the destination of any excavated material;
- (f) The likelihood of disturbing Aboriginal objects or relics,
- (g) The proximity to, and potential for adverse impacts on, any waterways, drinking water catchment or environmentally sensitive area;
- (h) Any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

**Comment:**

Consideration has been given to the provisions of Clause 6.10 of the LEP 2013 as follows:

- Council's Development Engineer has reviewed the stormwater management plan submitted by the applicant and raised no in-principle objection to the proposed excavation works on engineering/drainage grounds subject to the imposition of appropriate engineering conditions.
- The applicant has submitted a geotechnical report including further advice from the structural engineer recommending appropriate work methods to ensure the structural integrity of the adjoining properties. A condition is recommended requiring a detailed geotechnical report with reference further structural engineering statement (**Condition C1**).
- Appropriate conditions are recommended to minimise any nuisance associated with the construction works to ensure the amenity of the adjoining properties.

The proposal is considered to be consistent with the provisions of Clause 6.10 of the LEP 2013 subject to the imposition of appropriate conditions.

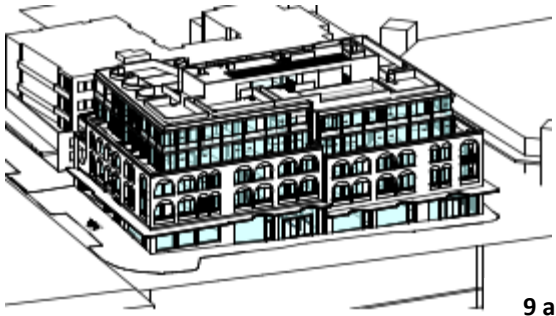
**NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013**

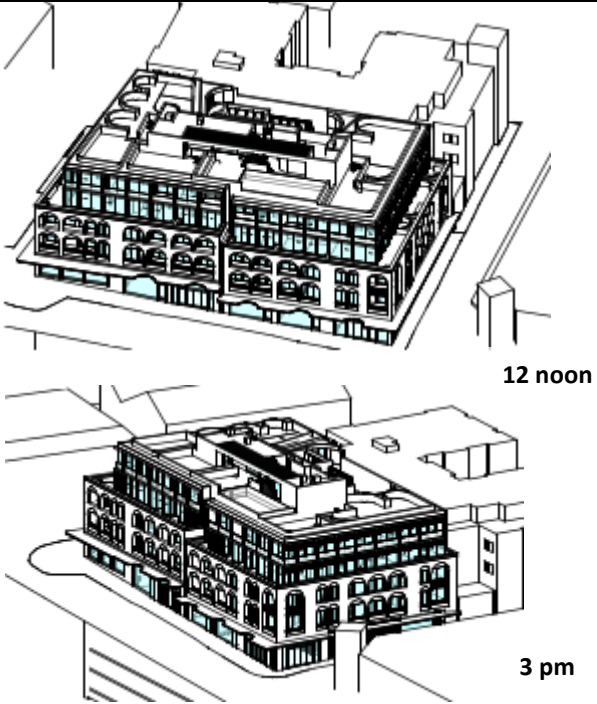
The proposal has been assessment under the following heading within NSDCP 2013:

**North Sydney DCP 2013 - Compliance Table**

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 2- Commercial and Mixed Use Development		
	<i><b>complies</b></i>	<i><b>Comments</b></i>
<b>2.2 Function</b>		
<b>Diversity of Activities</b>	Yes	The proposal would ensure diversity of activities within the mixed use zone with retail/commercial uses on the lower levels and residential uses on the upper levels.
<b>Maximise Use of Public Transport</b>	Yes	The subject site is located within Neutral Bay Town Centre in close proximity to Military Road. Military Road is well served by public transport with frequent bus services and is further enhanced by the B-Line bus service.

