

## COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	PPSSNH-427
<b>DA Number</b>	DA258/23
<b>LGA</b>	North Sydney Council
<b>Proposed Development</b>	Demolition of existing supermarket and Grosvenor Lane car park. Construction of a 4 storey mixed use and shop top housing development with 42 residential apartments, swimming pool, supermarket loading dock, liquor store and retail premises, 4 levels of basement parking including 189 retail parking spaces, 77 public parking spaces and 39 residential parking spaces, signage, associated civil and landscaping works and associated stratum subdivision.
<b>Street Address</b>	41-53 Grosvenor Street, Neutral Bay (Lot 1 DP 847474) and Grosvenor Lane (Lot 1 DP 617129, Lot 1 DP 737344, Lots 12, 13 and 14 DP 229737, Lot 18 DP 231396, Lot 2 DP 229837, Lot 21 DP 232918, Lot 27 DP 231494, Lots 1243 and 1244 DP 45724, Lot 19 DP 231395, Lot 2 DP 607355, Lots 25 and 26 DP 231565, Lot 4 DP 613732, Lot 16 DP 231564, Lot 2 DP 227611, Lot 21 DP 231493, Lot 3 DP 814310.)
<b>Applicant/Owner</b>	Applicant – Debrah Barr – Gyde Owners – Coles Group Property Developments Ltd and North Sydney Council
<b>Date of DA lodgement</b>	1 September 2023 and 7 November 2024 (amended)
<b>Total number of Submissions Number of Unique Objections</b>	479 unique submissions received in first notification period. 233 unique submissions received in second notification period.
<b>Recommendation</b>	Approval
<b>Regional Development Criteria Schedule 6 of the SEPP (Planning Systems) 2021</b>	Regional Development is defined in Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021  Development with an estimated development cost (EDC) over \$30 million is classified as “Regional”.  The Estimated Development Cost (EDC) of this development as outlined in the amended application is \$138,250,000.00 excluding GST.
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• Environmental Planning and Assessment Act 1979.</li> <li>• Environmental Planning and Assessment Regulation 2021.</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021.</li> <li>• State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>• State Environmental Planning Policy (Housing) 2021</li> <li>• State Environmental Planning Policy (Planning Systems) 2021</li> <li>• State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> </ul>

	<ul style="list-style-type: none"> <li>State Environmental Planning Policy (Sustainable Buildings) 2022</li> <li>State Environmental Planning Policy (Industry and Employment) 2021</li> <li>North Sydney Local Environmental Plan 2013</li> <li>North Sydney Development Control Plan 2013</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</li> <li>Clause 4.6 variation request for Building Height</li> <li>Response to Submissions</li> <li>Reasons for approval</li> </ul>
<b>Clause 4.6 requests</b>	Clause 4.3 Building Height
<b>Report prepared by</b>	Planning Ingenuity Independent Assessment Planner
<b>Report date</b>	6 April 2025
<b>Summary of s4.15 matters</b> Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	<b>Yes</b>
<b>Legislative clauses requiring consent authority satisfaction</b> 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? <i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i>	<b>Yes</b>
<b>Clause 4.6 Exceptions to development standards</b> 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?	<b>Yes – Building exceeds Clause 4.3 Height of Building Standard</b>
<b>Special Infrastructure Contributions</b> Does the DA require Special Infrastructure Contributions conditions (S7.24)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	<b>Not applicable</b>
<b>Conditions</b> Have draft conditions been provided to the applicant for comment? <i>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</i>	<b>No</b>

## **Executive Summary**

### **Proposal**

- Council received a development application (DA258/23) on 1 September 2023 seeking consent for a Concept Development Application for the creation of a public plaza over the existing Grosvenor Lane car park and works comprising demolition of existing structures and part of the adjacent Council car park. It included construction of a 7-storey mixed use shop top housing development with a supermarket, liquor store and retail premises, a public community space, 72 apartments, 4 basement levels containing 267 public car parks and 84 private car spaces, the loading docks, services areas, "click and

collect” facilities, signage, associated civil and landscaping works and associated subdivisions.

2. The application was accompanied by a letter of offer to enter into a VPA for the delivery of public domain works and facilities for Council’s consideration.
3. The application was on public exhibition from 29 September until 27 October 2023. During the notification period a total of 498 submissions were received. From a review of submissions, 19 of these were ‘double ups’, miscounted, did not object, supported the proposal or did not relate to the proposed development. As such, a total of 479 actual submissions were received. From the total 479 submissions, 412 of these objected to the proposal and 67 were in support.
4. Following the notification period and correspondence with the Applicant, a Request for Additional Information/Amended Plans was issued to the Applicant on 12 January 2024. The Request included comments and concerns raised by internal and external referrals and a preliminary planning assessment.
5. A meeting was held with the Panel Chair, applicant and Council on 16 February 2024. The applicant requested additional time to provide the amended plans and supporting documentation. The Panel Chair agreed to additional time being provided.
6. A further meeting at the request of the applicant was held with the Panel Chair, applicant and Council on 8 May 2024. Some preliminary sketches were provided at the meeting however still failed to satisfy the concerns raised in the RFI. No formal amended plans were lodged. At this meeting, the applicant indicated that they will be providing additional information and amended plans in response to the RFI and the meetings held within approximately 4 -6 weeks after this meeting (i.e 8 June 2024 – 22 June 2024). The applicant was advised that these plans would require renotification.
7. A further meeting at the request of the applicant was held with the Panel Chair, applicant and Council on 26 June 2024. The applicant requested additional time to address the concerns of the RFI, whilst awaiting the outcome of the VPA. The Panel Chair agreed to additional time being provided.
8. A further meeting at the request of the applicant was held with the Panel Chair, applicant and Council on 31 July 2024. The applicant requested additional time to address the concerns of the RFI. The Panel Chair agreed to additional time being provided and a further meeting would take place on 28 August 2024.
9. A further meeting at the request of the applicant was held with the Panel Chair, applicant and Council on 28 August 2024. The applicant requested additional time to address the concerns of the RFI. The Panel Chair agreed to additional time being provided and a further meeting would take place on 2 October 2024.
10. A further meeting at the request of the applicant was held with the Panel Chair, applicant and Council on 2 October 2024. The applicant requested additional time to address the concerns of the RFI and that amended plans would be submitted in the next month. The Panel Chair agreed to the additional time being provided to submit the amended plans and supporting documentation.
11. The Applicant submitted a revised application on 7 November 2024 in response to the Request issued by Council. Under Section 38 of the EP&A Regulations 2021, a consent

authority may approve an application for an amendment to a development application, and if approved, the development application is taken to be lodged on the day on which the applicant applied for the amendment. As such, in accordance with Section 38 of the Regulations, the lodgement date for the application, as amended, is taken to be 7 November 2024.

12. The revised application seeks consent for demolition of an existing supermarket and Grosvenor Lane car park. It reduces the height of the original proposal to include construction of a 4-storey mixed use and shop top housing development with 42 residential apartments, supermarket loading dock, liquor store and retail premises, 4 levels of basement parking including 189 retail parking spaces, 77 public parking spaces and 39 residential parking spaces, signage, associated civil and landscaping works and associated stratum subdivision.
13. The revised application and accompanying documentation was placed on public exhibition from 22 November 2024 until 10 January 2025. In response to the second notification period a total of 250 submissions were received. From a review of submissions, 17 of these were 'double ups', did not object, supported the proposal or did not relate to the proposed development. As such, a total of 233 actual submissions were received. From the total 233 submissions, 209 of these were in objection to the proposal and 24 were in support.
14. The plans and supporting documents assessed as part of this report are those submitted on 7 November 2024 in response to the Request issued by Council which were on public notification from 22 November 2024 until 10 January 2025.

#### **Site and Locality**

15. The subject development site is known 41-53 Grosvenor Street, Neutral Bay (Lot 1 DP 847474) and Grosvenor Lane (Lot 1 DP 617129, Lot 1 DP 737344, Lots 12, 13 and 14 DP 229737, Lot 18 DP 231396, Lot 2 DP 229837, Lot 21 DP 232918, Lot 27 DP 231494, Lots 1243 and 1244 DP 45724, Lot 19 DP 231395, Lot 2 DP 607355, Lots 25 and 26 DP 231565, Lot 4 DP 613732, Lot 16 DP 231564, Lot 2 DP 227611, Lot 21 DP 231493, Lot 3 DP 814310.).
16. The Site is located within the Neutral Bay Town Centre on the northern side of Military Road. The Site has a total area of approximately 4,285m<sup>2</sup>. The Site falls approximately 3.5m from the southeast to the northwest.
17. The Site is bounded by Grosvenor Street to the north, Cooper Lane to the west, Grosvenor Lane to the south and Waters Lane to the east, allowing for vehicular access around the site.
18. The Site includes a parcel owned by Coles Group, as well as Grosvenor Lane and Grosvenor Lane public car park, which are both Council owned land.
19. Existing on the site is a single storey building which until recently was utilised as a Woolworths supermarket and liquor store, with one (1) level of basement car parking accessed via Grosvenor Street.
20. There is an existing car park on and adjoining Grosvenor Lane which contains 77 council parking spaces and existing mature trees.

### **State Environmental Planning Policies**

21. The proposal has been considered to be satisfactory in respect to the following policies which have been considered in respect to the application:

- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Housing) 2021
- State Environmental Planning Policy (Sustainable Buildings) 2022
- State Environmental Planning Policy (Biodiversity and Conservation) 2021.
- State Environmental Planning Policy (Transport and Infrastructure) 2021.
- State Environmental Planning Policy (Industry and Employment) 2021.

### **Zoning and NSLEP 2013 Compliance - LEP**

22. The site is zoned MU1 Mixed Use pursuant to the provisions of the North Sydney Local Environmental Plan 2013. The proposal is considered to satisfy the objectives for the MU1 zoned land. The proposed application is for a shop top housing development comprising a residential flat development and retail premises which are all permitted land uses in the MU1 Mixed Use zone under NSLEP 2013.

23. The application is seeking a variation to the statutory height limit of 16m to 20.7m, a variation of 4.7m (29.3%).

24. The application has been accompanied by a Clause 4.6 – exceptions to development standards request for variation to Clause 4.3 – Height of buildings development standard. The request is considered to be well founded, having demonstrated that compliance is unreasonable or unnecessary and that there are environmental planning grounds are sufficient to justify the contravention.

### **North Sydney Development Control Plan 2013**

25. The provisions of North Sydney Development Control Plan 2013 are applicable to the proposed development. The proposal is considered to be an acceptable urban design and planning outcome for the site and is considered to satisfy a number of the applicable provisions contained within the NSDCP.

### **Submissions**

26. The application was first advertised for a period of twenty-eight (28) days between 29 September 2023 and 27 October 2023 in accordance with the North Sydney Community Engagement Protocol criterion. During this first notification period (2023 notification) a total of 498 submissions were received. From a review for submissions 19 of these were 'double ups', miscounted or did not relate to the proposed development. As such, a total of 479 actual submissions were received. From the total 479 submissions, 412 of these were in objection to the proposal and 67 were in support. The issues raised were predominately in relation to the scale of the development noting the significant height breach proposed. The key issues of concern included:

- Unacceptable building height variation;
- Premature submission of a DA prior to the release of the Neutral Bay Town Centre Planning Study;
- Transfer of control and development rights in respect of the Grosvenor Lane car park for private development;
- Traffic congestion and parking;
- Impact of loss of vehicular access and car parking on retailers;
- Overshadowing to the new plaza; and
- Lack of details on plaza design.

27. Following amendments made to the proposal by the Applicant in response to Councils Request for Additional Information, the amended application was advertised for a period of twenty-eight (28) days between 22 November 2024 and 10 January 2025 in accordance with the North Sydney Community Engagement Protocol criterion. It is noted that the period between 20 December and 10 January (inclusive) is excluded from the calculation of a period of public exhibition in accordance with Clause 16 to Schedule 1 of the EP&A Act 1979. During this second notification period (2024 notification) a total of 250 submissions were received. From a review of submissions 17 of these were 'double ups', miscounted or did not relate to the proposed development. As such, a total of 233 actual submissions were received. From the total 233 submissions, 209 of these were in objection to the proposal and 24 were in support. A detailed review of submissions is provided in a separate attachment to this report, however, the key issues of concern are summarised as follows:

- Loss of public benefit by the amended proposal which no longer includes the construction of the public plaza.
- Construction of private development on Council owned land without the provision of the public benefit.
- Relationship of this development with the Arkadia redevelopment of "Site 2".
- Building height.
- Building setbacks to street frontages.
- Parking impacts during construction in relation to the removal of the public car park to allow for the excavation of the basement parking.
- Impact on small businesses through the removal of at-grade public parking and reduced circulation/access.
- Infrastructure availability to support the increased residential density.
- Environmental impacts in terms of tree removal.
- Access from the basement parking to the future public plaza and how it favours the Coles development rather than small businesses in the centre.
- Obstruction of views and removal of natural buffers.
- Impact on property values.
- Traffic congestion generated and potential vehicular and pedestrian safety issues.
- Loading arrangements including impacts of the truck hoist lift.
- Removal of outdoor public parking.
- Staging of the proposal does not support the community.
- Limited access points to the car park.
- Noise and dust impacts during construction.
- Noise impacts resulting from loading and parking during operation.
- Equitable access for pedestrians during construction and operation.
- Uncertainty of future redevelopment for the public plaza.

It is also noted that a number of submissions appear to refer to the Arkadia Planning Proposal rather than this application. These submissions refer to 9 storey development which relates to the Planning Proposal rather than this DA for a 4 storey built form.

### **Level of Determination**

28. The amended proposal has an estimated development cost of \$138,250,000 (excluding GST). The development application is to be determined by the Sydney North Planning Panel due to the estimated development cost exceeding \$30 million for a mixed-use development pursuant to the definition of regional development contained within Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021. The estimated development cost has been confirmed and is outlined in the Registered

Quantity Surveyors Detailed Cost Report which accompanies the Development Application.

29. A preliminary briefing was held with the Sydney North Planning Panel (SNPP) on 6 December 2023. The Panel identified a number of key issues that needed to be addressed.
30. As mentioned previously a number of meetings were held between the Panel Chair, the applicant and representatives and Council between February and October 2024.

### **Key Planning Issues**

31. A summary of the key issues associated with the proposal include:
  - **Building Height and Clause 4.6 Request** – The proposal exceeds the maximum height of building development standard pursuant to Clause 4.3 of NSLEP 2013. The height exceedance outlined in the Clause 4.6 request has been significantly reduced from the original proposal and the proposal maintains a 4 storey building height despite the non-compliance.
  - **Privacy**– Amenity impacts on adjoining properties result from the proposal, with regard to visual privacy concerns with reduced building separation distances proposed resulting from both the proposed building setbacks and the reduced setback of neighbouring properties.
  - **Residential amenity** – There are some apartments proposed with balcony sizes that are less than that required by the ADG.
  - **Tree impacts** – The concerns include the removal of mature trees on Council owned land.

### **Conclusion**

32. The application has been assessed having regard to the matters for consideration under section 4.15(1) of the Environmental Planning and Assessment Act 1979, the provisions of the relevant State Environmental Policies, North Sydney Local Environmental Plan 2013 and North Sydney Development Control Plan 2013.
33. Following a preliminary assessment of the proposal, internal and external referrals, submissions and a briefing with the Panel, a number of key issues were identified.
34. An amended application was submitted to Council on 7 November 2024. The amended application represented a significant reduction in the size of the development proposed on the subject site including a reduced variation to the height of buildings development standard under Clause 4.3 of the LEP. The application also removed the VPA.
35. It is considered that the proposal, as amended, represents a suitable bulk and scale of development on the site, under the current planning controls. The proposed development is considered to provide a sympathetic response to the existing and desired future character and context of the area. The proposed exceedance of the building height development standard is considered acceptable on merit and suitable environmental planning grounds have been provided to justify the proposed height exceedance. The built form responds to the site context and respects the amenity of adjoining properties to provide an outcome that is an improvement upon the existing site use and will have a positive contribution to the Neutral Bay Town Centre.
36. Following a full assessment and having regard to the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979, the application is recommended for approval subject to conditions.



## **Report in Full**

### **Site and Locality**

37. The subject development site is known as No. 41-53 Grosvenor Street, Neutral Bay (Lot 1 DP 847474) and Grosvenor Lane (Lot 1 DP 617129, Lot 1 DP 737344, Lots 12, 13 and 14 DP 229737, Lot 18 DP 231396, Lot 2 DP 229837, Lot 21 DP 232918, Lot 27 DP 231494, Lots 1243 and 1244 DP 45724, Lot 19 DP 231395, Lot 2 DP 607355, Lots 25 and 26 DP 231565, Lot 4 DP 613732, Lot 16 DP 231564, Lot 2 DP 227611, Lot 21 DP 231493, Lot 3 DP 814310.).



**Figure 1:** Aerial view of subject development site shown outlined in red.

38. The Site is located within the Neutral Bay Town Centre, north of Military Road. The site has a total area of approximately 4,285m<sup>2</sup>. The Site falls approximately 3.5m from the southeast to the northwest.
39. The Site is bounded by Grosvenor Street to the north, Cooper Lane to the west, Grosvenor Lane to the south and Waters Lane to the east, allowing for vehicular access around the site.
40. The Site includes a parcel owned by Coles Group, as well as Grosvenor Lane and Grosvenor Lane public car park, which are both Council owned land. Existing on the site is a single storey building which until recently was utilised as a Woolworths supermarket and liquor store, with one (1) level of basement car parking accessed via Grosvenor Street.
41. There is an existing car park on and adjoining Grosvenor Lane which contains 77 council parking spaces and existing mature trees.





**Figure 2:** Subject site as viewed from the Grosvenor Street looking east.



**Figure 3:** Subject site as viewed from the Grosvenor Street looking west.





**Figure 4:** Subject site as viewed from the Grosvenor Lane looking north west.



**Figure 5:** Subject site as viewed from Waters Lane.





**Figure 6:** Subject site as viewed from Cooper Lane.



**Figure 7:** Subject site as viewed from Grosvenor Lane looking north east.



### Surrounding Development

42. The surrounding context contains a mix of commercial, residential and public parking. Existing within the immediate locality is multi storey commercial and retail buildings along Grosvenor Lane, shop top housing developments along both Waters Lane and Cooper Lane, and residential flat buildings along Grosvenor Street.
43. Development within the locality ranges from two to seven storeys in height.
44. Notably, the following developments are existing or approved within the immediate locality:
  - No. 4-8 Waters Road – existing 5 storey mixed use development;
  - No. 12-14 Waters Road – approved 6 storey mixed use development;
  - No. 19 Young Street – existing 5 storey mixed use development;
  - No. 27 Grosvenor Street – existing 4 storey mixed use housing development; and
  - No. 64 Grosvenor Street – existing 7 storey residential flat building.
45. The site at No. 12-14 Waters Road was subject to a recent Planning Proposal (2/22) and LEP amendment, which increased the building height to 22m for the site with an allowance for rooftop open space and facilities to reach a height of 24m. A development application to amend the mixed-use building approved under DA92/21 to increase the total stories from 5 to 6, was approved by the Land and Environment Court following finalisation of the Planning Proposal.
46. Immediately adjoining the site to the south is the Grosvenor Lane car park which separates the site from a variety of commercial and retail buildings up to four storeys in height.



**Figure 8:** Shop Top Housing at No. 4-8 Waters Lane, east of the site.





Figure 9: Approved development at No. 12-14 Waters Road, as viewed from Waters Lane.



Figure 10: Approved development at No.12-14 Waters Road, as viewed from Waters Road.