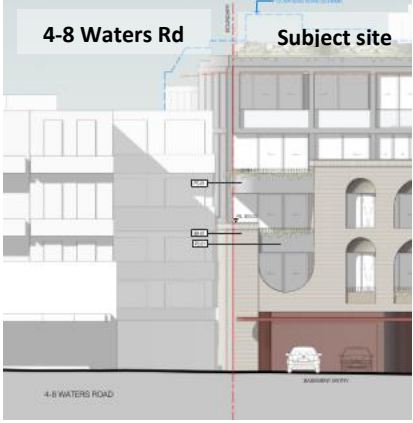
<b>Mixed Residential Population</b>	Yes	<p><i>Unit Mix:</i></p> <p>The proposal provides a mixture of 1, 2 and 3 bedroom apartments to provide a wider range of housing choice for the local community. The higher proportion of 2 and 3 bedroom apartments (38% and 44% respectively) will respond to a demand for certain demographic groups such as owner occupiers, empty nesters, downsizers and the like. The proposal is likely to improve the overall imbalance in the supply of larger units within the locality that has a higher number of smaller units.</p>
	Yes	<p><i>Adaptable Units:</i></p> <p>The applicant's proposal for nine (9) adaptable units (25%) complies with the DCP requirement for a minimum of 20% of adaptable units.</p>
<b>2.3 Environmental Criteria</b>		
<b>Noise</b>	Yes (via condition)	<p>The proposed development is unlikely to cause material noise nuisance for the nearby residential properties for the following reasons:</p> <ul style="list-style-type: none"> <li>(a) The living room windows and balconies on the northern (Grosvenor Street), eastern (Waters Road) and western (Waters Lane) elevations would be located away from the adjoining mixed use building at No.4-8 Waters Road and other residential/mixed use buildings on the opposite side of Grosvenor Street and Waters Road;</li> <li>(b) The roof top communal area would be setback from the property boundaries with a condition requiring further design modifications including an increase in the setback of the communal area to 5m from the southern property boundary and the re-location of the communal area to the northern side of the proposed building in order to protect the amenity of the mixed use building to the south (Nos.4-8 Waters Road) (<b>Condition AA1</b>);</li> <li>(c) The operating hours of the rooftop communal areas would be regulated with the imposition of a condition restricting the operating hours of this communal space to minimise adverse noise impacts on the adjoining property (<b>Condition I1</b>);</li> <li>(d) A condition is recommended requiring adherence to the recommendations of the acoustic report to minimise noise nuisance for the surrounding properties (<b>Condition C2</b>);</li> <li>(e) A standard condition is recommended relating to noise from the plant equipment/air conditioning units to protect the amenity of the adjoining properties (<b>Condition C33</b>); and</li> <li>(f) The requirement for a construction noise management plan to ensure appropriate management of noise generating activities during the construction phase of the proposed development (<b>Condition C40</b>).</li> </ul>
<b>Wind Speed</b>	Yes	<p>Whilst the building height of the proposed development is unlikely to adversely affect the pedestrian comfort along Grosvenor Street, Waters Road and Waters Lane, the provision of awnings along the street frontages and the additional setbacks above the podium height would further alleviate any impacts on pedestrians.</p>
<b>Reflectivity</b>	Yes (via condition)	<p>The proposed building façade treatments and the choice of materials with generally natural tones and textured brickwork should minimise the level of reflectivity as indicated on the proposed materials and finishes. Standard condition relating to reflectivity of glazing is recommended to ensure that appropriate</p>

		type of glazing will be used in order to minimise reflectivity and glare ( <b>Condition C10</b> ).
<b>Artificial Illumination</b>	Yes (via condition)	<p>The external lighting on ground level would only involve lighting of building entrances and passageways. Any external lighting for the rooftop communal area would not be highly visible from surrounding properties and acceptable given the condition to limit the hours of operation of this area and a condition restricting illumination of the rooftop terrace (<b>Conditions I1 and I11</b>).</p> <p>The proposal is therefore considered to be acceptable having regard to lighting.</p>
<b>Awnings</b>	Yes	The applicant has amended the original proposal to incorporate awnings on the front and rear street frontages to provide weather protection for pedestrians as recommended by the DEP.
<b>Solar Access</b>	Yes	<p>The DCP requires 70% of dwelling within a residential flat building/shop top housing to receive more than 2 hours of sunlight in mid-winter. It is noted that 27 of the 36 apartments (75%) would receive 2 hours of direct solar access to living spaces and balconies.</p> <p>As mentioned earlier in this report, shadows from the new building elements above the LEP building height limit would primarily fall on the roof of the mixed use building to the south at Nos.4-8 Waters Road.</p> <p>The proposal would cause additional overshadowing of the north facing windows for three apartments at the north-eastern corner of Nos.4-8 Waters Road. These apartments have secondary windows to the main living room and a bedroom facing the subject site. It is however noted that the main living room windows/balconies on the eastern elevation would receive approximately 2 hours of sunlight between 9am and 11am during mid winter.</p> <p>It is also noted that the balconies above the basement car park driveway entry on the eastern (Waters Road) elevation would be overshadowed by the proposed development during mid-winter. It is noted, however, that the balconies are currently overshadowed by an existing commercial building and the additional shadows arising from the proposed development would generally fall within the existing shadows.</p> <p>Therefore, any shadowing impacts on the adjoining properties are considered to be acceptable.</p> 