**Figure 11:** Development to the north of the site on the opposite side of Grosvenor Street.



**Figure 12:** Residential Flat Building at No. 64 Grosvenor Street, to the north of the site.





**Figure 13:** Shop Top Housing to the west of the site along Cooper Lane, including No. 27 Grosvenor Street.



**Figure 14:** Shop Top Housing at No. 19 Young Street, west of the site.





**Figure 15:** Shop Top Housing at No. 9-17 Grosvenor Street, west of the site.



**Figure 16:** Grosvenor Lane Car Park looking north.



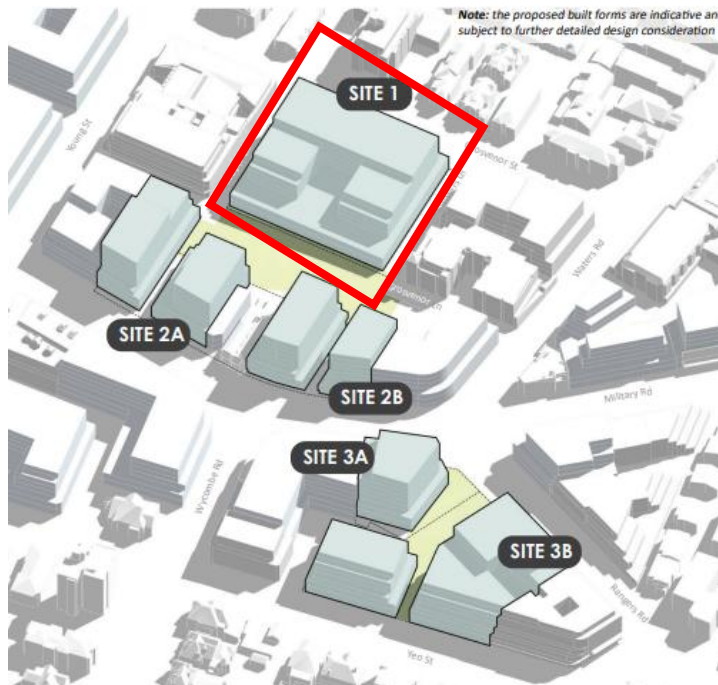


**Figure 17:** Grosvenor Lane Car Park looking south.

### **Background and Strategic Context**

47. The Grosvenor Lane Planning Study was adopted by Council at its meeting on 15 September 2014 for the purpose of public exhibition. The Study looked at increasing development yield on opportunity sites and undergrounding the Grosvenor Lane car park.
48. The Military Road Corridor Planning Study was adopted by Council in February 2021. Of relevance to this application, the Study envisaged building heights of up to eight (8) storeys for the subject site and the Grosvenor Lane car park was identified to be relocated.
49. At its meeting on 24 January 2022 Council resolved to rescind The Military Road Planning Study and create an updated strategic development framework with a better balance between development height and the provision of additional public open space.
50. The draft Neutral Bay Village Planning Study was placed on public exhibition from 27 February 2024 to 2 April 2024. The Neutral Bay Village Planning Study (NBVPS) was adopted on 27 May 2024, with amendments following public exhibition.
51. The NBVPS has been prepared to guide future development, protect existing employment opportunities through carefully managed height increases within the town centre and deliver much-needed improvements to the public domain and community facilities.

52. The NBVPS identifies key sites for a proposed height increase of up to 8 storeys, however, the additional height over the existing LEP limit will only be considered where the delivery of identified public benefits is provided alongside the site redevelopment. The subject site has been identified as a key site known as 'Site 1'. An extract from the NBVPS is provided below which identifies the key sites including the subject site.



**Figure 18:** Aerial of indicative development envelopes at key sites (Source: Neutral Bay Village Planning Study)

53. Whilst the NBVPS identifies that a Council led planning proposal to amend the NSLEP 2013 will be considered, the planning proposal will not include any of the key sites. Instead, and as detailed within the NBVPS, any proposed changes to the planning controls that apply to the key sites (including Site 1), may be initiated by the landowners via a planning proposal that is supported by a planning agreement to deliver the public benefits outlined in the study.
54. With regard to the 'key sites' excluding the subject site, the following development proposals are currently under assessment:
- 183-183 Military Road, Neutral Bay (Site 3A)
    - Planning Proposal to amend building height and non-residential FSR controls under NSLEP 2013 submitted to Council on 6 April 2023 (Equitibuild Pty Ltd).
    - The proposal seeks to provide a 12 storey mixed use development on the site.
    - The proposal is accompanied by a VPA to provide a new community centre, a 2.5m wide setback along Military Road, an increased setback along the eastern boundary forming a plaza on grade fronting Rangers Road and a public bike parking facility integrated with the ground level of the building.
  - 166-178, 184-192 and 198-214 Military Road, Neutral Bay (Site 2A and 2B)
    - Planning proposal to amend building height and non-residential FSR controls under NSLEP 2013 submitted to Council on 29 October 2024 (Arkadia Property Services).
    - The proposal seeks to provide a 9-12 storey mixed use tower on the site.



- The proposal is accompanied by a VPA to provide a new community centre, additional through-site links, upgrades to existing through site link and pedestrian footpath widening along Military Road.
  - 1-7 Rangers Road and 50 Yeo Street, Neutral Bay (Site 3B)
    - A Planning Proposal (PP2022/1633) was submitted to Council on 12 January 2023 to amend the building height and non-residential FSR controls under NSLEP 2013. The Planning Proposal was considered by the North Sydney Planning Panel on 19 April 2023 however it was recommended that the proposal should not proceed to Gateway.
    - A Rezoning Review request was submitted on 23 May 2023. Following the review the Planning Proposal received Gateway Determination on 25 March 2024.
    - Development Application for the construction of a 6-8 storey mixed use development was submitted to Council on 6 November 2024 (Woolworths).
    - The Rezoning Review and Development Application have since been withdrawn and an application is now in with the HDA for this site for both the rezoning and DA.
55. Importantly, as detailed above, redevelopment proposals for each key site have been approached through the preparation of a Planning Proposal as a prelude to development application. This is considered to be the proper strategic planning process where significant variations to controls are sought.
56. The subject application originally submitted to Council for the site sought consent for a 7 storey shop top housing development accompanied by a VPA for public domain works. Despite seeking a building height 2-3 storeys above the LEP building height limit, the application was submitted without a planning proposal for the site. This was raised as an issue following preliminary assessment.

### **Description of Proposal**

57. As per the amended submission to Council on 7 November 2024, development consent is sought for the demolition of the existing supermarket and Grosvenor Lane car park, construction of a 4-storey mixed use and shop top housing development with 42 residential apartments, supermarket loading dock, liquor store and retail premises, 4 levels of basement parking including 189 retail parking spaces, 77 public parking spaces and 39 residential parking spaces, signage, associated civil and landscaping works and associated stratum subdivision.



**Figure 19:** Perspective of proposal as viewed from the Grosvenor Street looking south west  
(Source: SJB Architects)



**Figure 20:** Perspective of proposal as viewed from Grosvenor Street (Source: SJB Architects)

58. The main components of the proposal, as amended, include:

- Demolition of existing buildings on the site.
- Four basement parking levels including both private and public parking, residential storage, loading dock and service areas beneath the Coles site connected to two basement parking levels below Grosvenor Lane for public parking only to provide a total of 189 retail parking spaces, 77 public parking spaces and 39 residential parking spaces. Public and loading dock vehicular access from Grosvenor Street and residential access from Cooper Lane.
- Ground floor retail in the form of a supermarket, liquor store and retail premises.
- Residential lobby at the ground floor.
- Three levels of residential apartments to provide a total of 42 apartments including 6 x 1 bedroom apartments, 12 x 2 bedroom apartments and 24 x 3 bedroom apartments.
- Landscaped communal open spaces on Level 1 being the Sky Lobby and the roof top including a swimming pool.

A detailed breakdown of the proposed development is as follows:

#### Basement Level 4

Comprising loading dock with HRV turntable, residential loading dock, truck hoist, residential garbage room, supermarket back of house area with goods lift, plant, residential parking spaces, car wash bay, general services and storage, residential lift lobby, fire stairs and lift access.

#### Basement Level 3

Comprising residential parking spaces and bicycle parking, car wash bay, plant and supermarket back of house areas (office and amenities) with goods lifts, general services and storage, residential lift lobby, fire stairs and lift access.

#### Basement Level 2

Comprising retail and public car parking spaces, retail plant and retail bicycle parking, end of trip facilities, general services and storage, fire stairs and lift access including public lift and trolley lift, trolley bats and escalators to the supermarket above.



### Basement Level 1

Comprising residential car park entry and exit from Cooper Lane, public carpark entry and exit from Grosvenor Street, and loading dock entry and exit from Grosvenor Street. The level will include retail and public parking space, Coles click and collect with goods lift and loading bay, residential storage, residential bin holding area with service lift, retail waste room, trolley lift and bays, public lift and escalators to the supermarket above.

### Ground Floor Plan

Comprising Coles supermarket and back of house with goods lift with various building trances and lift and escalator access, liquor store, smaller retail premises, and residential lobby with residential lifts.

### Mezzanine Plan

Comprising Coles plant and staff room with lift and stair access to trading floor below.

### Level 1 Plan

Comprising sky lobby with seating area and planting, communal spaces including gym, library, music room, co-working space, cinema room and game room and 12 apartments including 2 x 1 bedroom apartments, 1 x 2 bedroom apartments and 9 x 3 bedroom apartments with balconies, four (4) separate lobby areas with lift and stair access, services, waste room and residential waste lobby and lift.

### Level 2 Plan

Comprising 16 apartments including 2 x 1 bedroom apartments, 7 x 2 bedroom apartments and 7 x 3 bedroom apartment with balconies, four (4) separate lobby areas with lift and stair access, services, waste room and lightwell void to sky lobby below.

### Level 3 Plan

Comprising 14 apartments including 2 x 1 bedroom apartments, 4 x 2 bedroom apartments and 8 x 3 bedroom apartments with balconies, four (4) separate lobby areas with lift and stair access, services, waste room and lightwell void to sky lobby below.

### Roof Plan

Comprising communal open space including swimming pool, BBQ area, outdoor seating and landscaping, condenser deck, accessible bathroom, store room, lift and stair access.

## **Development Summary**

59. A numerical summary of the proposed development is provided as follows:

Element	Proposal
Building Height MU1 zoned land (maximum 16m)	20.7m
Gross Floor Area	Residential GFA: 6,075m <sup>2</sup> Retail GFA: 3,116m <sup>2</sup> Total GFA: 9,191m <sup>2</sup>
Non-Residential Floor Space Ratio (minimum 0.5:1)	0.72:1
Number of Storeys	Four (4) storeys <ul style="list-style-type: none"><li>One (1) commercial/retail ground level</li><li>Three (3) residential levels</li></ul>

Apartment Mix	<p>42 residential apartments comprised as follows:</p> <ul style="list-style-type: none"> <li>• 6 x 1 bedroom apartments (14.3%)</li> <li>• 12 x 2 bedroom apartments (28.6%).</li> <li>• 24 x 3 bedroom apartments (57.1%).</li> </ul> <p>Note: Includes 12 adaptable apartments.</p>
<p>Car parking spaces</p> <ul style="list-style-type: none"> <li>• Residential maximum 0.5 spaces per 1 bed and 1 space per 2 and 3 bed dwelling– maximum 39 spaces</li> <li>• Supermarket maximum 1 spaces per 100m<sup>2</sup> – maximum 156 spaces</li> <li>• Liquor store maximum 1 space per 60m<sup>2</sup> – maximum 4 spaces</li> <li>• Speciality retail maximum 1 space per 60m<sup>2</sup> – maximum 2 spaces</li> </ul>	<p>305 car parking spaces comprising the following:</p> <ul style="list-style-type: none"> <li>(i) 39 Residential spaces (including 12 accessible spaces).</li> <li>(ii) 162 non-residential/retail spaces (including 4 accessible spaces).</li> <li>(iii) 77 existing Grosvenor Lane Public Car Park spaces undergrounded (including 4 accessible spaces).</li> <li>(iv) 27 additional public parking spaces.</li> <li>(v) Two (2) car wash bays.</li> <li>(vi) Five (5) click and collect parking spaces.</li> </ul> <p>Note this equates to 312 if you include the 2 x car wash bays and the click and collect.</p>
Bicycle parking spaces	<p>57 bicycle spaces as follows:</p> <ul style="list-style-type: none"> <li>- 47 Residential bicycle spaces.</li> <li>- 10 commercial bicycle spaces.</li> </ul>
<p>Motorcycle spaces</p> <ul style="list-style-type: none"> <li>• 1 space per 10 car spaces (maximum)</li> </ul>	28 motorcycle spaces provided.
Communal open space	<p>1087m<sup>2</sup> (25.3%)</p> <p>Located on Level 1 and roof terrace.</p>
Deep soil area	169m <sup>2</sup> (3.9%)
<p>Solar access for apartments</p> <ul style="list-style-type: none"> <li>• 70% minimum</li> </ul>	39/42 apartments (92%) receive a minimum of 2 hours of solar access during mid-winter
<p>Cross ventilation for apartments</p> <ul style="list-style-type: none"> <li>• 60% minimum.</li> </ul>	28/42 apartments (67%)

## Background

60. The application has been subject to four (4) Pre-DA meetings held on 10 October 2022, 15 December 2022, 21 December 2022 and 1 June 2023.
61. The Pre DA meeting advice from the final meeting on 1 June 2023 identified various issues and concerns with the proposal including building separation and setback non-compliances, solar access to residential apartments and the overall built form response to the surrounding context. Notwithstanding these concerns, the main issue with the proposal surrounded the extent of the height non-compliance proposed which sought a numerical variation of 15.65m or 97.8% above the 16m height control under Clause 4.3 of the NSLEP 2013. The Pre-DA minutes noted that it had not been Council's practice

to accept such variations and that a planning proposal was the preferred pathway or mechanism for such a height variation.

62. The application was reviewed by Council's Design Excellence Panel (DEP) on 8 August 2023. Notably, this was prior to the lodgement of the application, but from a comparison between the Pre-DA and DA documents, it was understood that the proposal submitted to Council under the DA was essentially the same scheme that was reviewed by the DEP.
63. Council received development application (DA258/23) on 1 September 2023 seeking consent for a Concept Development Application for the creation of a public plaza over the existing Grosvenor Lane car park and works comprising demolition of existing structures and part of the adjacent Council car park. Construction of a 7-storey mixed use shop top housing development with a supermarket, liquor store and retail premises, a public community space, 72 apartments, 4 basement levels containing 267 public car parks and 84 private car spaces, the loading docks, services areas, Click and Collect facilities, signage, associated civil and landscaping works and associated subdivisions.
64. Sydney North Planning Panel (SNPP) Preliminary Briefing was undertaken on 6 December 2023, during which the key issues identified were the delay in the VPA, the status of the Draft Town Centre study in relation to height, massing, scale and FSR and it was noted that an RFI was to be issued to the applicant. Given the nature of the application at the time of the briefing, a determination date was not scheduled.
65. A Request for Additional Information/Amended Plans was issued to the Applicant on 12 January 2024. The Request included comments and concerns raised by internal and external referrals and a preliminary planning assessment.
66. A meeting at the request of the applicant was held with the Panel Chair, applicant and Council on 16 February 2024. The applicant requested additional time to provide the amended plans and supporting documentation. The Panel Chair agreed to additional time being provided.
67. A further meeting at the request of the applicant was held with the Panel Chair, applicant and Council on 8 May 2024. Some preliminary sketches were provided at the meeting however still failed to satisfy the concerns raised in the RFI. No formal amended plans were lodged. At this meeting, the applicant indicated that they will be providing additional information and amended plans in response to the RFI and the meetings held within approximately 4 -6 weeks after this meeting (i.e 8 June 2024 – 22 June 2024). The applicant was advised that these plans would require renotification.
68. A further meeting at the request of the applicant was held with the Panel Chair, applicant and Council on 26 June 2024. The applicant requested additional time to address the concerns of the RFI, whilst awaiting the outcome of the VPA. The Panel Chair agreed to additional time being provided.
69. A further meeting at the request of the applicant was held with the Panel Chair, applicant and Council on 31 July 2024. The applicant requested additional time to address the concerns of the RFI. The Panel Chair agreed to additional time being provided and a further meeting would take place on 28 August 2024.
70. A further meeting at the request of the applicant was held with the Panel Chair, applicant and Council on 28 August 2024. The applicant requested additional time to address the

concerns of the RFI. The Panel Chair agreed to additional time being provided and a further meeting would take place on 2 October 2024.

71. A further meeting at the request of the applicant was held with the Panel Chair, applicant and Council on 2 October 2024. The applicant requested additional time to address the concerns of the RFI and that amended plans would be submitted in the next month. The Panel Chair agreed to the additional time being provided to submit the amended plans and supporting documentation.
72. The Applicant submitted a revised application on 7 November 2024 in response to the Request issued by Council. The revised application seeks consent for demolition of an existing supermarket and Grosvenor Lane car park. Construction of a 4-storey mixed use and shop top housing development with 42 residential apartments, supermarket loading dock, liquor store and retail premises, 4 levels of basement parking including 189 retail parking spaces, 77 public parking spaces and 39 residential parking spaces, signage, associated civil and landscaping works and associated stratum subdivision.
73. The revised application and accompanying documentation were placed on public exhibition from 22 November 2024 until 10 January 2025. In response to the second notification period a total of 250 submissions were received.
74. The plans assessed as part of this report are those submitted on 7 November 2024 in response to the Request issued by Council.

### **Statutory Framework**

#### **Environmental Planning and Assessment Act 1979 (EP & A) Act 1979**

75. The proposal has been assessed and considered against the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act), as follows:

### **Compliance and Assessment**

#### **STATE ENVIRONMENTAL PLANNING INSTRUMENTS**

76. The following State Environmental Planning Policies (SEPP) are relevant to this application:

<b>State Environmental Planning Policy</b>
State Environmental Planning Policy (Resilience and Hazards) 2021
State Environmental Planning Policy (Biodiversity and Conservation) 2021
State Environmental Planning Policy (Transport and Infrastructure) 2021
State Environmental Planning Policy (Industry and Employment) 2021
State Environmental Planning Policy (Housing) 2021
State Environmental Housing Policy (Sustainable Buildings) 2022
State Environmental Planning Policy (Planning Systems) 2021

A summary of the key matters for consideration in relation to these State Environmental Planning Policies are considered in more detail below:

#### **State Environmental Planning Policy (Resilience and Hazards) 2021**

77. The following chapters are relevant to the proposal:

##### Chapter 4 Remediation of Land

78. Chapter 4 of the SEPP relating to remediation applies to the site.

79. Chapter 4 aims to promote the remediation of contaminated land in order to reduce the risk of harm to human health or any other aspect of the environment. Clause 4.6 requires contamination and remediation to be considered in determining a development application. The consent authority must not consent to the carrying out of development on land unless it has considered whether or not the land is contaminated.
80. A Preliminary Site Investigation (PSI) report was prepared by Geo-Logix Pty Ltd and submitted with the application. The submitted report identified potential contaminants and based on the conclusions of the submitted report, Councils Environmental Health Officer requested a detailed (Stage 2) site investigation be carried out.
81. The Applicant subsequently submitted a Detailed Site Investigation (DSI) prepared by Geo-Logix Pty Ltd in response to Council's request. The DSI provides the following conclusion:
- It is Geo-Logix's opinion the site is suitable for the proposed land use. However, due to the limitations of the vapour assessment it is unknown currently whether vapour contamination is worse at depth. Considering the MOS and that basements are proposed further vapour investigation at depth is considered necessary to qualify the potential vapour exposure risk.*
82. Following the above, Councils Environmental Health Officer has requested that a condition of consent be drafted to require a further vapour investigation, and also to require an unexpected finds protocol to be drafted in the event any contaminated soils are encountered. These items will be conditioned accordingly.