		 <p style="text-align: right;"><b>12 noon</b></p> <p style="text-align: right;"><b>3 pm</b></p> <p style="text-align: center;"><b>Figures 22-24: Shadow Diagrams – Mid winter</b></p>
<b>Views</b>	Yes	<p>A detailed view assessment has been carried out earlier in this report.</p> <p>The building elements causing the view impacts are generally compliant with the building height control in Clause 4.3 in NSLEP 2013 and the DCP setback controls. The proposed design with additional building setbacks above the podium would facilitate view sharing including the retention of district views towards the east as seen from the north-eastern corner and district views to the north and north-west as seen from the north-western corner of the mixed use building at Nos.4-8 Waters Road.</p> <p>Therefore, the proposal is considered to be acceptable having regard to the Tenacity View Impact Planning Principle.</p>
<b>Acoustic Privacy</b>	Yes	<p>The applicant has submitted an acoustic report recommending various measures for the proposed development, to include acoustic glazing and noise attenuation measures for plant equipment, to achieve compliance with the DCP acoustic amenity requirements.</p> <p>A condition is recommended requiring the development to comply with the recommendations of the acoustic report to ensure the amenity of the proposed apartment units (refer to <b>Condition C2</b>).</p>
<b>Visual Privacy</b>	Yes (via condition)	<p>The proposed mixed building would provide a building separation distance in excess of 20m to minimise any visual privacy impacts for the adjoining properties on the opposite side of Grosvenor Street, Waters Road and Waters Lane.</p> <p>Despite the absence of any setback from the rear (southern) property boundary, there would be no windows on the walls along such boundaries. Therefore, there would be no adverse visual privacy impacts on the adjoining properties at Nos.4-8 Waters Road.</p> <p>Furthermore, the applicant has proposed a central lightwell with</p>

		<p>a minimum of 6m separation between the proposed bedroom windows looking into the lightwell. Furthermore, the position of these windows will be off set from each other with recessed planters to minimise any visual privacy impacts.</p> <p>As indicated earlier in this report, a condition is recommended requiring an increase in setback from the southern (rear) boundary for units 3.04, 3.05, 4.04 and 4.05 by 3m in order to improve building separation and access of daylight to apartments on the lower levels (<b>Condition AA2</b>).</p> <p>The proposal is therefore considered to be acceptable.</p>
<b>2.4 Quality built form</b>		
<b>Context</b>	Yes	<p>The design of the proposed mixed use building is generally in line with other existing mixed use development within the Neutral Bay Town Centre. The proposed design has been considered by the Design Excellence Panel (DEP) and the applicant has amended the design of the proposed development in order to address the matters raised by the Panel including the deletion of one residential level to improve compliance with the LEP maximum building height limit.</p>
<b>Site Consolidation</b>	Yes	<p>The subject site has three street frontages on Grosvenor Street, Water Road and Waters Lane. The proposed mixed use building has a 55m frontage along Grosvenor street, this complies with the street frontage requirement for redevelopment site of 25m-30m in the DCP character statement for Neutral Bay/Cremorne Town Centre. A condition of consent is recommended requiring site consolidation prior to the release of any occupation certificate to promote the orderly development of the land. (<b>Condition G26</b>)</p>
<b>Setbacks- Front</b>	No (acceptable on merit)	<p>The proposed building has zero front setback from Grosvenor Street for the Ground Level and Levels 1 &amp; 2 with a three storeys podium height.</p> <p>Whilst the proposed three (3) storeys podium height is not consistent with the two (2) storey podium height as specified in the DCP character statement, it is noted that existing building has a three storey street frontage and the mixed use building at Nos.27-35 Grosvenor Street to the west of the subject site and the supermarket also has a three storey podium.</p> <p>It is therefore considered that the proposed three storey podium is generally consistent with the character of the locality.</p>
<b>Setbacks – Side &amp; Rear</b>	(Acceptable on merit)	<p>The applicant has proposed a transition podium height from 2 storey on the southern side to a three (3) storey podium height further to the north (front) of the building. The proposal is considered to acceptable as the design respects the two storey podium height on the eastern side of the adjoining mixed use building to the south (Nos.4-8 Waters Road).</p>