### **State Environmental Planning Policy (Biodiversity and Conservation) 2021**

83. The following chapters are of relevance to the proposal:
- Chapter 2 Vegetation in non-rural areas
84. Chapter 2 of the SEPP relating to vegetation in non-rural areas applies to the site.
85. Chapter 2 regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.
86. The aims of this Chapter are to protect the biodiversity values of trees and other vegetation in non-rural areas of the State and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation. This policy is applicable pursuant to Clause 2.3 of the SEPP as the site is within both North Sydney Council and the MU1 Mixed Use zone.
87. The proposed development seeks consent for the removal of 30 existing trees including the following:
- 1 x Eucalyptus Saligna
  - 1 x Cupaniopsis Anacardioides
  - 1 x Ficus Benjamina
  - 2 x Koelreuteria Paniculata
  - 5 x Sasanqua Camelia
  - 7 x Pyrus Calleryana
  - 13 x Platanus Orientalis

88. The tree removal was assessed by Council's Landscape Officer who does not support the removal of T17-T28 within the Grosvenor Lane public car park. Whilst it is a legitimate concern that mature trees are being removed from the public car park, it is considered reasonable given it is required to allow for the redevelopment of the subject site, commercially zoned land within a town centre. Retention of these trees would result in a fundamentally different development outcome with regards to the basement parking levels, significantly reducing the amount of underground public parking provided, which on balance would thwart achievement of the vision for the centre and future pedestrian plaza. Notwithstanding this, whilst the Applicant has not provided any details for replacement tree planting, Conditions have been imposed by Council's Landscape Officer to require commensurate replacement planting.

#### Chapter 6 Water Catchments

89. Chapter 6 of the SEPP relating to Water Catchments applies to the site.
90. All stormwater from the proposed development can be treated in accordance with Council's Stormwater Management Policy and would satisfy the relevant provisions of Chapter 6, subject to specific construction requirements which will be conditioned.

### **State Environmental Planning Policy (Transport and Infrastructure) 2021**

91. The following chapter is relevant to the proposal:

#### Chapter 2 Infrastructure

92. Chapter 2 aims to facilitate the effective delivery of infrastructure across the State by improving regulatory certainty and efficiency, providing greater flexibility in the location of infrastructure and service facilities, allowing development of surplus government owned land, identifying environmental assessment categories and matters to be considered in assessments, and providing for consultation with relevant public authorities.
93. The application was referred to Ausgrid pursuant to Clause 2.48 of the SEPP. No objection was received from Ausgrid.
94. Clause 2.122 of the SEPP relates to traffic generating development and requires that DAs for certain traffic generating development, as set out in Column 1 Schedule 3 of the policy be referred to TfNSW and that any submission from the TfNSW be considered prior to the determination of the application.
95. The application was referred to Transport for NSW who have provided their concurrence subject to requirements and conditions as detailed within their letter.

### **State Environmental Planning Policy (Industry and Employment) 2021**

96. The following chapter is relevant to the proposal:

#### Chapter 3 Advertising and Signage

97. Chapter 3 applies to all signage that can be displayed with or without development consent and is visible from any public space.
98. The proposal does not provide details of signage content but identifies signage zones across the elevations of the proposal.
99. Whilst the signage zones appear reasonable any future signage for the development will need to be proposed as part of a separate development application. A condition will be imposed to this effect.



### **State Environmental Planning Policy (Sustainable Buildings) 2022**

100. The BASIX SEPP applies to the proposed development. In accordance with the requirements, a compliant BASIX certificate has been submitted with the application.

### **State Environmental Planning Policy (Planning Systems) 2021**

101. The proposal is a regionally significant development pursuant to Clause 2 of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021 as it has a CIV of more than \$30 million in accordance with the SEPP.
102. In this case the Sydney North Planning Panel is the consent authority for the subject development application.

### **State Environmental Planning Policy (Housing) 2021**

103. State Environmental Planning Policy (Housing) 2021 (Housing SEPP) commenced on 26 November 2021 and aims to incentivise the supply and ensure the effective delivery of new affordable and diverse housing. Furthermore, the Housing SEPP was amended on 14 December 2023 to further incentivise affordable housing, and to also consolidate the provisions of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development.
104. In accordance with Section 38 of the EP&A Regulations 2021, the application was formally amended by the applicant and therefore the lodgement date for the application was revised to be 7 November 2024. Therefore, SEPP 65 no longer applies to the application and instead the application is subject to the provisions under the Housing SEPP, including Chapter 4 Design of residential apartment development.
105. Chapter 4 of the Housing SEPP applies to the assessment of DAs for residential flat developments of three (3) or more storeys in height and containing at least four (4) dwellings. As such, Chapter 4 of the Housing SEPP is applicable to the proposed development and is addressed below.
106. Clause 147 of the Housing SEPP requires that the consent authority take into consideration the following as part of the determination of DAs to which the Housing SEPP applies:
- (a) the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,*
  - (b) the Apartment Design Guide,*
  - (c) any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.*
107. The application has been reviewed having regard to the criterion and design principles as set out in the ADG.
108. The tables below provide a comprehensive assessment against the principles, objectives and controls of the Housing SEPP and the ADG.

### **Design Quality Principles**

109. The proposal has been considered against the design principles under Schedule 1 of the SEPP which are addressed in turn below:
110. Principle 1 - Context and Neighbourhood Character: The proposed four storey shop top housing development respects the existing context of the town centre whilst allowing for

an increased scale and density of development for the site as anticipated by strategic and statutory planning for the centre. When considering the nature of surrounding developments, both existing and approved, the proposal aligns with the desired future character for the centre and will present a compatible form of development that will complement both the existing and future streetscape context. The proposed use for the site is consistent with the applicable controls and is contextually appropriate.

111. Principle 2 - Built Form and Scale: Amendments have been made to significantly reduce the bulk and scale of the proposed development which has resulted in a reduced height variation and a number of storeys which is consistent with the form and scale of development within the locality. The visual bulk of the development as viewed from Grosvenor Street has been significantly reduced, with a level of articulation in the built form provided that results in a suitable streetscape presentation, particularly at the street level. The proposed podium and upper level setback are in accordance with Council's requirements which prescribe a consistent built form element that allows for a suitable scale of development as it presents to the public domain.
112. Principle 3 - Density: The proposal seeks to provide a shop top housing development including a density of residential apartments which is considered appropriate within the MU1 Mixed Use zone. The density of the proposal is well supported by the provision of sufficient parking, access to public transport and commercial and retail uses, including job opportunities. The proposal provides appropriate building setbacks and in no way represents an overdevelopment of the site, particularly considered against the lack of adverse amenity impacts on surrounding development.
113. Principle 4 – Sustainability: The proposal achieves an appropriate outcome in terms of cross ventilation and solar access for apartments. Solar panels are to be provided to improve energy efficiency of the building.
114. Principle 5 - Landscape: The proposed deep soil, whilst not compliant with the ADG requirement, is considered to be an appropriate outcome for the site considering its location within the MU1 zone. The proposed sky lobby is considered a quality space which allows for the opportunity for landscaping to provide a buffer and soften the built form.
115. Principle 6 - Amenity: The proposed development provides good amenity to the residents of the apartments noting all apartments achieve compliance with the ADG requirements for cross ventilation and solar access. Private open space in excess of the ADG requirements is also provided to most units except for Unit 3.04 and 3.11 which fall short by approximately 0.5sqm. When considering these balconies are of a regular shape and that relatively minor numerical shortfall, they are considered to offer residents with suitable levels of amenity. Notably, it will be conditioned that these balconies will not be able to support any services that would remove usable space.

Concerns were previously raised with the overshadowing impacts caused by the proposal, particularly to the Grosvenor Street car park which is to be the future plaza. Notwithstanding this, the proposal has been amended to reduce the scale of the built form which has had beneficial effects in terms of reducing the amount of overshadowing cast by the proposal.

In terms of setbacks, the building has been designed to mitigate privacy impacts through adequate building separation and screening measures where necessary.

116. Principle 7 - Safety: The development is considered to be appropriately designed to ensure a high level of safety for people visiting the site. Areas of public and private space have been clearly separated, including vehicle access. Where required entrances should be provided with secure access points.
117. Principle 8 – Housing diversity and social interaction: The proposal seeks to provide an appropriate mix of 1, 2, 3 bedroom apartments, including accessible apartments. The proposal also offers high quality communal indoor and outdoor spaces for residents to enjoy and interact.
118. Principle 9: - Aesthetics: The development achieves an appropriate design with a varied and balanced composition of elements, colours and materials.

**Table - Design considerations of Part 3 and Part 4 of the Apartment Design Guide (ADG)**

Clause	Standard	Proposal	Complies
<b>2F Building separation</b>	Up to 12m (4 storeys) Habitable/habitable - 12m Habitable/ Non-habitable – 9m Non-habitable/Non-habitable - 6m	Level 1: West – 10m East – 11.2m	No, see discussion below and at 3F
	Up to 25m (5-8 storeys) Habitable/habitable - 18m Habitable/ Non-habitable – 12m Non-habitable/Non-habitable - 9m	Level 2 (complies): West – 14.5m East – 12m	Yes
	Over 25m (9+ storeys) Habitable/habitable - 24m Habitable/ Non-habitable – 18m Non-habitable/Non-habitable - 12m	Level 3 (complies): West – 16.6m East – 13-17m	Yes
Note: Where applying separation to buildings on adjoining sites, apply half the minimum separation distance measured to the boundary. This distributes the building separation equally between sites (consider relationship with Section 3F Visual privacy).			
<b>3D - Communal open space</b>	1. Communal open space has a minimum area equal to 25% of the site.	1,087sqm (25.3%)	Yes
	2. 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)	Complies	Yes
<b>3E – Deep Soil zones</b>	1. Deep soil zones are to meet the following minimum requirements:  Where the site has an area of between	169sqm (3.9%)	No. See discussion below.

	>1500sqm – 6m min dimension  Minimum deep soil area of 7% (207.9sqm)		
<p><u>Comment on Deep Soil (3E Deep Soil Zones):</u></p> <p>The deep soil zone has an area of 3.9% of the site area due to the unavailability of land for planting as a result of the basement. Notwithstanding the non-compliance, the proposal is considered appropriate given the podium planting provided to soften the built form and meet the objectives of the deep soil requirements. The amount of podium planting provided at the Level 1 sky lobby, within the planters to balconies at Level 1, 2 and 3, and at the rooftop terrace. Soft landscaped spaces include planters with minimum 1m depth for small to medium sizes trees, as shown on the submitted Landscape Plans.</p> <p>Furthermore, the proposed landscape design includes seating opportunities, lawn area, swimming pool and outdoor kitchen facilities, all of which seek to increase the amenity of resident son the site. Therefore, the proposed soft landscaping is considered to satisfy the objectives of the requirement by providing areas for plant and tree growth and overall improved residential amenity. It is noted that the ADG says at Part 3E that deep soil planting may not be possible on sites within centres and high density areas, and where there are non-residential uses at the ground floor level. The site and proposal satisfy these criteria for a reduction.</p>			
<b>3F- Visual Privacy</b>	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <p>Up to 12m (4 storeys) Habitable - 6m Non-habitable – 3m</p> <p>Up to 25m (5-8 storeys) Habitable – 9m Non-habitable – 4.5m</p> <p>Over 25m (9+ storeys) Habitable – 12m Non-habitable – 6m</p>	<p>Level 1: West – 2.4m East – 3m</p> <p>Level 2 (complies): West – 6.9m East – 4m</p> <p>Level 3 (complies): West – 8m East – 6m</p>	<p>No, see discussion below.</p> <p>Yes</p> <p>Yes</p>
<p><u>Comment on Separation distances (3F Visual Privacy):</u></p> <p>The site is an “island allotment” bordered by Grosvenor Street to the north, Grosvenor Lane to the south, Cooper Lane to the east and Waters Lane to the west. Importantly, development to the east and west, as existing or approved, do not provide the required building setbacks in accordance with Section 3F. Indeed, the properties to the east and west provide either nil setbacks or setbacks of 1.5m, relying on the adjoining laneways for separation. This arrangement has been taken into consideration for the proposed building setbacks provided.</p> <p><u>Cooper Lane boundary setback</u></p> <p>The properties to the west of the site on the opposite side of Cooper Lane provide a nil setback for the full length and height of the buildings which reach between 4 and 5 storeys in height. The properties contain balconies at this elevation built to the site</p>			

boundary. The setback up to four levels is required to be 6m with a total building separation between the habitable spaces of each property of 12m.

Whilst the properties to the west provide nil setbacks to Cooper Lane, the proposal achieves a setback of 6m or more for Level 2 and 3 and an overall building separation in excess of the 12m requirement, reaching 14.5m for Level 2 and 16.5m for Level 3.

With regard to Level 1, the proposal provides a 2.4m setback to residential balconies and an overall building separation to the balconies and windows of the west adjoining properties of 10m. Whilst this falls short of the 12m building separation requirement, the proposal is considered to provide a suitable setback in order to equitably share the separation requirement.

Indeed, given the west adjoining properties are provided with nil setbacks, it would be unreasonable to burden the subject site and proposal to provide a 4.4m building setback to achieve the 12m separation. The proposed separation distance is considered acceptable in terms of achieving a suitable level of visual privacy for all properties at this interface.

Notably, a landscaped planter is proposed within the side setback along the length of the elevation, which will aid in privacy in conjunction with the balcony balustrades. It is also noted that given the size of the balconies that the main use of the space would likely occur closer to the living space where the level above will provide an awning, rather than the edge of the balconies which will be open to the elements.

With regard to the habitable rooms, the proposal complies with the building separation requirements at Level 1.

Ultimately, the building separation at this elevation is considered acceptable and the proposal continues to achieve the objective of the control to create reasonable levels of external and internal visual privacy.

#### Waters Lane boundary setback

The properties to the east of the site on the opposite side of Waters Lane provide a building setback of 1.5m, including the approved five (5) storey development at 12-14 Waters Lane. The properties contain balconies at this elevation with a setback of 1.5m. The setback up to four levels is required to be 6m with a total building separation between the habitable spaces of each property of 12m.

At Level 1, the proposal provides a building setback of only 3m to the site boundary. Despite this non-compliance, the proposal is considered acceptable when noting that building separation must be shared equitably between adjoining properties. The existing and approved developments to the east provide only a 1.5m setback to the laneway and therefore to burden the site with a greater building setback than already proposed is considered to be an unreasonable outcome.

Ultimately, the proposal allows for a building separation of approximately 11.2m which is considered acceptable to achieve visual privacy for all properties at this interface, particularly at this level. Additional privacy screening is also offered by the mature tree plantings which are to be retained along Waters Lane.

At Level 2, the proposal provides a building setback of only 4m to the site boundary, however the 12m building separation requirement is achieved to properties on the opposite side of the laneway as a result of the distance afforded by the lane itself.

Notably, the properties on the opposite side of the laneway, including the approval at No. 12-14 Waters Lane provide a 1.5m setback.

The proposal achieves the 6m setback requirement at Level 3 allowing for a building separation of 12m or greater, as required.

Overall, the proposed building setbacks and resulting building separation outcomes are considered to be acceptable and achieve the objectives of the relevant ADG sections.

<b>3G – Pedestrian Access and entries</b>	<p>Building entries and pedestrian access connects to and addresses the public domain</p> <p>Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge</p>	Separate lobby entries have been provided to the residential and commercial components of the development.	Yes
<b>3H-Vehicle Access</b>	Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.	The vehicular access point for residents is located off Cooper Lane, separate from pedestrian access off Waters Lane.	Yes
<b>3J-Bicycle and carparking</b>	<p>For development in the following locations:</p> <ul style="list-style-type: none"> <li>On sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>On land zoned and sites within 400m of land zoned B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre.</li> </ul> <p>The minimum car parking requirement for residents and visitors is set out in the Roads and Maritime Services Guide to Traffic Generating Developments (RMS), or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>Councils DCP prescribes a maximum of 0.5 spaces per 1</p>	<p>The Council's DCP are the relevant controls applicable to this assessment.</p> <p>39 Residential spaces proposed</p> <p>162 spaces for retail/commercial have also been provided. Furthermore, an additional 104 public parking spaces are provided to replace the existing Grosvenor Lane public car parking.</p> <p>A loading dock has been provided and</p>	Yes, the maximum residential spaces are numerically compliant.



	<p>bedroom unit and 1 space per dwelling for 2+ bedrooms.</p> <p>Maximum Residential spaces permitted = 39 spaces.</p>	accessed via Grosvenor Street.	
<b>3J-2</b>	Conveniently located and sufficient numbers of parking spaces should be provided for motorbikes and scooters.	Provided in accordance with minimum rates of DCP.	Yes
	Secure undercover bicycle parking should be provided that is easily accessible from both the public domain and common areas.	Provided in accordance with minimum rates of DCP.	Yes
	Conveniently located charging stations are provided for electric vehicles, where desirable.	Can be provided	Can be provided
<b>4A- Solar and daylight access</b>	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter in the Sydney Metropolitan Area	A minimum of 39/42 apartments (92%) receive a minimum of 2 hours of solar access during mid-winter.	Yes
	A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm in midwinter	3/42 apartments (7%) receive no direct sunlight.	Yes
<b>4B-3 Natural Ventilation</b>	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.	67% (28) of apartments are natural cross ventilated	Yes
<b>4C-Ceiling Heights</b>	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: Habitable rooms = 2.7m Non-habitable rooms = 2.4m	A minimum 3200mm floor to floor height has been provided to enable a minimum 2.7m ceiling height to be achieved to the residential component.	Yes
	3.3m for ground floor and first floor in mixed use areas to promote flexibility of use	Ground floor exceeds 3.3m in height. The first floor has a ceiling height of only 3m. This is however considered acceptable given the nature of the ground plane which includes a	No

		mezzanine level as well.	
<b>4D- 1 Apartment size and layout</b>	<p>Apartments are required to have the following minimum internal areas:  Studio = 35sqm  1 bedroom = 50sqm  2 bedroom = 70sqm  3 bedroom = 90sqm</p> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each.</p>	The apartments achieve the minimum internal area requirements.	Yes
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms	Every habitable room has window openings larger than 10% of the room area.	Yes
<b>4D-2 Apartment size and layout</b>	<p>Habitable room depths are limited to a maximum of 2.5 x the ceiling height  In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</p>	<p>Satisfactory.</p> <p>It is noted that some open plan layouts exceed 8m in depth from their balconies, however, the size of glazing provided to these spaces is considered sufficient to accommodate the apartment depth. Furthermore, it is considered that the intention of this requirement is for an 8m depth to windows rather than glazed doors which offer more lighting and ventilation.</p>	Yes
<b>4D-3 Apartment size and layout</b>	Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space).	All master bedrooms have a minimum internal size of 10sqm.	Yes

	Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	All bedrooms have minimum 3m dimensions.	
	Living rooms or combined living/dining rooms have a minimum width of: -3.6m for studio and 1 bedroom - 4m for 2 and 3 bedroom apartments	3.6m for 1 bedroom 4m for 4 bedroom	Yes
<b>4E- Private Open space and balconies</b>	<p>All apartments are required to have primary balconies as follows:</p> <p>-1 bedroom = 8sqm/2m depth</p> <p>-2 bedroom = 10sqm/2m depth</p> <p>-3+ bedroom = 12sqm/2.4m</p> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>	<p>Each dwelling has access to a balcony of the required area and depth except for Unit 3.04, Unit 3.11 and Unit 3.13. These units contain balcony areas which measure only 11.5sqm. Given the minor shortfall in area and that the balcony achieves the minimum depth and is of a standard shape, the balcony size is considered acceptable on merit.</p> <p>Notwithstanding this it will be conditioned that these balconies do not contain any air conditioning units, hot water systems or other services.</p> <p>It is noted that the balcony of Unit 3.13 indicates an area of 7sqm, however upon measuring the balcony it achieves the 8sqm minimum requirement.</p>	No. Acceptable on merit.