		 <p><b>Figure 25: Transition podium height</b></p> <p>The applicant has also proposed a matching three storey podium height on the rear (Waters Lane) frontage with the existing mixed use building at No.4-8 Waters Road in addition to the 1.5m setback from the rear property boundary as required by the DCP.</p> <p>The proposed zero rear boundary setbacks are also consistent with the character of existing developments with the Neutral Bay Town Centre..</p>
<b>Building Design</b>	Yes	<p>The proposed building design with zero front and side setbacks and the use of ground floor for commercial/retail purposes is generally consistent with the character of similar mixed use buildings within the Neutral Bay Town Centre.</p> <p>The proposed podium height is considered to be acceptable as it is generally consistent with building design and street frontage building height within the locality.</p> <p>The proposal is considered to be acceptable because the proposal complies with the LEP's minimum non-residential FSR and the apartments would generally achieve good amenity with solar access to most apartments within the proposed development.</p>
<b>Skyline</b>	Yes	<p>The proposal is generally within the LEP height limit, with the exception of the roof terraces, lift and stairs overruns and the communal room. The communal room would be located at the centre of the roof level away from the edge of the proposed mixed use building. The design would minimise any visual impacts on the skyline of the Neutral Bay Town Centre.</p>
<b>Balconies - Apartments</b>	Yes	<p>The proposal would provide complying balconies to all apartments to ensure access to functional private open space for the future residents.</p>
<b>Streetscape</b>	Yes	<p>The design of the building and the treatments of the building façade to Grosvenor Street, Waters Road and Waters Lane with appropriate podium heights is considered to be acceptable and would provide visual interest.</p> <p>The retention of most street trees and the required new street planting would also provide some softening of the built form.</p> <p>The proposed commercial/retail uses on the ground level would provide further opportunities for street activation on Grosvenor Street, Waters Road and Waters Lane.</p>