<b>4F- Common circulation areas</b>	The maximum number of apartments off a circulation core on a single level is eight	No more than four (4) units are provided to any one core on a single level.	Yes
	For Buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Not applicable.	N/A
<b>4G- Storage</b>	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <p>1 bedroom = 6m<sup>3</sup>  2 bedroom – 8m<sup>3</sup>  3 bedroom – 10m<sup>3</sup></p> <p>At least 50% of storage is to be located within the apartment.</p>	Each unit is provided with sufficient storage space with at least 50% located in individual units. The remaining is located in a dedicated secure location within the residential areas of the basement.	Yes
<b>4H- Acoustic Privacy</b>	<p>Adequate building separation is provided within the development and from neighbouring buildings/adjacent uses. Window and door openings are generally orientated away from noise sources</p> <p>Noisy areas within buildings including building entries and corridors should be located next to or above each other and quieter areas next to or above quieter areas</p> <p>Storage, circulation areas and non-habitable rooms should be located to buffer noise from external sources</p>	<p>Building separation, orientation and arrangements are designed to mitigate noise pollution with openings shielded through setbacks and other arrangements from noise sources. In addition, the building must comply with the specific requirements of the NCC – BCA.</p> <p>The application is accompanied by an acoustic report addressing potential noises issues on the site from the roadways, relating to traffic generation and vehicle movements,</p>	Yes

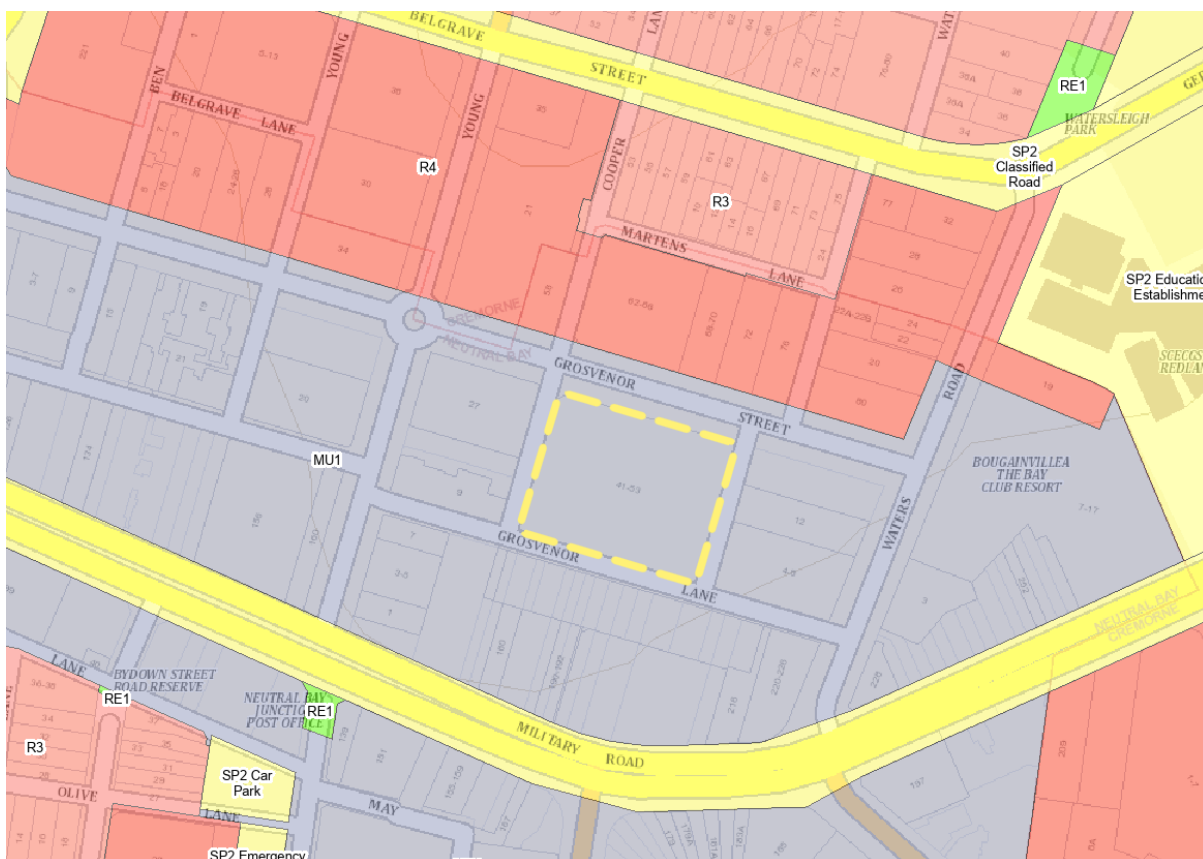
		noise from commercial usage and from mechanical plant.	
<b>4J – Noise and Pollution</b>	<p>To minimise impacts the following design solutions may be used:</p> <ul style="list-style-type: none"> <li>• physical separation between buildings and the noise or pollution source</li> <li>• residential uses are located perpendicular to the noise source and where possible buffered by other uses</li> <li>• buildings should respond to both solar access and noise. Where solar access is away from the noise source, non-habitable rooms can provide a buffer</li> <li>• landscape design reduces the perception of noise and acts as a filter for air pollution generated by traffic and industry</li> </ul>	<p>Site layout and floor plan design seeks to minimise acoustic disruption on the enjoyment of the future residents/users of the development. The communal open space within the development is located on Level 1, shielded from Grosvenor Street and located at the rooftop, elevated above the street.</p>	Yes
<b>4K – Apartment Mix</b>	<p>A range of apartment types and sizes is provided to cater for different household types now and into the future.</p> <p>The apartment mix is distributed to suitable locations within the building</p>	<p>The development offers a mix of 1, 2 and 3 bedroom apartments across all three (3) residential levels.</p>	Yes
<b>4L – Ground Floor Apartments</b>	<p>Street frontage activity is maximised where ground floor apartments are located.</p> <p>Design of ground floor apartments delivers amenity and safety for residents.</p>	<p>No ground floor apartments proposed.</p>	N/A
<b>4M - Facades</b>	<p>Facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale.</p>	<p>The façade treatment is consistent with the desired streetscape character and the context of the area.</p>	Yes
<b>4N – roof design</b>	<p>Roof treatments are integrated into the building design and positively respond to the street. Opportunities to use roof space for residential accommodation and open space are maximised.</p>	<p>Complies. The proposed roof top communal open space is considered to be appropriate and</p>	Yes

	Incorporates sustainability features.	suitable for the site.	
<b>4O – Landscape Design</b>	Landscape design is viable and sustainable, contributes to the streetscape and amenity	A detailed landscape design has been prepared. Planting is provided throughout the design. The range and type of species and planting is consistent with the requirements of the ADG and DCP requirements. Impacts on trees however needs to be addressed.	Yes
<b>4P- Planting on Structures</b>	Planting on structures – appropriate soil profiles are provided, plant growth is optimised with appropriate selection and maintenance, contributes to the quality and amenity of communal and public open spaces	Deep soil and planting zones have been integrated into the design to ensure appropriate growing conditions, drainage and placement are facilitated as well as an attractive, welcoming and usable environment.	Yes
<b>4Q – Universal Design</b>	Universal design – design of apartments allow for flexible housing, adaptable designs, accommodate a range of lifestyle needs	Satisfactory.	Yes
<b>4R – Adaptive reuse</b>	Adaptive reuse as apartment of existing buildings- new additions are contemporary and complementary, provide residential amenity while not precluding future adaptive reuse. Additions to heritage items should be clearly identifiable from the original building.	Not applicable.	N/A
<b>4S Mixed Use</b>	Mixed use development are provided in appropriate locations and provide active	A range of public transport options	Yes

	street frontages that encourage pedestrian movement	are located within close proximity.  Within the development ground level uses will create active frontages, encourage movement and curiosity, and contribute to the public domain.	
<b>4U – Energy Efficiency.</b>	Development incorporates passive environmental design, passive solar design to optimise heat storage in winter and reduce heat transfer in summer, natural ventilation minimises need for mechanical ventilation	A compliant BASIX Certificate accompanies the application.	Yes
<b>4V – Water management and conservation</b>	Water management and conservation – potable water use is minimised, stormwater is treated on site before being discharged, flood management systems are integrated into the site design	The development incorporates appropriate stormwater measures and Council's Development Engineers are satisfied with the design subject to conditions.	Yes
<b>4W – Waste Management</b>	Waste management – storage facilities are appropriately designed, domestic waste is minimised by convenient source separation and recycling	The proposal provides suitable waste management facilities to meet Councils DCP subject to conditions.	Yes
<b>4X – Building Maintenance</b>	Building design provides protection from weathering Enables ease of maintenance, material selection reduces ongoing maintenance cost	The design incorporates a mix of external finishes that require minimal maintenance.	Yes

#### **North Sydney Local Environmental Plan 2013 (NSLEP 2013)**

119. The subject development site is zoned MU1 Mixed Use under the NSLEP 2013 as shown in **Figure 21** below:



**Figure 21:** Land Zoning map with the subject site shown MU1 zone.

The proposed development being defined as ‘shop top housing’ is a permissible land use within the MU1 Mixed Use zone

The objectives of the MU1 Mixed Use zone are:

- (a) To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.
- (b) To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.
- (c) To minimise conflict between land uses within this zone and land uses within adjoining zones.
- (d) To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- (e) To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.
- (f) To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses concentrated on the lower levels and residential uses predominantly on the higher levels.

The proposal is considered to satisfy all of the objectives of the MU1 Mixed Use zone.

120. An assessment of the proposal against the relevant LEP clauses and development standards is as follows:

Clause	Standard	Proposal	Complies
<b>Part 2: Permitted or Prohibited Development</b>			



<b>2.2 Zoning of Land to which Plan applies</b>	MU1 Mixed Use	The proposed application is for mixed use development in the form of shop top housing comprising residential apartments and commercial premises. The proposal is permitted within the MU1 zone.	Yes
<b>2.3 Zone objectives and Land use table</b>	Objectives of zone to be satisfied	The proposal satisfies the objectives MU1 zone.	Yes
<b>2.7 Demolition</b>	Demolition requires development consent.	Consent for demolition of existing structures is sought.	Yes
<b>Part 4: Principal Development Standards</b>			
<b>4.3 Height of Buildings</b>	Maximum permitted height as per height of building map:  16m	20.7m Variation of 4.7m (29.3%)	No, see clause 4.6 submitted and discussion below.
<b>Note:</b> Clause 4.6 objection has been submitted requesting a variation to the development standard for the maximum building height.			
<b>4.4A Non – Residential Floor Space Ratio</b>	Minimum required 0.5:1	0.72:1	Yes
<b>4.5 Calculations of Floor space and Site area</b>	Floor space to be calculated in accordance with Clause.	Floor space has been calculated in accordance with this clause.	Yes
<b>4.6 Exceptions to Development Standards</b>	A Clause 4.6 variation request has been submitted in relation to the proposed building height.		
<b>Part 5: Miscellaneous Provisions</b>			
<b>5.10 Heritage Conservation</b>	(5) <b>Heritage assessment</b> The consent authority may, before granting consent to any development— (a) on land on which a heritage item is located, or (b) on land that is within a heritage conservation area, or (c) on land that is within the vicinity of	The subject property is not a scheduled heritage item and is not located in a heritage conservation area. It is however, located in the immediate vicinity of the following heritage items: 228 Military Rd – Former CBC Bank (I0677)	Yes

	land referred to in paragraph (a) or (b), require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.	194 & 196 Military Rd – Shops (I0675 and I0676).  The application has been referred to Council's Heritage Team who have raised no objection to the proposal.	
<b>Part 6: Additional Local Provisions</b>			
<b>6.10 Earthworks</b>	(2) Development consent is required for earthworks unless— (a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or  (b) the earthworks are ancillary to development that is permitted without consent under this Plan or to development for which development consent has been given.	The proposal includes the provision of four (4) levels of basement car parking.  The amount of excavation is considered reasonable based on the parking requirements and undergrounding of public parking.	Yes
<b>6.12A Residential flat buildings in Zone MU1 Mixed Use</b>	(1) The objective of this clause is to ensure that development for residential flat buildings on land in Zone MU1 Mixed Use forms part of mixed use developments and does not impact on	The development is a mixed use development comprising commercial and residential apartments above.	Yes

	the activation of street frontages.		
	(2) This clause applies to land in Zone MU1 Mixed Use.	The site is zoned MU1 Mixed Use	Yes
	(3) Development consent must not be granted for development for the purpose of a residential flat building on land to which this clause applies unless the consent authority is satisfied that— (a) the residential flat building is part of a mixed use development, and (b) no part of the ground floor of the building that is facing a street is used for residential accommodation.	The development contains commercial premises on the ground and first floor with residential apartments above.	Yes

## Clause 4.6 Exceptions to development standards

### Detailed assessment of variation to Clause 4.3 Height of Buildings

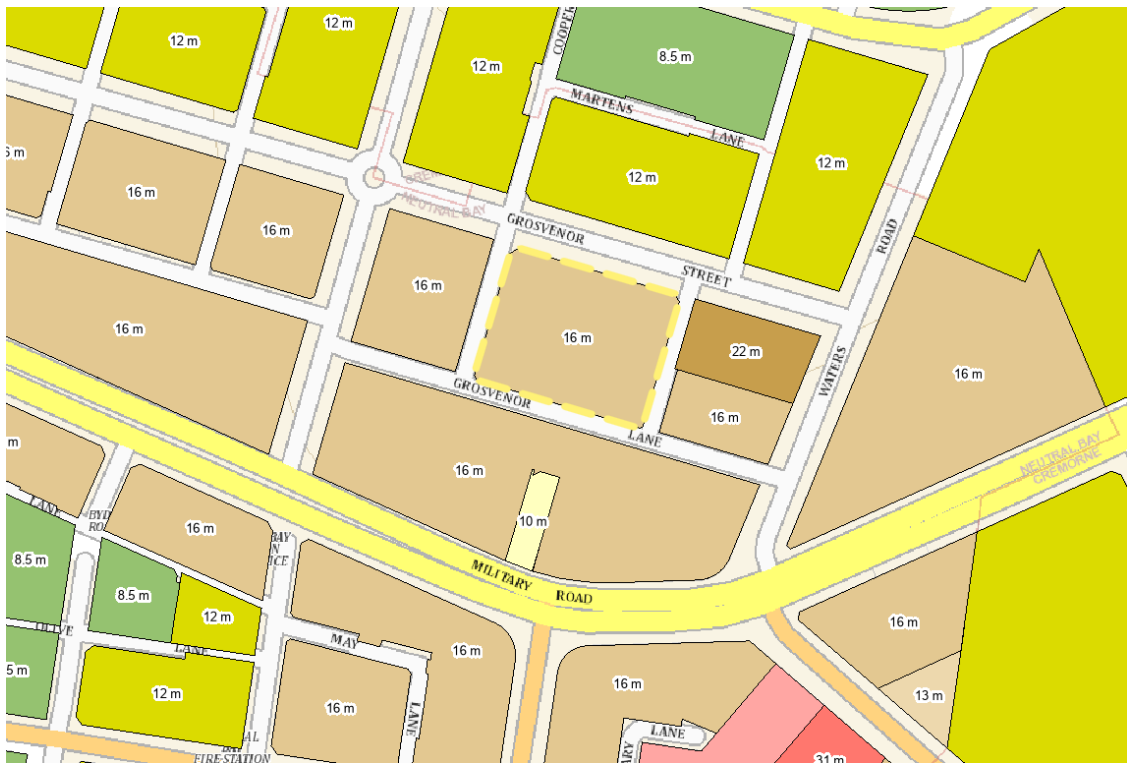
121. Clause 4.3 of the North Sydney Local Environmental Plan 2013 (NSLEP) relates to the maximum permitted building height for a site and refers to the Height of Buildings Map. The relevant map identifies the subject site as having a maximum height of 16m. Building Height is defined as:

*“Building height (or height of building) means:*

- In relation to the height of a building in metres – the vertical distance from ground level (existing) to the highest point of the building, or*
- In relation to the RL of a building – the vertical distance from the Australian Height Datum to the highest point of the building*

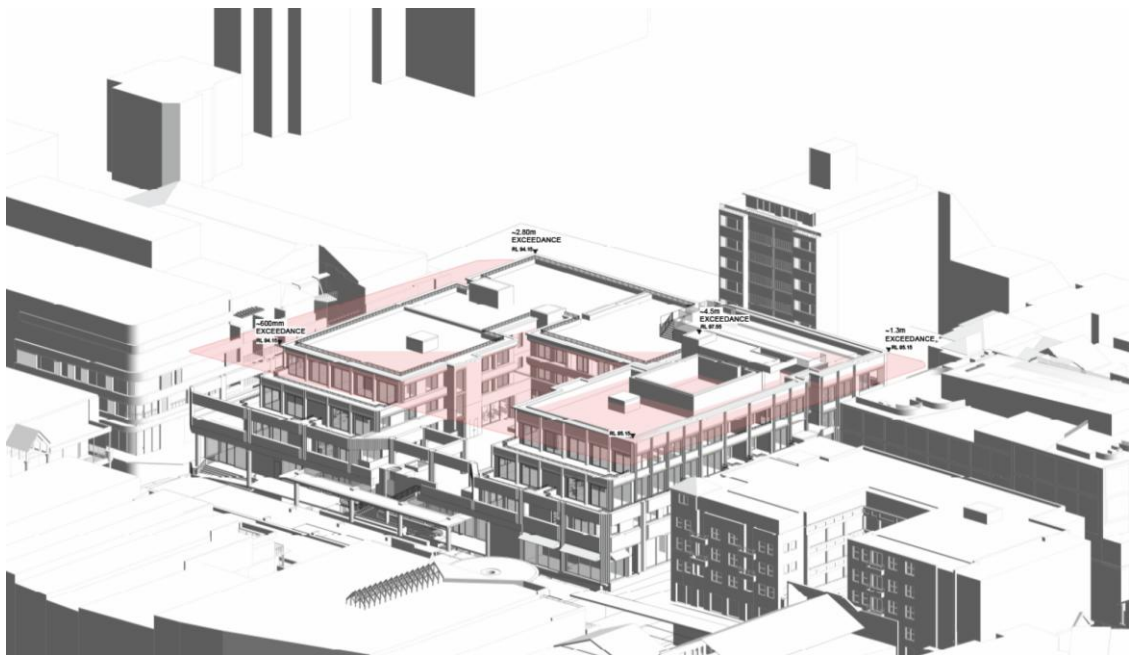
*including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.”*

The maximum height zones within the immediate area are shown below:



**Figure 22:** Maximum Building height map with the subject site shown 16m.

The location and extent of the non-compliance is provided in the image below:



**Figure 23:** LEP Height plane drawing which illustrates the components which are above the height control, viewed looking north towards the site (Source: SJB Architects).

122. The proposed development seeks a variation to the development standard relating to height (Clause 4.3). The NSLEP identifies a maximum height control of 16m. The building is proposed to sit at a height of 18.8m to the roof of the building and 20.7m to the top of the roof plant. As such the proposal exceeds the height limit by a maximum of 4.7m resulting in a numerical variation of 29.3% to the development standard.

123. Any variation to a statutory control can only be considered under Clause 4.6 – Exceptions to Development Standards of the NSLEP. An assessment of the proposed height against the survey plan levels was conducted to indicate the Applicant's calculations are generally accurate.
124. Clause 4.6(1) outlines the objectives of the standard which are to “*provide an appropriate degree of flexibility in applying certain development standards to particular development*” and “*to achieve better outcomes for and from development by allowing flexibility in particular circumstances*”.
125. Clause 4.6(3) states that:
- “Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard”*
126. To support the non-compliance, the applicant has provided a request for a variation to Clause 4.3 in accordance with Clause 4.6 of NSLEP 2013. The Clause 4.6 request for variation is assessed as follows:

***Is the planning control in question a development standard?***

127. The Height of Buildings control under Clause 4.3 of the North Sydney Local Environment Plan 2013 is a development standard.

***What are the underlying objectives of the development standard?***

128. The objectives of the Height of Buildings development standard under Clause 4.3 of NSLEP 2013 are:
- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) to promote the retention and, if appropriate, sharing of existing views,*
- (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) to 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,*
- (g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone C4 Environmental Living.*

***Compliance is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a))***

129. There have been several Court cases that have established provisions to assist in the assessment of Clause 4.6 statements to ensure they are well founded and address the provisions of Clause 4.6.

130. In *Wehbe v Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

*“An objection under State Environmental Planning Policy 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.”*

131. The judgment goes on to state that:

*“The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”*

132. Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation):

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

133. The Clause 4.6 statement was prepared having regard to the recent court cases and their judgements.

134. Applicants comment: “ It is sufficient to demonstrate only one of these ways to satisfy Clause 4.6(3)(a) (*Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22] and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].  
Nonetheless, we have considered each of the ways as follows.

3.1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

*The following table considers whether the objectives of the development standard are achieved notwithstanding the proposed variation (First Test under Wehbe).*

Table 1: Consistency with Objectives of Clause 4.3 – Height of Buildings


OBJECTIVE	DISCUSSION
<p>4.3 Height of Buildings (1) The objectives of this clause are as follows –</p>	
<p>a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,</p>	<p>Rather than stepping down with the topography, the building utilises the sloping site to achieve a supermarket at grade with the future public plaza, to promote seamless activation and access between the retail space and future plaza space.</p>
<p>b) to promote the retention and, if appropriate, sharing of existing views,</p>	<p>SJB Architects has undertaken an assessment of the neighbouring property at 62-66 Grosvenor Street, which, due to its height and proximity, is likely to have the greatest potential for views, from its upper level apartments, to be affected by the non-compliant height of the proposed development.</p> <p>This assessment found:</p> <ul style="list-style-type: none"> <li>• There were 14 apartments which faced south towards the subject site;</li> <li>• There were also 6 townhouses and 10 apartments facing north away from the subject site.</li> <li>• Out of the 14 apartments facing south, each apartment in this orientation has two aspects, that being the living room and the kitchen.</li> <li>• Any outlooks to the south increase up the levels of the building.</li> </ul> <p>A search has been undertaken using real estate advertising which includes images of outlooks and vistas from the apartments for sale. A search of these databases demonstrates that the 14 apartments facing this site do not enjoy any important views to the harbour, cityscape or iconic views.</p> <p>This is demonstrated in the following figures:</p>  <p>Figure 7: Outlook from the balcony for Unit 30/62-66 Grosvenor Street Neutral Bay (Source: onthefhouse.com.au)</p>



Figure 8: Outlook from Unit 29/62-66 Grosvenor Street Neutral Bay with site highlighted in orange bubble (Source: onthefhouse.com.au)



Figure 9: Outlook from Unit 26/62-66 Grosvenor Street, Neutral Bay with subject site shown in orange bubble (Source: realestate.com.au)

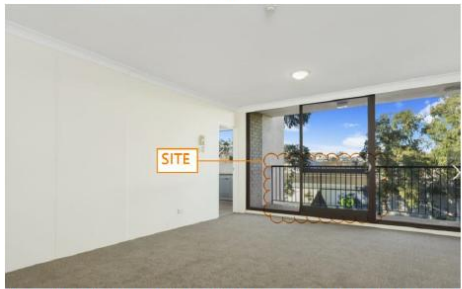


Figure 10: Outlook from Unit 22-62-66 Grosvenor Street, Neutral Bay with subject site shown in orange bubble (Source: realestate.com.au)

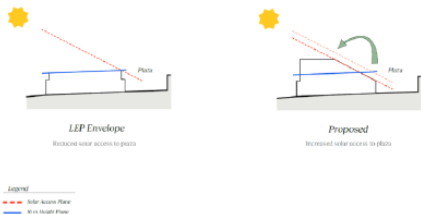


Figure 11: Outlook from the balcony of Unit 21/62-66 Grosvenor Street Neutral Bay with subject site shown in orange bubble (Source: Realestate.com.au)

*The above images indicate that views from lower level apartments of No. 62-66 Grosvenor are relatively limited and largely only of sky over the top of the subject site. At the higher levels of the building, the aspect opens up over the subject site, but is still relatively limited, generally extending to buildings fronting Military Road and the sky above. The proposed non-compliant height would at worst interrupt sky views from lower level apartments and mid-distance 'townscape' views from the upper levels. There would be some impact on these views from a height compliant development on the site. Whilst such impacts will be marginally greater than those associated with a height compliant building, given the relative limitations of the existing views and of the likely*



	<p>additional interruption to those views by the non-compliant elements, these impacts are not unreasonable in the circumstances.</p>
<p>c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,</p>	<p><b>Existing dwellings</b>  The non-complying elements will cause some additional overshadowing of existing balconies and living areas of adjoining dwellings directly to the east and west of the site compared to the current situation and to a complying height development, as shown in the accompanying overshadowing study.</p> <p>The orientation of the adjoining dwellings to the east and west of the subject site ensures that overshadowing from the proposed development will only affect those dwellings in the morning or afternoon respectively. The solar access study prepared by SJB Architects accompanying this revised DA demonstrates that the living areas of the building to the east maintain 2 hours or more of solar access at mid-winter. All living areas to the building to the west receive at least 3 hours solar access at mid-winter.</p> <p>Figure 12: Revised shadow diagram on the winter solstice at 9am (Source: SJB Architects)</p> <p>Figure 13: Revised shadow diagrams at 12pm on winter solstice (Source: SJB Architects)</p> <p>Figure 14: Revised shadow diagrams at 3pm on winter solstice (Source: SJB Architects)</p>

	<p><i>Public reserves and streets</i></p> <p><i>Maintaining and optimising solar access to the proposed public plaza is the proposed building's key design driver and contributor to its height non-compliance. A height (and setback) compliant building would have a significantly greater overshadowing impact on the plaza than the proposed building, based on the design principle shown below.</i></p>  <p><i>Figure 15: Building envelope plane for the proposed plaza compared to NSLEP envelope (Source: SJB Architects)</i></p> <p><i>Detailed solar studies have been undertaken by SJB Architects to demonstrate that 50% of the plaza maintains 3 hours of solar access and 69% of the area maintains 2-hour solar access under the proposed design, even with the non-complying elements of the height.</i></p> <p><i>Optimising solar access to the plaza results in a 'loss' of floorspace that would otherwise be accommodated in the southern part of the site under a height complying scheme. As will be discussed later, redistribution of this 'lost' floor space elsewhere on the site is necessary for the viability of the proposal and delivery of its public benefit offerings.</i></p> <p><i>To achieve this, the redistributed floor space inevitably exceeds the height standard towards the central and northern parts of the site.</i></p>
<p><i>d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings.</i></p>	<p><i>The non-complying elements will cause little overlooking and associated privacy concerns between existing balconies and living areas of any adjoining dwelling and proposed dwellings on the subject site.</i></p> <p><i>The proposed building separation between this site and the surrounding properties meets that as listed within the Apartment Design Guide (ADG). One of the key intents of the building separation guideline is to ensure that proposed dwellings do not impinge on the privacy of existing dwellings. Meeting or exceeding the minimum building separation requirements as listed ensures this.</i></p>
<p><i>e) to ensure compatibility between development, particularly at zone boundaries</i></p>	<p><i>The Courts have held that "compatibility" does not mean 'sameness'. In Project Venture v Pittwater Council, Roseth SC stated that: "It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance".</i></p> <p><i>The non-complying parts of the building are consistent with the adjoining and surrounding buildings. The proposal in the context of the surrounding street can be seen in the following 3D models:</i></p>

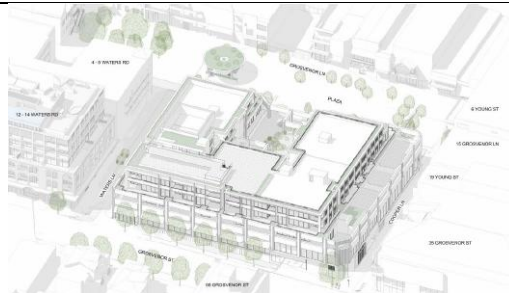


Figure 16: Revised 3D Modelling from the north (Source: SJB Architects)

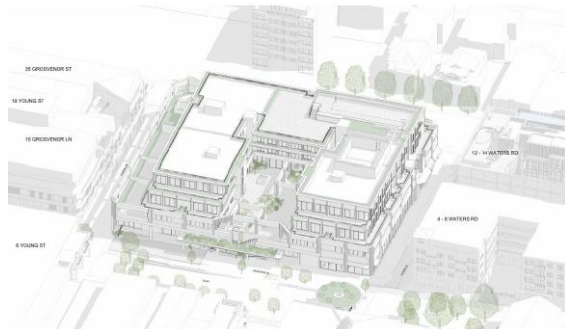


Figure 17: Revised 3D Modelling from the south (Source: SJB Architects)



Figure 18: Revised 3D Modelling to the east (Source: SJB Architects)

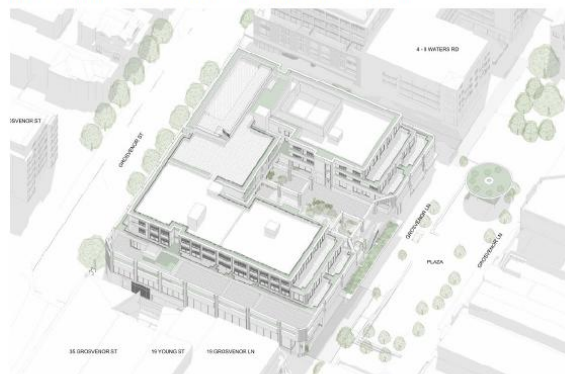


Figure 19: Revised 3D Modelling to the west (Source: SJB Architects)

f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.

The Courts have held that for areas in transition, the desired future character is a more relevant consideration than the existing character.

The desired future character of the Grosvenor Lane Car Park Precinct has been described in the Grosvenor Lane Planning Study and NSDCP since 2014. It is also described in the recently adopted Neutral Bay Town Centre Planning Study. The future character is clearly described as involving

development that delivers underground public parking that enables a public plaza to be developed on the car park site. The Study acknowledges that for this desired future character to be realised, it may involve a scale and density of development that may exceed the expectations of some of the community. The conundrum is, however, that in the absence any public funding commitment towards the underground public car park and plaza, and no allowance for additional development yield on adjoining sites to privately fund them, the most important elements of the desired future character of this area will not be realised.

The context studies prepared by SJB Architects (see above) demonstrate how the proposed height variation sits comfortably within both the existing and the desired future character of the area. The proposal is compatible in terms of scale, height, architectural style and setback with the recently approved Pienza building to the east and the existing residential building on Grosvenor Street to the north, and therefore is in harmony with the current character of the town centre, and the desired typology of the transitioning area.

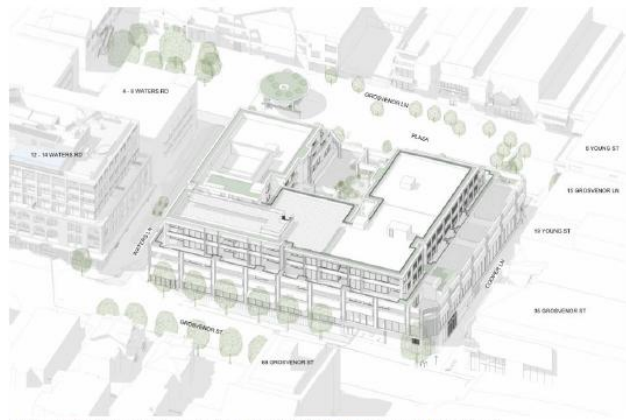


Figure 20: Revised axonometric view (north) (Source: SJB Architects)



Figure 21: No. 64 Grosvenor St (opposite site) (Source: StreetView)

We note that this objective refers to “an appropriate” scale and density of development. This requires consideration of what is appropriate in the circumstances, which can involve not only the appropriateness of the physical form of the building (as discussed above), but also the appropriateness of that scale and density (from the perspective of the development feasibility it delivers) to “promote” and realise

	<i>the desired character of the area. In both respects, we consider the proposed scale and density of the development to be “appropriate”.</i>
<i>g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone C4 Environmental Living.</i>	<i>The subject site is zoned MU1 Mixed Use Zone and therefore this objective does not apply.</i>

*As demonstrated in Table 1 above, the objectives of Clause 4.3 Height of Buildings development standard are achieved notwithstanding the proposed variation.*

*In accordance with the decision in Wehbe v Pittwater Council [2007] NSWLEC 827, Initial Action Pty Limited v Woollahra Municipal Council [2018] NSWLEC 118, Al Maha Pty Ltd v Huajun Investments Pty Ltd (2018) 233 LGERA 170; [2018] NSWCA 245 and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130 and SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112 at [31], therefore, compliance with the Height of buildings development standard is demonstrated to be unreasonable or unnecessary and the requirements of Clause 4.6(3)(a) have been met on this way alone. For completeness however, we have reviewed the remaining Wehbe “ways”, as follows.*

*3.2. The underlying objectives or purpose is not relevant to the development with the consequence that compliance is unnecessary.*

*The underlying objective or purpose is relevant to the development and therefore is not relied upon.*

*3.3. The objective would be defeated or thwarted if compliance was required with the consequent that compliance is unreasonable.*

*The objective would/ would not be defeated or thwarted if compliance was required. This reason is not relied upon.*

*3.4. The development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary.*

*The standard has/ has not been abandoned by Council in this case and so this reason is not relied upon.*

*3.5. The zoning of the land is unreasonable or inappropriate.*

*The zoning of the land is/ isn’t reasonable and appropriate and therefore is not relied upon. ”*

135. Officer’s comment: It is considered that the applicant has demonstrated that, consistent with the “first test” in *Wehbe*, *the objectives of the standard are achieved notwithstanding non-compliance with the standard*. It is considered that the proposal satisfies this test for the following reasons:



- Whilst the proposal does not necessarily step down the slope of the site, the proposed built form provides a suitable response to the context of the site by providing an at grade supermarket which promotes a seamless activation to the street frontages, particularly to the future pedestrian plaza.
- The proposal will not have any adverse impacts on surrounding properties in terms of views. The views interrupted by the non-compliant height affect only sky views and views of the town centre itself. These views are not considered significant and the impact would not be significantly reduced by a height compliant development.
- The proposal has been designed in a way that maximises solar access to existing dwellings, public reserves and streets, with particular emphasis placed on the solar retention of the future Grosvenor Lane plaza. As shown by the submitted shadow diagrams, whilst the height non-complying elements will cause some additional overshadowing to properties to the east and west, due to the orientation of the dwellings, the dwellings will maintain suitable levels of solar access during mid-winter in accordance with the ADG. Notably, the height non-compliance is setback from the site boundaries, particularly the future public plaza in order to optimise solar access to the space. Whilst floor space could be redistributed towards the southern portion of the site to achieve compliance with the building height standard, this would have a poor outcome for the future public plaza in terms of maintaining solar access.
- The proposed height breach will not have any adverse privacy impacts, particularly the non-compliant elements comply with the ADG separation requirement or are limited to service elements.
- Despite the proposed height breach, the proposal presents a four (4) storey built form which is entirely consistent with the bulk and scale of development within the immediate locality, both in terms of existing and approved built form. Indeed, the surrounding context is characterised by development reaching five (5) storeys in height, and therefore, the height breach, which is predominantly limited to roof elements, is considered to be compatible with this established local character. This is evidenced by the 3D modelling provided by the Applicant.
- When considering the character of the area it is agreed that the desired future character is of relevance. Notably, in accordance with the recently exhibited Neutral Bay Village Planning Study the site is earmarked for greater building heights than that proposed by this application. Whilst it is too early to rely on this study for the purpose of supporting additional building height, it is a reasonable consideration for understanding the desired future character for the site and locality. As such, the proposed height breach is considered to encourage a scale of development which aligns with the desired future character of the area.

136. The height control objectives articulate the ultimate function of the establishing the height of buildings. The maximum height for buildings on land is identified on the Height of Buildings Map. As previously described, the maximum building height permitted on the subject site is 16m, with the maximum height proposed being 20.7m. Whilst the proposal contravenes the standard, the proposal is considered to achieve the objectives of the control and is in keeping with the desired future character of development within this area.

**Clause 4.6(3)(b) are there sufficient environmental planning grounds to justify contravening the standard**

137. Clause 4.6 (3)(b) states that *(b) there are sufficient environmental planning grounds to justify contravening the development standard.*



138. Applicants Comment: “In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be ‘sufficient’ environmental planning grounds to justify a written request under Clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

The environmental planning ground to justify the departure of the Height of buildings development standard are as follows:

#### 4.1. Relocating gross floor area for optimal solar access

As outlined above in the assessment of the objectives, a key cause of the proposed variation is the design approach to maximise solar access available to the future public plaza. The proposed stepped design approach achieves superior solar access outcomes than envisaged by the NSDCP (refer to Figure 22 below).

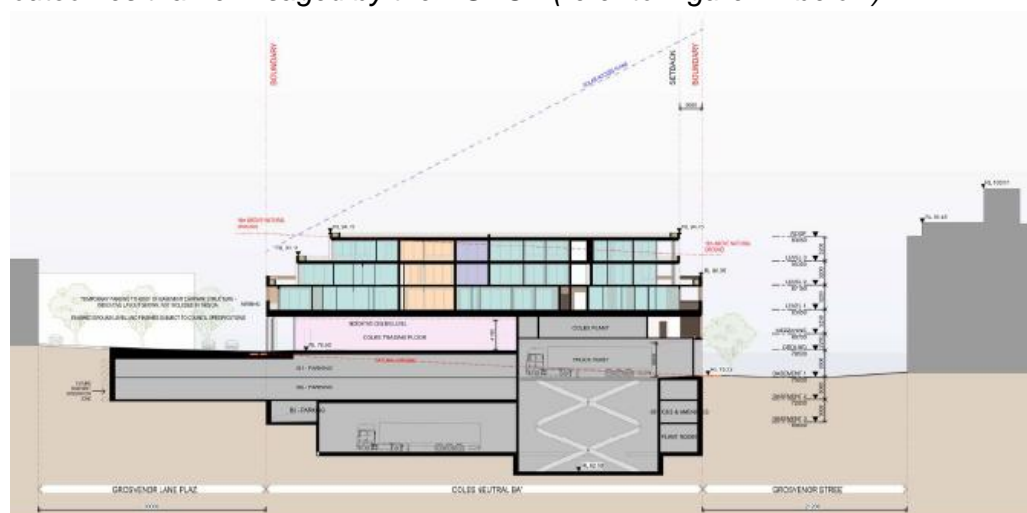


Figure 22: Section showing storeys below height limit adjacent to the plaza with 'lost' floor space shown in red cloud (Source: SJB Architects)

The redistributed floor space inevitably exceeds the height standard towards the central and northern parts of the site. However, the solar analysis demonstrates that the non-complying elements of the development do not cause any additional overshadowing of the future plaza (see above in the assessment against the objectives of the development standard).