Entrances and Exits	Yes	The through-site-link would also provide pedestrian access to the lift foyers for the apartments together with gates to ensure safety and security for the residents.																							
2.5 Quality Urban Environment																									
Accessibility	Yes	The proposed development, including the ground floor commercial/retail tenancies, the apartment units and the rooftop communal area, would be accessible.																							
Safety and Security Illumination	Yes	The design of the proposal has considered personal safety and security with secured access and lighting for the building entrance.																							
High Quality Residential Accommodation	Yes/ No (acceptable on merit)	<div><div>Unit Size</div><table><tr><th>Dwelling Type:</th><th>Proposed</th><th>Control</th><th>Compliance</th></tr><tr><td>Studio</td><td>N/A</td><td>40sqm</td><td>N/A</td></tr><tr><td>1 Bedroom</td><td>58m² - 61m²</td><td>50sqm</td><td>Yes</td></tr><tr><td>2 Bedroom</td><td>76m² - 113m²</td><td>80sqm</td><td>No/Yes</td></tr><tr><td>3 Bedroom</td><td>119m² - 158m²</td><td>100sqm</td><td>Yes</td></tr></table></div> <p>All the proposed 1 bedroom and 3 bedroom apartments would comply with the DCP's unit size requirements.</p> <p>There are four two bedroom apartments that do not comply with the DCP apartment unit size requirement with a shortfall of up to 4sqm. However, these apartments comply with the ADG's minimum area requirements for two bedroom units at 70sqm. Furthermore, the design of all apartment are considered to be satisfactory to provide a reasonable level of amenity for the occupants.</p> <div><div>Width of Apartments</div><p>The proposed apartments would have variable widths. It is noted that the width of the apartments comply with the ADG requirements as detailed earlier in this report.</p></div> <div><div>Cross Ventilation</div><p>A proposal complies with the DCP requiring 60% of the apartments to experience good cross ventilation as indicated earlier in this report.</p></div>				Dwelling Type:	Proposed	Control	Compliance	Studio	N/A	40sqm	N/A	1 Bedroom	58m² - 61m²	50sqm	Yes	2 Bedroom	76m² - 113m²	80sqm	No/Yes	3 Bedroom	119m² - 158m²	100sqm	Yes
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Private Open Space	Yes	Compliant balconies and/or courtyards have been proposed for all apartments. Furthermore, a communal area has been proposed on the roof level providing additional amenity for the residents.																							
Vehicular Access	Yes	Vehicular access to the basement carpark would be provided off Waters Road. Council's Development Engineer has raised no objection to the proposed vehicular access design subject to the imposition of appropriate conditions.																							
Car Parking	Yes	<div><div></div><table><tr><th>Parking Type:</th><th>Proposed</th><th>Control</th><th>Complies</th></tr><tr><td>Residential: - Car</td><td>34</td><td>34 (Max.</td><td>Yes</td></tr></table></div>				Parking Type:	Proposed	Control	Complies	Residential: - Car	34	34 (Max.	Yes												
Parking Type:	Proposed	Control	Complies																						
Residential: - Car	34	34 (Max.	Yes																						

					0.5sp/1B, 1sp/2B or 3B unit )	
			Residential - Motorcycle	17	10 (1sp/10car)	Yes
			Disabled	5	5 (1sp/each adaptable unit)	Yes
			Non- residential	60	69 (1sp/25sqm or 1sp/60sqm)	Yes
<b>Garbage Storage</b>	Yes	The proposal is generally acceptable having regard to waste management subject to the imposition of appropriate conditions.				
<b>Site Facilities</b>	Yes	The proposal is considered to provide for the needs of future residents and have no adverse impacts to the environment.				
<b>2.6 Efficient Use of Resources</b>						
<b>Energy Efficiency</b>	Yes	The application is accompanied by a compliant BASIX Certificate.				

### ***North Cremorne Planning Area (Neutral Bay and Cremorne Town Centres)***

The application has been assessed against the relevant controls in NSDCP 2013 and generally found to be satisfactory as shown in the earlier compliance table.

The proposal is also generally consistent with Part C of North Sydney DCP 2013 in particular Section 5 of the Character Statement for North Cremorne Planning Area and Section 5.1 for Neutral Bay and Cremorne Town Centres.

The proposed mixed use building would be generally consistent with the desired mixed use character for development within the Neutral Bay Town Centre. The design of the proposed mixed use building is also generally consistent with the desired built form within the town centre in terms of bulk/scale, setbacks, podium heights and car parking arrangements.

### **NORTH SYDNEY LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN 2020**

The subject application has been assessed against the North Sydney Local Infrastructure Contribution Plan 2020 and is subject to payment of contributions towards the provision of local infrastructure. The contributions payable have been calculated in accordance with Council's Contributions Plan as follows:

<b>Development type</b>	<b>Existing</b>	<b>Proposed</b>	<b>Change</b>
<b>Residential accommodation</b>	N/A	36 dwellings	Increase: 36 dwellings
<b>Non-Residential Floorspace</b>	4,137sqm	2,020sqm	Decrease: 2,117sqm

**Contribution amounts payable: \$354,631.74**

<b>Applicable contribution type: s7.11 contribution</b>		
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	Open space and recreation facilities:	\$291,368.23
	Public domain:	\$0.00*
	Active transport:	\$0.00*
	Community facilities:	\$58,521.89
	Plan administration and management:	\$4,741.62
	<b>Total:</b>	<b>\$354,631.74</b>

\* No additional contribution required due to credit from existing development.