#### 4.2. Ground level supermarket

In addition to the desire to maximise solar access and to reallocate 'lost' GFA, another key driver is the desire to locate the supermarket at ground level to the future plaza rather than below ground.

Earlier design iterations of the development showed the supermarket below ground level. A below ground supermarket would allow more profitable residential GFA to be constructed under the 16m height standard. However, following consultation with

*Council and the community, this was deemed inconsistent with community expectations.*

*The implication of this decision is that because of the significantly greater floor to ceiling height required for a supermarket compared to residential development, the overall building height is increased for the same number of storeys. A height complying development with a ground level supermarket therefore reduces the number of achievable residential storeys, which affects the feasibility of the development.*

#### **4.3. Scale comparison with 'complying scheme'**

*The NSLEP does not impose a maximum FSR on most sites in the LGA. Instead, it uses building height and NSDCP controls such as setbacks as a mechanism to establish appropriate building form and scale. As such, whilst it is not possible to directly calculate the maximum GFA achievable under a 'FSR complying scheme' and compare it to the proposed GFA, the applicant has undertaken some analysis to derive a reasonable basis for comparison.*

*The total GFA of the proposed development is 9,460sqm. SJB Architects has calculated that a fully height complying scheme, inclusive of a basement supermarket, would achieve 10,897sqm of GFA. The proposed scheme represents a GFA 13% less than a notionally 'complying' scheme.*

*This demonstrates that the bulk, scale and intensity of development on the site is consistent with what could be expected from a height compliant scheme.*

139. Officer's Comment: The planning grounds established by the Applicant are considered sufficient to justify contravening the development standard. The height non-compliance is driven by the provision of a ground level supermarket, which by nature require greater floor to ceiling heights compared to residential development and even smaller retail premises. The decision to provide a ground level supermarket rather than locate it underground is considered to be a superior outcome for the community and for the activation of the future public plaza. The implication of this decision results in an increase to the overall building height and a resulting height breach, despite only four (4) storeys being provided, as envisaged by the 16m building height limit.

It is also important to highlight that the extent of the height non-compliance is limited to roof elements and services rather than a full storey, and therefore, visually represents a scale of development which is reasonably anticipated by the current planning controls. When considering the anticipated bulk and scale of development it must also be acknowledged that the site is earmarked for greater building height in accordance with the Neutral Bay Village Planning Study.

Whilst it is too early in the process for this study to be relied upon for greater building height, it provides some context for the desired future character of the area and it is clear that the proposed development, inclusive of the height breach, will fit that context, whilst also being compatible with the current context and surrounding built form reaching four (4) storeys in height.

The Applicant also submits that the design of the built form has located floor space in a way that steps back from the future public plaza in order to achieve superior solar access

outcomes than those envisaged by the NSDCP. It is agreed that the proposed building arrangement represents a good design response with a positive impact on the future public plaza.

#### **Conclusion – Assessment of Clause 4.6 Request for Variation**

140. The proposed variation is considered to be acceptable and to satisfy the provisions of Clause 4.6.
141. The proposed development satisfies the objectives of the height control as it will present a bulk and scale of development which is appropriate for the current context of the site and locality and consistent with the desired future character of the centre. The proposed design response is considered to be in the public interest through the provision of a ground level supermarket that activates the surrounding street frontages and providing a building arrangement which seeks to maximise solar access to the future public plaza.

The additional height is considered to be appropriately designed and sited within the site whereby the maximum height non-compliance to the lift overrun is centralised within the site so as to not be visually perceptible from the street level. Indeed, given the non-compliances relate to roof elements and services rather than a full storey, the development will present as a height compliant four (4) storey development to the casual observer. As a result, despite the height variation, the proposal sits at a scale which is consistent with both existing and approved development within the immediate locality and will appear sympathetic with the scale and form of development within the centre.

142. For these reasons the Clause 4.6 Statement is considered to be well-founded and there are sufficient environmental planning grounds to justify contravening the standard given that in this case the proposal satisfies the objectives of the MU1 zone and the development standard (Clause 4.3, building height control). As such the Clause 4.6 is supported.

#### **North Sydney Development Control Plan 2013 (NSDCP 2013)**

143. The proposed development is subject to the provisions of North Sydney Development Control Plan 2013 (NSDCP 2013).

The proposal needs to address and satisfy the relevant provisions of Part B of NSDCP 2013. The most relevant parts of Part B have been addressed and reproduced below:

#### **Part B Section 2 Commercial and Mixed Use Development**

Part B Section 2 of NSDCP 2013 is discussed in the table below:

<b>North Sydney Development Control Plan 2013 Part B Section 2 COMMERCIAL AND MIXED USE DEVELOPMENT</b>		
<b>Provision</b>	<b>Complies</b>	<b>Comments</b>
<b>2.2 Function</b>		
<b>2.2.1 Diversity of activities, facilities, opportunities and services</b>		
<b>P1</b> Non-residential buildings or components of buildings should incorporate a variety of different sized spaces that reflect a site's location in the commercial centre (i.e. large floor plates should be provided in higher order centres with	Yes	Floor plates have been designed for purpose, including a supermarket, which is appropriate to the commercial centre location.

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**COMMERCIAL AND MIXED USE DEVELOPMENT**

<b>Provision</b>	<b>Complies</b>	<b>Comments</b>
small floor plates in lower order centres).		
<b>P2</b> Consideration should be given to incorporating community and entertainment facilities within a development.	Yes	The proposal provides a ground floor retail presentation which will activate street frontages and integrate into the future surrounding public domain.
<b>P3</b> A variety of uses should be provided at street level, which contributes positively to economic and social vitality.	Yes	The proposed supermarket, liquor store and retail premises are provided at the street level and will positively contribute to the vitality of the centre.
<b>P4</b> Avoid blank walls that face streets and laneways at the ground level.	Yes	Blank walls are proposed where back of house facilities and services are located. This is considered reasonable on balance given the amount of activation provided by the remaining ground floor frontage and upper level activation through orientation of apartments to the street.
<b>P5</b> Enhance the amenity of the public domain to meet the needs of the workforce, residents and visitors.	Yes	Generally acceptable.
<b>P6</b> Mixed use developments within the B1 Neighbourhood Centre, B4 Mixed Use or IN2 Light Industrial zones should: (a) ensure all residential common areas of the building (including the principal entrance to the building) are accessible to all persons regardless of mobility; and (b) have the retail/commercial uses located on the ground floor, retail/commercial or residential uses on the first floor, and residential uses on upper floors.	Yes	Common areas are accessible.  Retail uses are located on the ground floor with residential uses on the upper floors.
<b>2.2.2 Maximise Use of Public Transport</b>		
<b>P1</b> Locate pick up and drop off points for public transport and taxi ranks as close as possible to public spaces and activities.	Yes	Development is located close to public transport with bus stops within close proximity.
<b>P2</b> Locate short stay (ten minute) parking spaces within or as close as possible to meeting places.	Yes	There is public parking within the basement and public parking within the vicinity in surrounding streets and carparks.
<b>P4</b> Minimise any non-residential parking on site.	No	Non-residential parking exceeds the maximum permitted as a result of the undergrounding of the Grosvenor Lane carpark spaces and additional parking spaces nominated to the public. This is

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Provision	Complies	Comments												
		considered acceptable given the surrounding on-street parking situation.												
<b>P5</b> Bicycle storage facilities are provided in accordance with Part B: Section 10 - Car Parking and Transport of the DCP.	Yes	See Section 10.												
<b>P6</b> Provide showers for use by cyclists and people that walk to work.	Yes	See Section 10												
<b>2.2.3 Mixed Residential Population</b>														
<b>P3</b> Mixed use developments incorporating residential accommodation containing 20 or more dwellings should provide a mix of dwelling sizes in accordance with Table B-2.1.  <table><tr><th colspan="2">TABLE B-2.1: Dwelling Mix</th></tr><tr><th>Dwelling Size</th><th>% of Total Dwellings</th></tr><tr><td>studio</td><td>10-20%</td></tr><tr><td>1 bedroom</td><td>25-35%</td></tr><tr><td>2 bedroom</td><td>35-45%</td></tr><tr><td>3 bedroom+</td><td>10-20%</td></tr></table>	TABLE B-2.1: Dwelling Mix		Dwelling Size	% of Total Dwellings	studio	10-20%	1 bedroom	25-35%	2 bedroom	35-45%	3 bedroom+	10-20%	No	The development provides 42 apartments as follows: 1 bed: 14% 2 bed: 29% 3 bed: 57%  The applicant has stated that the mix is in response to market demands and population trends. The proposed mix is considered acceptable given the residential market is constantly changing and that the DCP controls, being some 12 years old, may no longer align with market demand. Whilst the proposal seeks a variation to the DCP requirements the proposal clearly provides for a mix of unit sizes and types and meets the objective of the control. It is also noted that whilst the ADG encourages apartment mix it does not set a numeric for mix to be achieved.
TABLE B-2.1: Dwelling Mix														
Dwelling Size	% of Total Dwellings													
studio	10-20%													
1 bedroom	25-35%													
2 bedroom	35-45%													
3 bedroom+	10-20%													
<b>P4</b> Variations to the dwelling mix within P2 or P3 will not be considered, unless the applicant can adequately demonstrate by an authoritative analysis of current and future market demand that the suggested mix is not reasonable.	No	The applicant has stated that the mix is in response to market demands and population trends. For the reasons detailed above an analysis of the market is not considered necessary, noting that the proposal offers a mix of 1, 2 and 3 bedroom apartments with adaptable housing included.												
<b>P6</b> A minimum of 20% of dwellings in mixed use developments containing more than 5 dwellings must comprise adaptable housing, and be designed and constructed to a minimum Class C Certification under AS 4299 – Adaptable Housing.	Yes	The proposal has 12 adaptable apartments which equates to 28% of the apartments.												
<b>P7</b> Where adaptable housing is to be provided, the	Yes	Generally acceptable												

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<b>Provision</b>	<b>Complies</b>	<b>Comments</b>
adaptable housing components must: (a) be integrated into the overall design of the development, and must not be isolated; and (b) not use a different standard of materials and finishes to the remainder of the building.		
<b>P8</b> Where universally designed and adaptable dwellings are proposed, those dwellings must be clearly identified as such on the submitted development application plans.	Yes	The adaptable dwellings are labelled on the plans.  2.04, 2.06, 2.07, 2.10, 2.11, 2.13, 3.03, 3.05, 3.06, 3.09, 3.10 and 3.12
<b>P9</b> Developments requiring adaptable housing must also satisfy the provisions of Part B: Section 12 - Access of this DCP.	Yes	See discussion in Section 12
<b>P10</b> Provide services and facilities within the development that meet the needs of different population groups and build flexibility into communal spaces to meet changing needs.	Yes	Generally acceptable
<b>2.3 Environmental Criteria</b>		
<b>2.3 Clean Air</b>		
<b>P1</b> Operating plant, building materials and finishes should be incorporated that are nontoxic and reduce toxic emissions.	Yes	Generally acceptable
<b>P2</b> Discourage use of the private motor car and encourage walking, cycling and use of public transport.	Yes	The proposal provides a compliant amount of residential and retail parking which does not exceed the maximum rate. The provision of public parking is considered appropriate and a public benefit considering the future removal the Grosvenor Lane car park. Bicycle parking has been provided.
<b>P3</b> Car parking is provided in accordance with Part B: Section 10 - Car parking and Transport of the DCP.	Yes	As above the proposal complies with the DCP parking requirements, in addition to provide undergrounded public parking.
<b>2.3.2 Noise</b>		
<b>P1</b> Noise emission associated with the operation of non-residential premises or non-	Yes	A noise and vibration impact assessment report were submitted. Addressing construction noise and vibration and



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<b>Provision</b>	<b>Complies</b>	<b>Comments</b>
residential components of a building must not exceed the maximum 1 hour noise levels (LAeq 1 Hour) specified in Table B-2.3.		operational noise, recommendations are made to address compliance with EPA and DCP criteria.
<b>P2</b> In terms of determining the maximum noise levels as required by P1 above, the measurement is to be taken at the property boundary of the nearest residential premises. Within a mixed use development, the boundary is taken to be nearest floor ceiling or wall to a residential dwelling on the site.	Yes	Acoustic report indicates that noise levels were measured at the property boundary.
<b>P3</b> Despite P1 above, the noise emission associated with the operation of non-residential premises or non-residential components of a building must not exceed 5 dBA above the background maximum 1 hour noise level (LAeq 1 Hour) during the day and evening and not exceeding the background level at night when measured at the boundary of the property.	Yes	Conditioned imposed to comply with acoustic report.
<b>P4</b> Council may require the submission of an Acoustic Report to ensure compliance with P1 above.	Yes	An acoustic report was submitted with the application
<b>2.3.3 Wind Speed</b>		
<b>P1</b> Buildings should be designed to reduce wind velocity at footpaths and public outdoor spaces.	N/A	Given the height of the development, the building is not considered to have any adverse impact on winds.
<b>P2</b> Development should not result in the wind speed exceeding 13m/s at footpaths and accessible outdoor spaces.	N/A	As above.
<b>P3</b> A Wind Impact Report, prepared by an appropriately qualified person, must be submitted with any application where the proposal results in the building exceeding 33m in height.	N/A	The development does not exceed 33m in height.

<b>North Sydney Development Control Plan 2013 Part B Section 2 COMMERCIAL AND MIXED USE DEVELOPMENT</b>		
<b>Provision</b>	<b>Complies</b>	<b>Comments</b>
<b>2.3.4 Reflectivity</b>		
<b>P1</b> Buildings should provide a greater proportion of solid to void on all facades and use non-reflective materials.	Yes	Generally satisfactory
<b>P2</b> Buildings should use non-reflective glass and / or recess glass behind balconies.	Yes	Generally satisfactory
<b>P3</b> Sun shields, such as awnings, canopies and pergolas should be provided to glazed areas.	Yes	Generally satisfactory
<b>P4</b> Council may require the submission of a Reflectivity Study prepared by a suitably qualified consultant.	N/A	
<b>2.3.5 Artificial illumination</b>		
<b>P1</b> External facades of buildings should not be floodlit.	Can comply	Can be conditioned
<b>P2</b> Where external artificial illumination is proposed: (a) it should be designed and sited to minimise glare. (b) It must comply with the standards set out in Australian Standard AS 4282 – Control of the Obtrusive Effects of Outdoor Lighting.	Can comply	Standard conditions can be applied recommending compliance with Australian Standards
<b>P3</b> Illumination of roof top and/or podium level facilities is not to exceed the curfew outlined in Table B-2.4.	Can comply	Can be conditioned
<b>2.3.6 Awnings</b>		
<b>P1</b> Provide continuous, horizontal awnings on all street frontages which are activated by ground floor uses and those streets identified in the relevant area character statement (refer to Part C of the DCP), using materials that are sun, rain and wind proof.	Yes	The character statement does not require awnings to be provided. Notwithstanding this, awnings have been provided in select positions along the active frontages.
<b>2.3.7 Solar access</b>		
<b>P2</b> Developments located outside of the North Sydney Centre should be designed and sited such that solar access at the winter solstice (21st June) provides a minimum of 3 hours between	Yes	The proposal is considered to allow for appropriate levels of solar access to the adjoining developments at the winter solstice. This is demonstrated in the sun eye diagrams submitted with the proposal. With regard to overshadowing to residential development, P2 applies.

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<b>Provision</b>	<b>Complies</b>	<b>Comments</b>
the hours of 9.00am and 3.00pm to: (a) any solar panels; (b) the windows of main internal living areas; (c) principal private open space areas; and (d) any communal open space areas. located on the subject property and any adjoining residential properties. Note: Main internal living areas excludes bedrooms, studies, laundries, storage areas.		
<b>P3</b> Despite P2 above, living rooms and private open spaces for at least 70% of dwellings within a residential flat building or shoptop housing should receive a minimum of 2 hours of solar access between the hours of 9.00am and 3.00pm at the winter solstice (21st June).	Yes	The living spaces and private open spaces of adjoining properties will maintain 2 hours of solar access in mid-winter.
<b>P4</b> New development should not overshadow existing or proposed public open spaces located outside of the North Sydney Centre between 11.30am and 2.30pm.	Yes	The amount of shadow cast to the future Grosvenor Lane Plaza is considered appropriate. Notably, the extent of shadowing is less than a compliant scheme due to the careful building design and distribution of GFA.
<b>P5</b> Spaces are to be created between taller buildings to avoid a solid mass of development and to allow daylight and/or sunlight to penetrate through to pedestrian level.	Yes	The building design allows for sun to penetrate the sky lobby and the surrounding public domain.
<b>P7</b> Provide a mix of sun-protected and unprotected areas in public open space, roof top gardens and other outdoor spaces.	Yes	The communal open spaces will provide a balance of shaded spaces and spaces with direct natural light.
<b>P8</b> Avoid providing apartments within mixed use developments that have a sole orientation to the south. Where south facing apartments cannot be avoided, ensure that they are provided with adequate access to natural	Yes	There are no apartments with a single facing orientation to the south.  The proposal complies with the ADG requirements for solar access.

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light (e.g. by providing enlarged windows, skylights and the like). No more than 15% of all dwellings in the development must not receive no direct sunlight between 9am and 3pm at mid-winter.		
<b>P9</b> The use, location and placement of photovoltaic solar panels take into account the potential permissible building form on adjoining properties.	Yes	Solar panels are appropriately located on the rooftop.
<b>2.3.8 Views</b>		
<b>P1</b> Where appropriate, the opening up of views should be sought to improve the legibility of the area.	Yes	The height and scale of the proposal will not impact any existing views.
<b>P2</b> Provide public or semi-public access to top floors where possible (e.g. restaurants, roof top gardens and facilities).	No	Access to upper floors is for residents and guests only. This is considered appropriate given the development type.
<b>P3</b> Use setbacks, design and articulation of buildings to maintain street views, views from public areas and those identified in the relevant area character statement (refer to Part C of the DCP).	Yes	The proposed built form is not considered to have any adverse impacts on existing views enjoyed across the site.
<b>P4</b> Maintain and protect views identified in the relevant area character statement (refer to Part C of the DCP) from future development.	Yes	There are no significant views impacted by the proposal.
<b>P5</b> Where a proposal is likely to adversely affect views from either public or private land, Council will give consideration to the Land and Environment Court's Planning Principles for view sharing established in <i>Rose Bay Marina Pty Ltd v Woollahra Municipal Council and anor</i> [2013] NSWLEC 1046 and <i>Tenacity Consulting v Warringah Council</i> [2004] NSWLEC 140. The Planning Principles are available to view on the Land and Environment Court's website	Yes	



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<b>Provision</b>	<b>Complies</b>	<b>Comments</b>
( <a href="http://www.leg.justice.nsw.gov.au/planning_principles">http://www.leg.justice.nsw.gov.au/planning_principles</a> ).		
<b>2.3.9 Acoustic Privacy</b>		
<b>P1</b> This subsection only applies to the residential component of any mixed use development.	Noted	
<b>P3</b> Where multiple dwellings are provided within the same building, the residential components of the building shall be designed and constructed to comply with the requirements in Table B-2.7 regarding acoustic insulation of walls and floors.	Can comply	
<b>P4</b> An acoustic report prepared by a certified acoustic consultant must be submitted with all development applications which involves the construction of 4 or more new dwellings and must address the requirements to P2.	Yes	Acoustic report submitted with application.
<b>P11</b> Where dwellings are located on busy roads incorporate the following into the design of the development to reduce traffic noise within the dwelling: (a) cavity brick walls; (b) double glazing; (c) solid core doors; (d) concrete floors; and (e) recessed balconies.	Yes	Design generally includes most of these.
<b>2.3.11 Visual Privacy</b>		
<b>P1</b> Locate windows to avoid direct or close views into the windows, balconies or private open space of adjoining dwellings.	Yes	Windows and balconies have been oriented to Grosvenor Street and Grosvenor Lane where practicable. The adjoining lane ways offer suitable separation for those balconies and windows facing adjoining properties.
<b>P2</b> Where windows are located with a direct outlook to windows of an adjacent dwelling, the windows must be provided with a minimum sill height of 1.5m, or use fixed obscure glazing or other privacy devices.	No	Windows along the eastern and western elevations do not achieve a 1.5m sill height. Whilst this represents a non-compliance with the control, the proposal is considered to achieve an appropriate level of visual privacy between the site and adjoining sites. The proposed building separation distances have been considered sufficient to provide a good privacy relationship

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		<p>between dwellings. Furthermore, in addition to the separation distances achieved, the proposed balcony balustrades, retention of existing trees along Waters Lane and the provision of planters along Cooper Lane provide suitable screening to further strengthen the visual privacy offered by the proposed development.</p> <p>To require the proposal to provide 1.5m high window sill heights would be unreasonable and have a disproportionate impact on the amenity of the proposed apartments with no significant benefit to the privacy outcome for neighbours.</p>
<b>P3</b> Provide suitable screening structures or planting to minimise overlooking from proposed dwellings to the windows, balconies or private open space of adjacent dwellings, to windows, balconies or private open space of dwellings within the same development.	Yes	Planters are proposed along balconies where possible to provide additional privacy screening.
<b>P4</b> Provide visual separation between any non-residential use and residential uses within buildings and sites.	N/A	
<b>P5</b> The residential components of mixed use developments are to provide adequate separation between habitable rooms, balconies and non-habitable rooms, consistent with SEPP 65. The relevant separation distances are reproduced in Table B-2.8.	Yes	The proposal provides separation distances which are acceptable and generally in accordance with SEPP (Housing) 2021. See comments below.
<b>P6</b> Council may consider a variation to the building separation control within P5 above, but only where the applicant can demonstrate that the variation has been made in response to site and context constraints and that the variation is not made at the expense of amenity (e.g. visual and acoustic privacy, outlook, solar access). However, Council will not	Yes	<p>The upper levels of the proposal achieve full compliance with the SEPP (Housing) 2021 separation distances.</p> <p>With regard to Level 1, the building separation non-compliances are a response to the site context whereby the adjoining developments have provided building setbacks less than that required by the ADG and the proposed development should not be burdened by compliance with the separation requirement. Notably, the building separation to the west is 10m and</p>

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consider a variation if an apartment's only outlook is onto an area that is under the minimum building separation distance.		the building separation to the east is 11.2m. Whilst non-compliant these separation distances are considered reasonable at this level. Planters have been provided at the western elevation where a 10m separation is provided. All habitable rooms achieve compliance with the ADG.
<b>2.4 Quality built form</b>		
<b>2.4.1 Context</b>		
<b>P1</b> Proposed developments must be designed to respond to the issues identified in the site analysis and in the relevant area character statement (refer to Part C of the DCP).	Yes	
<b>P2</b> A Site Analysis is undertaken in accordance with Part A: Section 5 - Site Analysis of this DCP.	Yes	Has been provided.
<b>2.4.2 Site Consolidation</b>	Yes	The development site is of a suitable size in terms of frontage and width.
<b>2.4.3 Setbacks</b>	N/A	Part C for the North Cremorne Planning Area applies.
<b>2.4.4 Podiums</b>		
<b>P1</b> Where required, a podium must be provided along all street frontages including laneways, with a height and setback above the podium, in accordance with the relevant area character statement	Yes	See assessment below in relation to Part C for the North Cremorne Planning Area.
<b>P2</b> Podiums should match the height and setbacks of adjacent buildings or the average of the heights of the adjacent podiums having regard to their existing nature and/or their redevelopment potential.	Yes	
<b>P3</b> Where the ground level changes across the width of a site, the podium should be stepped at an appropriate location to maintain a characteristic podium height.	Yes	
<b>2.4.5 Building Design</b>		
<b>P1</b> Floor to ceiling heights: Ground – 3.3m First Floor – 3.3m Upper Floors – 2.7m	Yes	Floor to ceiling heights are acceptable. The first floor has a floor to ceiling height of 3m which is considered acceptable given the nature of the proposal with a

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		supermarket at the ground floor and mezzanine level above.
<b>P2</b> A variation may be considered by council where the applicant can demonstrate that the dwelling or non-residential floor space is capable of receiving satisfactory light and ventilation	Yes	The first floor apartments receive the necessary solar access and ventilation within the 3m floor to ceiling height.
<b>P5</b> Podiums are to be built to the boundary of the site unless providing a setback for public space at ground level as required by the relevant area character statement	No	The proposed podium is largely built to the site boundaries, however, this is not consistent with the character statement. Refer to Part C and discussion below.
<b>2.4.8 Balconies – Apartments</b>		
<b>P1</b> Balconies must be incorporated within building envelope (as specified by setbacks and or building height plane) and should not be located on roofs, podiums or be cantilevered.	Yes	The proposed balconies are predominately integrated into the building envelope and do not cantilever except where they extend to Grosvenor Lane where they act as an awning above retail entrances.
<b>P2</b> Balconies should be integrated into the overall architectural form and detail of the building.	Yes	Balconies integrated into the building.
<b>P3</b> No balconies, verandahs or the like are to project over the public domain.	Yes	No balconies project over the public domain.
<b>P5</b> Balconies should not be enclosed.	Yes	No balconies are enclosed
<b>2.4.9 Through-site Pedestrian Links</b>		
<b>P1</b> Provide linkages through sites to other streets and laneways as identified in the relevant area character statement (refer to Part C of the DCP) applying to the site or where enhancing pedestrian movement to public transport infrastructure.	N/A	
<b>2.4.10 Streetscape</b>		
<b>P1</b> The ground level of buildings should align with the corresponding level of the adjacent footpath, laneway or outdoor space.	Yes	Aligns with adjoining public domain levels.
<b>P2</b> Continuous active uses, such as shops and cafes,	Yes	Active uses proposed.



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should be provided at the ground level of the building to all streets, laneways and public spaces.		
<b>P4</b> Landscaping and changes in level at building frontages is to be avoided where possible to facilitate natural surveillance of public areas and views into buildings.	Yes	The proposed levels respond to the surrounding public domain.
<b>P5</b> All ground level windows fronting street, laneways and public spaces must be glazed with clear glass, to promote active surveillance of the public domain.	Yes	Clear glass proposed to be used.
<b>P6</b> All ground level shopfronts are to have a zero metre setback unless specified in the relevant area character statement (refer to Part C of the DCP).	Yes	Zero setback proposed.
<b>P7</b> Introduce visually interesting elements to the building façade such as articulation, detailing and art works.	Yes	Facades are highly articulated.
<b>2.4.11 Entrances and exits</b>		
<b>P1</b> Main entrances and exits located at the front of the site must be directly visible from the street.	Yes	
<b>P2</b> At least one main entrance to the building provides a continuous path of travel.	Yes	
<b>P8</b> Access to the building must be designed in accordance with the provisions contained within Part B: Section 12 – Access of the DCP.	Yes	See Section 12
<b>P9</b> Separated pedestrian entrances and lobbies are to be provided where it is proposed to accommodate within the same building, the following mixture of land uses: (a) residential accommodation and non-residential development; or (b) hotel or motel accommodation or serviced	Yes	Separate entrances and lobbies proposed.

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apartments and any other form non-residential development.		
<b>2.4.12 Nighttime Appearance</b>		
<b>P1</b> Encourage the use of large windows to enable internal illumination to spill onto public footpaths and public areas.	Yes	
<b>2.4.13 Public Spaces and Facilities</b>		
<b>P1</b> In terms of built form and intensity, new development should respect the scale, character and density of existing development located adjacent to business zoned land.	Yes	The proposed development responds to the scale of existing and approved development within the immediate locality.
<b>2.5 Quality Urban Environment</b>		
<b>2.5.1 Accessibility</b>		
<b>P1</b> Buildings are to be designed in accordance with the provisions contained within Part B: Section 12 - Access of the DCP.	Yes	See Section 12
<b>2.5.2 Safety and Security</b>		
<b>P1</b> Design routes between building entrances to maximise personal safety. Routes from parking areas to lift lobbies are particularly important in this regard. Clear lines of sight and well lit routes are required.	Yes	Building entrances are direct from the street frontages. Paths in the car park areas are direct to lifts and escalators.
<b>P2</b> Where open space and pedestrian routes are provided, they must be clearly defined, and have clear and direct sightlines for the users.	Yes	
<b>P3</b> Adequate lighting must be provided to open spaces, entrances and pedestrian areas to avoid the creation of shadowed areas.	Yes	
<b>P5</b> Land use activities which operate after normal business hours should be located along well-used pedestrian routes.	Yes	
<b>P6</b> Public toilets, telephones and other public facilities must be provided with direct access and good visibility from well-used public spaces.	Yes	

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<b>P7</b> Robust and durable design features should be used where relevant to discourage vandalism.	Yes	
<b>2.5.3 Illumination</b>		
<b>P1</b> The following areas must be illuminated in accordance with AS 1158.3.1 - Pedestrian (P): (a) public footpaths; (b) laneways; (c) areas under publically accessible awnings over public or private property.	Yes	Requirements would typically be enforced via conditions of consent.
<b>2.5.4 High Quality Residential Accommodation</b>		
<b>P1</b> Apartments within mixed use developments, must be designed to provide the following minimum internal areas <sup>3</sup> : (a) Studio 35m <sup>2</sup> (b) 1 bedroom 50m <sup>2</sup> (c) 2 bedrooms 70m <sup>2</sup> (d) 3+ bedrooms 90m <sup>2</sup>	Yes	All bedrooms exceed the requirements.
<b>P2</b> Include courtyards, balconies and gardens as the principal open space area for residents. These should have solar access for a minimum of 2 hours a day measured at June 21st.	Yes	See Housing SEPP and ADG assessment
<b>P3</b> Communal corridors must have a minimum width of 2m to facilitate movement (i.e. no right angled corners).	Yes	Corridors measure 2m wide.
<b>P4</b> No more than 8 dwellings are to be accessible from a single common lobby space.	Yes	See Housing SEPP and ADG assessment
<b>P5</b> Avoid the use of double loaded corridors.	Yes	See Housing SEPP and ADG assessment
<b>P6</b> Maximum depth of a habitable room from a window, providing light and air to that room, is 10m.	Yes	See Housing SEPP and ADG assessment
<b>P7</b> Apartments have a minimum width of 4m. An apartment's width should increase relative to an increase in its depth.	Yes	See Housing SEPP and ADG assessment

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<b>P8</b> Single aspect apartments have a maximum depth of 8m from a window.	Yes	See Housing SEPP and ADG assessment
<b>P9</b> The habitable space serviced by a window is no more than 10 times the glazed area of the window.	Yes	See Housing SEPP and ADG assessment
<b>P10</b> At least 60% of apartments are to be provided with cross ventilation (i.e. window openings that face different directions). For apartments with no cross ventilation, ceiling fans must be provided.	Yes	See Housing SEPP and ADG assessment
<b>P11</b> Utilise double glazing, awnings or window solar screens to reduce reliance on artificial cooling of buildings.	Noted	
<b>P12</b> The amount of glazing on eastern and western elevations is to be minimised and incorporate external shading devices.	Yes	
<b>P13</b> Amenity and safety of residents is protected from intrusion by users of the non-residential parts of the development (e.g. through the use of security access to lifts and car parking).	Yes	Security access will be implemented as part of the operation of the building.
<b>2.5.6 Private Open Space</b>		
<b>P1</b> Apartments within mixed use developments must provide at least one private open space with the following minimum areas: (a) Studio 4m <sup>2</sup> (b) 1 bedroom 8m <sup>2</sup> (c) 2 bedrooms 10m <sup>2</sup> (d) 3+ bedrooms 12m <sup>2</sup> Note: Best practice standard for balcony size is 15% of floor area of the apartment.	Yes	See Housing SEPP and ADG assessment
<b>P2</b> Private open spaces must provide a minimum depth of 2m, or 2.4m where it relates to a 3+ bedroom apartment.	Yes	See Housing SEPP and ADG assessment
<b>P4</b> Private open spaces should be located such that they are directly accessible off	Yes	All private open spaces area accessed via the living space.

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a main living area of the dwelling.		
<b>P6</b> Communal residential spaces: (a) should comprise a mixture of indoor and outdoor spaces (such as gymnasium, pool and meeting rooms for residents); (b) must be provided in developments containing more than 15 bedrooms, with a minimum area of 20m <sup>2</sup> or 1m <sup>2</sup> per bedroom, whichever is the greater; (c) may be provided in form of an internal room as long as it has a minimum area of 75% of the total residential communal area requirement (as required in P6(b) above), with the remainder appropriately located in the external recreation area; and (d) must be provided with access to natural light and not be located in basements.	Yes	Indoor and outdoor spaces are proposed inclusive of a pool, gym and outdoor areas.  Additionally public spaces are proposed on the ground floor.
<b>2.5.7 Vehicular Access</b>		
<b>P1</b> Where available and practical, all vehicle access must be provided from laneways.	Yes	Vehicle access is provided off Cooper Lane for residents and Grosvenor Street for the public and retail users. This is appropriate since Grosvenor Lane will not be accessible in the future.
<b>P2</b> Service vehicle access should be combined with parking access.	Yes	Service vehicle access is adjacent to public/retail access.
<b>P3</b> Vehicular access points should be limited to a maximum of one access point per building.	No	The proposed vehicular access points are considered appropriate considering the site has four (4) street frontages.
<b>P6</b> Service ducts and pipes should be concealed when viewed from the public domain.	Yes	Service ducts are to be concealed.
<b>P7</b> Parking areas must be designed to enable vehicles to enter and leave the site in a forward direction.	Yes	
<b>2.5.8 Car Parking</b>		
<b>P1</b> Provide on-site car parking in accordance with Part B:	Yes	See discussion in Section 10



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<b>Provision</b>	<b>Complies</b>	<b>Comments</b>
Section 10 – Car Parking and Transport of the DCP.		
<b>P2</b> All car parking must be provided underground.	Yes	The proposal also seeks to underground existing public parking which aligns with the Town Planning Study.
<b>2.5.9 Garbage Storage</b>		
<b>P1</b> Communal on-site waste storage, recycling and collection points must be provided for each development site.	Yes	
<b>P2</b> Separate waste storage facilities must be provided where a development contains a mixture of both residential and commercial uses. Access to these separate storage areas is to be restricted to their respective users.	Yes	Separate waste storage rooms provided for commercial and residential.
<b>P3</b> A garbage storage area should be located within 2m of the street or laneway boundary.	Yes	Residential garbage holding area is located adjacent to Cooper Lane. Retail waste storage is located further than 2m from a street and will be collected by private collection.
<b>P4</b> Notwithstanding P3 above, a garbage storage area may be located anywhere on a site, but only if a garbage collection area, capable of accommodating all of the required bins for the entire development is located within 2m of the street or laneway boundary.	No	Retail waste will be collected by private collection which is considered to be an acceptable arrangement.
<b>P15</b> Garbage facilities are to be designed and constructed in accordance with Council's Waste Management Guide (refer to Appendix 3).	Yes	
<b>Commercial components</b>		
<b>P16</b> On-site garbage storage areas must be provided which are capable of accommodating the number of garbage and recycling bins as indicated in Table B-2.10. However, industry standards for waste generation rates may be used where these differ from the Council rates or if no Council rate is given.	Yes	

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<b>P17</b> Notwithstanding the rates to P16, Council may permit a reduction in the number of bins required, but only if a garbage compactor is required or proposed to be incorporated within the development.	N/A	
<b>P19</b> The area allocated must accommodate any privately arranged collection (e.g. daily or weekly, etc. collections).	Yes	
<b>Residential component</b>		
<b>P24</b> On-site garbage storage areas must be provided which are capable of accommodating at least the number of garbage and recycling bins as indicated in Table B-2.11.	Yes	
<b>P25</b> Notwithstanding the rates to P24, Council may permit a reduction in the number of bins required, but only if a garbage compactor is required or proposed to be incorporated within the development.	N/A	
<b>P26</b> All developments containing a lift must provide: (a) a garbage chute leading to a central garbage storage room that has a waste compaction unit attached with a minimum compaction ratio of at least 2:1; and (b) an interim recycling room with a minimum dimension of 1.5m square on each level of the building, with at least one point of access to the garbage chute, which is provided with space to accommodate 1 x 240 litre bin for the separate collection of recyclable materials.	No	This will be conditioned.
<b>2.5.10 Site facilities</b>		
<b>P1</b> Site facilities should be located in the most accessible and convenient location and, if possible, located near regularly staffed areas such as reception areas.	Yes	
<b>2.6 Efficient Use of Resources</b>		

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<b>Provision</b>	<b>Complies</b>	<b>Comments</b>
<b>2.6.1 Energy Efficiency</b>		
<b>P2</b> Consider the following issues when assessing the energy rating of buildings and whether any of these issues prevent the achievement of the energy ratings: (a) orientation or shape of the block; (b) existing overshadowing due to either the surrounding terrain or existing development; (c) topography, geology or geo-technical constraints preclude energy saving design such as slab-on-ground construction; and (d) conflict with requirements or guidelines in relation to privacy, area character, building design, bulk and scale or heritage considerations set out in the LEP or the DCP.	Noted	
<b>P7</b> Car parking areas should be designed and constructed so that electric vehicle charging points can be installed at a later time.	Can comply	Can be conditioned
<b>P8</b> Where appropriate and possible, the development of the public domain should include electric vehicle charging points or the capacity for electric vehicle charging points to be installed at a later time.	Can comply	Can be conditioned
<b>Residential component</b>		
<b>P16</b> A BASIX Certificate is required to be submitted with all developments incorporating residential development types nominated under SEPP (Building Sustainability Index: BASIX) 2004.	Yes	A compliant BASIX certificate has been submitted.
<b>2.6.2 Passive Solar Design</b>	Yes	
<b>2.6.3 Thermal Mass and Insulation</b>	Yes	
<b>2.6.4 Natural Ventilation</b>	Yes	
<b>2.6.5 Water Conservation</b>	Yes	
<b>2.6.6 Waste Management &amp; Minimisation</b>		

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<b>P1</b> A Waste Management Plan for the demolition, construction and operation of the building must be provided in accordance with Part B: Section 19 - Waste Minimisation and Management of the DCP.	Yes	
<b>2.6.7 Stormwater Management</b>		
<b>P1</b> An Erosion and Sediment Control Plan for the construction of the building is required in accordance with Part B: Section 17 - Erosion and Sedimentation Control of the DCP.	Yes	Submitted
<b>P2</b> A Stormwater Management Plan for the operation of the building is required demonstrating compliance with this subsection as well as Part B: Section 18 – Stormwater Management of the DCP.	Yes	Submitted
<b>P3</b> Demonstrate how run-off from the site will be minimised and the quality of water leaving the site will be improved.	Yes	
<b>P4</b> Rainwater tanks should be installed for all developments, including major alterations and additions and mixed-use developments. Rainwater tanks should be plumbed to appropriate end uses, including toilet flushing, water features, car washing and garden irrigation, to ensure sufficient use of tank water so that capacity exists to accommodate rainwater from storm events.	Yes	
<b>P7</b> On-site stormwater detention, including the use of grass swales and detention basins, should be pursued where practicable to minimise and filter stormwater runoff	Yes	
<b>P10</b> In addition to a Stormwater Drainage Plan,	No	This has not been provided by the Applicant.