Conditions requiring the payment of contributions at the appropriate time are included in the attached conditions (**Condition C43**).

## **SITE SUITABILITY**

The proposed development is considered to be suitable for the subject site for the reasons provided within this report.

## **PUBLIC INTEREST**

The development is considered to be generally in the public interest for the reasons provided within this report.

## **ALL LIKELY IMPACTS OF THE DEVELOPMENT**

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

## **ENVIRONMENTAL APPRAISAL**

## **CONSIDERED**

- |    |  |     |
|----|--|-----|
| 1. | Statutory Controls   | Yes |
| 2. | Policy Controls  | Yes |
| 3. | Design in relation to existing building and natural environment                                      | Yes |
| 4. | Landscaping/Open Space Provision   | Yes |
| 5. | Traffic generation and Carparking provision  | Yes |
| 6. | Loading and Servicing facilities   | Yes |
| 7. | Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.) | Yes |
| 8. | Site Management Issues   | Yes |
| 9. | All relevant S4.15 considerations of Environmental Planning and Assessment (Amendment) Act 1979      | Yes |

## **SUBMITTERS CONCERNS**

The original proposal for a six storey mixed use building was notified to adjoining properties and the Brightmore Precinct. This notification attracted seven (7) submissions.

The amended proposal for a five storey mixed use building was also notified to adjoining

properties and the Brightmore Precinct. A total of 4 submissions have been received objecting the amended proposal. A further submission was received relating to the additional information submitted to Council in September 2021.

- ***Excessive building height***

The issue raised by submitters in relation to the non-complying six (6) storey building in the original proposal has been addressed by the amended plans with five (5) storeys.

The other issues raised in the submissions received are addressed as follows:

- ***Excessive traffic generation and parking and inappropriate location of the basement parking entrance off Waters Road.***
- ***Traffic/pedestrian safety concerns relating to the location of the proposed loading dock off Waters Lane.***
- ***Findings of the revised traffic assessment are questionable.***

**Comment:**

Council's Traffic and Transport Engineer has reviewed the amended proposal and raised no objection to the proposal on traffic and parking grounds subject to the imposition of appropriate conditions.

In particular, Council's Traffic and Transport Engineer has reviewed the revised traffic generation in the SIDRA analysis submitted with the updated traffic report. It was considered that there would be no apparent impact on the operation on the surrounding road network.

Furthermore, Council's Traffic and Transport Engineer has raised no objection to the proposed basement parking entrance on Waters Road subject to the imposition of a condition requiring compliance with the Australian Standard sight line requirements to ensure pedestrian safety.

In addition, the proposed loading dock would replace two (2) driveways to the parking areas within the existing commercial buildings at No 12 and 14 Waters Road. Therefore, the proposed development is unlikely to cause unacceptable traffic / pedestrian safety issues along Waters Lane because of the likely reduction in traffic movements generated from the subject site along Waters Lane.

- ***Non-compliance with the ADG building separation requirements from Waters Lane.***

**Comment:**

The proposed building would provide a 1.5m setback from the Water Lane property boundary or 5m from the centre of the laneway. Whilst this does not strictly comply with the ADG's 6m building separation requirement, the proposal matches the setback for the adjoining mixed use building to the south (Nos.4-8 Waters Road) and would have no material impacts on the amenity of the surrounding properties as demonstrated throughout this report.

- ***Excessive excavation and impacts on the structural integrity of the nearby properties.***

**Comment:**

The applicant has submitted a geotechnical report including further advice from the structural engineer recommending appropriate work methods to ensure the structural integrity of the adjoining properties. A condition is recommended requiring excavation works to be carried out in accordance with the further structural engineering statement (**Condition C1**).

In addition, a standard condition is also recommended requiring dilapidation surveys of properties affected by the proposed excavation works (**Conditions C4 and C5**).

- ***Loss of amenity and screening due to the removal of an established street tree and seating area on Waters Road.***

**Comment:**

As indicated earlier in this report, Council's Landscape Officer has raised no objection to the removal of an existing street tree subject to the requirement for the planting of replacement street trees. The applicant has also proposed additional landscaping along the street frontages in order to provide screening/softening of the proposed building and to enhance the amenity along the footpaths.

- ***Objection to underground retail space***

**Comment:**

The design of the proposed mixed use building featuring a dual service cores containing entrance foyers, lifts and staircases and a loading dock on the ground level has reduced the scope of commercial/retail floorspace on the ground level.

Notwithstanding this, the applicant has amended the design of the retail tenancies with additional street level retail tenancies along Grosvenor Street and Waters Road frontages. Furthermore, the main entrance to the lower ground floor major retail tenancy on the lower ground floor would be located at the north-western corner with frontages to Grosvenor Street and Waters Lane. It is considered that the location of the proposed retail tenancies and the main retail entrance would promote activities at street level.

The proposal is considered to be acceptable having regard to the objectives of the non-residential FSR pursuant to Clause 4.4A of NSLEP 2013.

- ***New development would change the village character of Neutral Bay.***

**Comment:**

The subject site is zoned B4 (Mixed Use) and shop top housing/mixed use development is a permissible form of development with consent from Council. The applicant has amended the original six storey proposal to a more compliant five storey design in order to be more consistent with the character of the Neutral Bay Town Centre.

- ***Construction activities would cause disruptions within the locality.***

**Comment:**

In addition to the requirement for a construction traffic management plan and other standard conditions relating to amenity protection during construction, a condition is recommended requiring the submission of a construction noise management plan to ensure proper management during the construction phase of the proposed development (**Condition C40**).

## **PUBLIC INTEREST**

The proposal is considered to be in the public interest for the reasons stated throughout this report.



## SUITABILITY OF THE SITE

The proposal would be located in a B4 (Mixed Use) where shop top housing/mixed use building is a permissible form of development. Consequently, the proposal is considered to be suitable for the site having regard to the merits of the proposal as described in the above report.

## CONCLUSION + REASONS

The development application has been assessed against the North Sydney LEP 2013 and North Sydney DCP 2013, SEPP 65 – Design Quality of Residential Apartment Development and the Apartment Design Guide and found to be generally satisfactory.

The application proposes a five (5) storey shop top housing/mixed use development that is a permissible form of development within a B4 (Mixed Use) zone.

This report has considered a written request submitted by the applicant seeking a variation to Clause 4.3 in North Sydney LEP concerned with the height of buildings height pursuant to Clause 4.6 of the LEP. It is considered that the variation to the building height development standard could be supported because the building elements in breach of the LEP building height development standard would not cause material impacts on the amenity of the adjoining properties as well as the character of the locality.

The applicant has amended the original design of the proposed mixed use building to provide a more compliant five (5) storey form and revisions to the retail/commercial tenancies in order to address the comments raised by the Design Excellence Panel and Council's Officers. These amendments are considered to be generally acceptable.

In addition, deferred commencement conditions have been recommended requiring design modifications to the layout of the roof top areas to provide more suitable communal areas and changes to the design of four (4) apartments on two upper levels to improve building separation, access to daylight and ventilation within the lightwell.

The issues raised in the submission have been addressed in this assessment report.

Having regard to the merits of the proposal, the application is recommended for deferred commencement approval subject to appropriate deferred commencement conditions, site specific and standard conditions.

## HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

The original proposal was notified between 23 April and 7 May 2021. A total of 7 submissions have been received objecting the original proposal. The amended proposal was notified between 16 and 30 July 2021. A total of 4 submissions have been received objecting the amended proposal. A further submission was received relating to the additional information submitted to Council in September 2021. The issues raised in the submission have been addressed throughout the assessment report.

## RECOMMENDATION

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

- A. **THAT** the Sydney Regional Planning Panel, as the consent authority, assume the concurrence of the Secretary of The Department of Planning, Industry, and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with Clause 4.3 in relation to maximum building height limit and **grant deferred commencement consent** to Development Application No.92/21 for the demolition of existing commercial buildings and construction of a five (5) storey shoptop housing/mixed use building with containing 36 apartments,

retail tenancies and parking within the basement for 100 cars, and associated landscaping, at Nos 12-14 Waters Road, Neutral Bay, subject to the conditions attached at **Appendix 1:-**

**Robin Tse**  
**SENIOR ASSESSMENT OFFICER**

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