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residential developments with a gross floor area greater than 2000m <sup>2</sup> must also submit a Water Sensitive Urban Design report from a suitably qualified consultant demonstrating that WSUD has been incorporated to the maximum extent practicable and that stormwater discharge will be reduced to the maximum extent practicable.		This matter is addressed through the conditions imposed with regard to stormwater.
<b>2.6.8 Building Materials</b>	Yes	
<b>2.6.10 Hot Water systems</b>	Yes	
<b>2.6.11 Green Roofs</b>	Yes	
<b>2.6.12 Wind Turbines</b>	Yes	
<b>2.7 Public Domain</b>		
<b>2.7.1 Street Furniture, Landscaping Works, Utilities and Equipment</b>		
<b>P1</b> Where relevant, all works should be designed in accordance with: (a) North Sydney Centre Public Domain Strategy; (b) St Leonards Public Domain Strategy; and (c) North Sydney Council Infrastructure Manual.	Can comply where relevant	
<b>P2</b> Where present, overhead wires are to be relocated underground along property boundaries, consistent with the North Sydney Council Undergrounding Master Plan.	Can comply	
<b>P3</b> Seating should be provided in public spaces that are not allocated to a specific use (e.g. a café) for people to 'hang out', take refuge and rest.	Can comply	
<b>2.7.4 Paving</b>		
<b>P1</b> Except where negotiated with the Council, all footpath paving along property frontages must be provided in accordance with Council's specifications (including requirements for disabled access).	Noted	
<b>2.7.5 Native vegetation and water</b>	Yes	



## **Part B Section 10 – Car Parking and Transport**

Part B Section 10 provides car parking and transport controls. If there is a discrepancy between Part B and Part C of the DCP, Part C will always prevail. The following table summarises the proposal against the relevant controls:

<b>DEVELOPMENT CONTROL PLAN 2013 – Part B Section 10 – Car parking and transport</b>		
<b>Provision</b>	<b>Complies</b>	<b>Comments</b>
<b>10.2 Parking Provision</b>		
<b>10.2.1 Quantity Requirement</b>		
<b>Residential Development</b>		
<b>P1</b> Provide on-site car parking, not exceeding the maximum rates stated in Table B-10.1.	Yes	Car parking has been provided at the maximum rate for the residential component of the development
<b>P2</b> For residential flat buildings, shop-top housing and attached dwellings, on-site car parking provision below maximum rates specified in Table B-10.1 is encouraged where the proposed development has good access to public transport.	Yes	Car parking has been provided at the maximum rate for the residential component of the development.
<b>P3</b> For residential developments containing 4 or more dwellings, a car wash bay is to be provided within the visitor parking area. The car wash bay may comprise a visitor car space. The wash bay is to be adequately drained and connected to the sewer line.	Yes	A car wash bay has been provided.
<b>P4</b> The use of car spaces is restricted to the occupiers(s) of a development.	Noted	Should approval be granted a condition of consent can be imposed restricting the use of the car spaces.
<b>P5</b> Designate visitor car parking spaces as common property.	Noted	Can be conditioned.
<b>P6</b> Developments containing adaptable housing must allocate at least one accessible parking space to each adaptable dwelling.	Yes	Twelve accessible spaces have been provided for the twelve adaptable apartments.
<b>Non-Residential Development</b>		
<b>P7</b> Provide on-site car parking not exceeding the maximum rates specified in Table B10.2.	Yes	Car parking has been provided at the maximum rate for the residential component of the development. It is noted that additional public parking is provided to account for the undergrounding of the Grosvenor Lane Public Car Park.
<b>P11</b> In addition to P7 and P8 above, parking for motorcycles	Yes	24 non-residential motorcycle spaces are proposed for the 266 non-residential

must be provided at the minimum rate of 1 space per 10 cars or part thereof.		parking spaces. Given this includes the undergrounded public parking this provision is considered acceptable.
<b>Note:</b> Submit a Traffic and Transport Study prepared by an appropriately qualified person, if required.		
<b>10.3 Design and Layout</b>		
<b>10.3.1 General</b>		
<b>P1</b> The size and design of all parking spaces, loading facilities and any associated manoeuvring areas must be in accordance with AS2890.	Yes	
<b>P2</b> 1-2% of all non-residential parking spaces are to be designated for use by the disabled.	Yes	
<b>P3</b> Car parking spaces for people with disabilities or their associates are provided adjacent or close to the principal public entrance in accordance with AS 1428.2.	Yes	Next to lifts
<b>P4</b> Motorcycle parking must have a minimum dimension of 1.2m x 3m.	No	The motorcycle spaces do not seem to achieve these measurements. This will be conditioned.
<b>P5</b> Council does not support the use of use of turntables for vehicular manoeuvring unless there is no feasible alternative.	Yes	A turntable is proposed for the loading dock which is considered acceptable given the supermarket use.
<b>P6</b> Where security doors/gates are proposed, an intercom system is to be provided to facilitate visitor/service access to underground parking areas.	Noted	
<b>P7</b> Where resident parking and non-resident parking is to be provided within the same development, vehicular access to the private residential areas of the parking area is to be restricted through appropriate security measures.	Noted	
<b>10.4 Loading and Servicing Facilities</b>		
<b>P1</b> Off-street loading and unloading facilities should be provided for all commercial and industrial premises as required by Council. The requirement for, number and size of loading bays will be determined by Council having regard to the: (a) Intended use of the premises;	Yes	

(b) Frequency of deliveries / collections; (c) Size and bulk of goods to be delivered / collected; (d) Size of vehicles to be used; (e) Practicality of accommodating delivery and service vehicles on site; and (f) Likely impacts on traffic safety and efficiency on adjoining roads.		
P2 Developments containing more than 30 dwellings but less than 60 must provide at least 1 service delivery space, capable of accommodating at least 1 Medium Rigid Vehicle. Development containing less than 30 dwellings must provide at least one delivery/service/trade standard parking space.	Yes	A residential loading dock is provided within Basement 04.
P5 Height clearances, including access routes to the required loading spaces must comply with Australian Standard AS 2890.2.	Yes	
<b>10.5 Bicycle Parking and Associated Facilities</b>		
P1 All new development is to provide on-site, secure bicycle parking spaces and storage for residential accommodation in accordance with the minimum rates specified in Table B-10.4	Yes	
P2 Bicycle parking facilities are to be additional to other parking requirements.	Yes	Facilities are provided in addition to other parking
P3 The minimum number of bicycle parking spaces is to be rounded up to the nearest whole number if it is not a whole number.	Noted	
<b>Design</b>		
P5 Design bicycle parking and storage facilities in accordance with the relevant Australian Standards that apply at the time.	Yes	
<b>Location</b>		
P6 Locate private bicycle storage facilities within basement parking levels of the building where provided.	Yes	Located within the basement
<b>Access</b>		

<b>P8</b> A safe path of travel from Security Class A and B facilities to entry/exit points is to be clearly marked.	Noted	
<b>Changing/shower facilities</b>		
<b>P11</b> For non-residential uses, the following facilities for bike parking are to be provided at the following rates: (a) 1 personal locker for each bike parking space; (b) 1 shower and change cubicle for up to 10 bike parking spaces; (c) 2 shower and change cubicles for 11 to 20 or more bike parking spaces are provided; (d) 2 additional shower and change cubicles for each additional 20 bike parking spaces or part thereof; (e) Showers and change facilities may be provided in the form of shower and change cubicles in a unisex area or in both female and male change rooms; and (f) Locker, change room and shower facilities are to be located close to the bicycle parking area, entry/exit points, and within an area of security camera surveillance where there are such building security systems.	Yes	Facilities provided on basement level 02.
<b>10.6 Travel Plans</b>		
<b>P1</b> A Travel Plan must be submitted with all development applications that involve: (a) New, or redevelopment of, educational establishments which result in the total number of students exceeding 100 persons. (b) New, or redevelopment of, non-residential developments which result in the total floor space of the development exceeding 2,000m <sup>2</sup> (approximately 100 employees in an office development). (c) The provision of 50 or more dwellings.	No	A Travel Plan will be required as a condition of consent.

<b>10.7 Traffic &amp; Parking Impact Assessment</b>		
<b>P1</b> A Traffic & Parking Impact Assessment must be submitted with all development applications that are also required to be referred to Transport for NSW under cl.2.122 and Schedule 3 of the SEPP (Transport and Infrastructure) 2021, and for all applications which are classified as designated development pursuant to s.4.10 of the EP&A Act 1979.	Yes	Traffic and Parking Impact Assessment Report prepared by People Trans Consultants was submitted with the development application.

### **Part B Section 12 Access**

Part B Section 12 provides access controls. If there is a discrepancy between Part B and Part C of the DCP, Part C will always prevail. The following table summarises the proposal against the relevant controls:

<b>DEVELOPMENT CONTROL PLAN 2013 – Part B Section 12 – Access</b>		
<b>Provision</b>	<b>Complies</b>	<b>Comments</b>
<b>12.4 Design Criteria</b>		
<b>12.4.1 Continuous Accessible Path of Travel</b>		
<b>P1</b> Continuous accessible paths of travel are to: (a) comply with the requirements under AS 1428.1 and 1428.2; (b) be well lit and sheltered from the weather where possible; (c) incorporate rest stations if the travel route is long; (d) provide for the physical separation of pedestrian traffic from vehicular traffic; (e) have the shallowest possible gradient for the distance available; and (f) incorporate walkways, ramps, step ramps or lifts at changes of level along the path of travel.	Yes	
<b>12.4.2 Parts of a building to be accessible</b>		
<b>P1</b> Access to buildings and their facilities should be provided in accordance with Table D3.2 of the BCA unless it can be shown that access to an area would be inappropriate because of the particular	Yes	Can comply



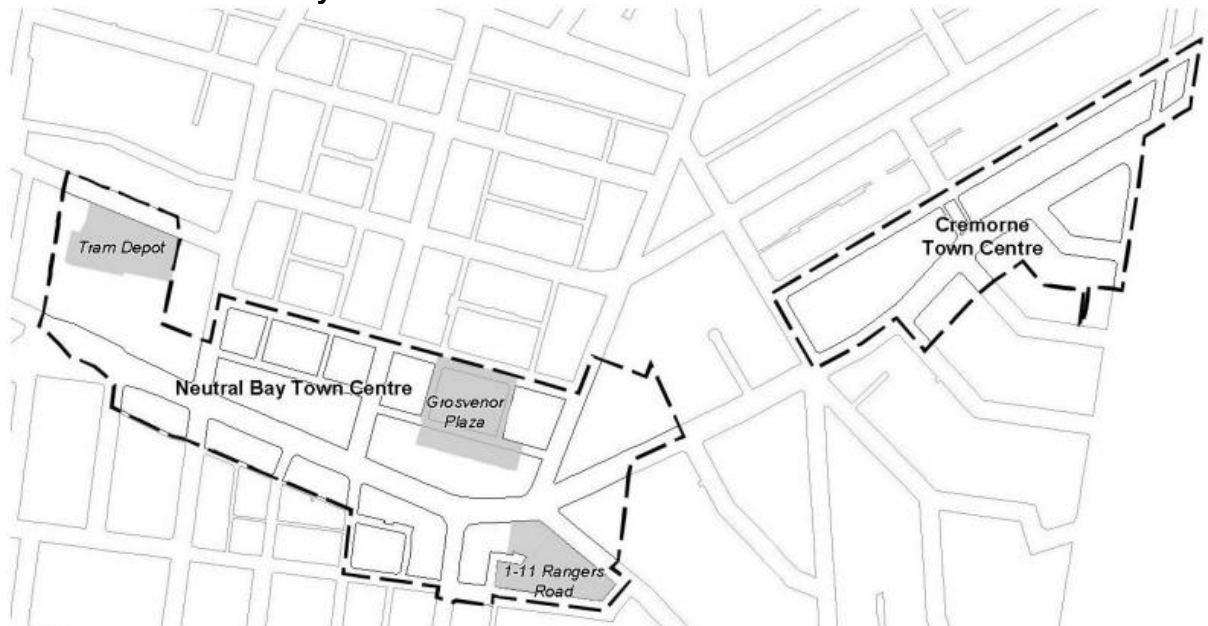
purpose for which the area is to be used.		
<b>12.4.4 Walkways, Ramps and Landings</b>		
<b>P1</b> Walkways, paths, ramps and landings must be provided in accordance with AS1428.1.	Yes	Can comply
<b>12.4.5 Doorways and Doors</b>	Yes	Can comply
<b>12.4.6 Circulation Spaces</b>	Yes	Can comply
<b>12.4.7 Lifts</b>	Yes	Can comply
<b>12.4.8 Sanitary Facilities</b>	Yes	Can comply
<b>12.4.9 Car Parking facilities</b>	Yes	Can comply
<b>12.4.10 Fire safety</b>	Yes	Can comply

## Part C – Area Character Statements

### Part C Section 5 North Cremorne Planning Area

Part C Section 5 provides specific planning objectives and controls for the North Cremorne Planning Area. If there is a discrepancy between Part B and Part C, the provisions within this Part take precedence over the provisions within Part B of the DCP. In addition to the Character Statement for the Planning Area, the character statement for the Locality Areas also require consideration. The site is located in the locality area known as the Neutral Bay Town Centre.

### Section 5.1 Neutral Bay and Cremorne Town Centres



**Figure 23:** Locality Area Map for map for Neutral Bay and Cremorne Town Centres

<b>DEVELOPMENT CONTROL PLAN 2013 – Part C Section 5.1 Neutral Bay and Cremorne Town Centres</b>		
<b>Provision</b>	<b>Complies</b>	<b>Comments</b>
<b>5.1.6 Grosvenor Lane Car Park</b>		
<b>P1</b> Provide a fine-grain of retail and other frontages at the interface with the public realm, including the public	Yes	Mixed use development will have commercial uses at ground level to activate the street frontages, including the future plaza.

plaza, to maximise variety of uses.		
<b>P2</b> Provide opportunities for outdoor dining.	Yes	The proposed uses do not lend themselves to dining, however, future uses of the retail tenancies may be for food and drink premises.
<b>P3</b> Provide active frontages to the plaza and where possible to laneways.	Yes	Active frontages have been maximised.
<b>P4</b> Create a public plaza on the current public car park site.	No	<p>The proposal, as amended, does not seek to redevelop the public car park for a plaza, however, the Applicant has advised that a future application for the site will likely involve the creation on the plaza in accordance with an associated VPA.</p> <p>Notably, the proposal will need to demolish the existing parking spaces to allow for redevelopment of the site. It has been conditioned that replacement tree plantings must be planted in Council's car park which is to be reinstated by the Applicant at no cost to Council.</p> <p>Furthermore, the proposal will underground the existing parking spaces to prepare for the future removal of the car park.</p>
<b>P5</b> Implement shared zones or widen footpaths where possible to improve pedestrian safety and amenity.	Yes	The proposal will allow for shared zones for the surrounding lanes.
<b>P6</b> Design plaza to be flexible and able to accommodate passive recreation and special events.	N/A	Plaza design does not form part of this DA.
<b>P7</b> Design of built form should facilitate the revitalisation and improvement of the public domain along Military Road.	N/A	
<b>P8</b> Upgrade adjoining laneways to complement the public plaza.	N/A	
<b>P9</b> Provide quality, active pedestrian links between Military Road and the public plaza.	N/A	
<b>P10</b> Set back buildings 1.5m at ground level on all street and laneway frontages.	No	The proposal provides nil setbacks at the ground level to Grosvenor Street and Cooper Lane, and 3m setbacks to Waters Land and Grosvenor Lane. This arrangement is considered to provide for a suitable relationship to the public domain by addressing the street frontages and

		allowing for retention of landscaping along Waters Lane.
<b>P11</b> Minimise the impact of development on the public domain and plaza.	Yes	The design of the built form setback from the plaza is consistent with the vision for the site and ensures impacts to the future plaza are minimised.
<b>P12</b> Minimise the impact of development on surrounding residential land.	Yes	The proposal has been designed to minimise impacts to surrounding developments.
<b>P13</b> Podium of 10m (three storeys) to Grosvenor Street, with a setback of 3m above the podium.	No	<p>The podium height ranges from approximately 11m to 13m in height. This is considered acceptable based on the slope of the topography and the podium height of the approved development at No. 12-14 Waters Road.</p> <p>Furthermore, the proposal provides a supermarket at ground level with a mezzanine space and therefore the podium height responds to this arrangement whereby supermarkets are provided with larger floor to ceiling heights. A 3m setback above the podium is achieved as required.</p>
<b>P14</b> Mitigate noise from Military Road in design of through- site link and built form.	N/A	
<b>P15</b> Relocate public parking underground and provide additional public car spaces	Yes	The proposal will underground the public parking from Grosvenor Lane car park being 77 spaces and will provide an additional 27 public parking spaces.
<b>P16</b> Maintain existing laneway network or provide adequate alternative for small scale loading, short term parking and vehicular circulation.	Yes	The proposal will maintain the existing laneway network.
<b>P17</b> Loading facilities should not impact on amenity of plaza and should ideally be provided underground.	Yes	Loading facilities are provided underground.
<b>P18</b> Upgrade or relocate Neutral Bay Community Centre as part of any redevelopment incorporating the existing site.	N/A	
<b>P19</b> Provide improved bus stop infrastructure on Military Road.	N/A	
<b>P20</b> Protect and respond architecturally to heritage items within the area.	Yes	The proposal will not have any adverse impacts on the adjoining heritage item.

## Local Infrastructure Contributions Plan

144. 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 has been calculated in accordance with Council's Contributions Plan as follows:

Contribution amounts payable

<b>Applicable contribution type</b>		
<b>s7.12 contribution details</b>	Development cost:	\$152,075,000.00
(payment amount subject to indexing at time of payment)	Contribution:	<b>\$1,520,750.00</b>

Conditions requiring the payment of contributions at the appropriate time are included in the attached conditions.

### **Housing Productivity Contribution**

145. The Ministerial Order for Housing Productivity Contribution came to effect on 1 October 2023. The order applies to land in that includes the Greater Sydney Region in which North Sydney Council is located.

The application was lodged on 1 September 2023, however an amended application was received from the applicant and accepted on 7 November 2024. In accordance with Section 38 of EP&A Regulations 2021 the new lodgement date for the amended application is 7 November 2024, and therefore, the application is subject to the Housing Productivity Contribution.

Part 2 Division 1 Clause 5 outlines that Residential Development and Commercial Development triggers a contribution if development consent is granted. The proposal is subject to the following contribution:

<b>Housing and Productivity Contribution</b>	<b>Amount</b>
Housing and productivity contribution (base component)	\$473,015.07
Total housing and productivity contribution	<b>\$473,015.07</b>

146. All likely impacts of the proposed development have been appropriately considered by this report.

### **All Likely Impacts of the development**

147. All likely impacts of the proposed development have been appropriately considered by 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. | Relevant S4.15 considerations of the Environmental Planning and Assessment Act 1979 | Yes |

### ***Natural Environment***

148. The proposed development is considered to have some impact upon the health and retention of a number of trees that adjoin the site, particularly those required to be removed within the existing Grosvenor Lane public car park. Whilst the proposed tree removal is not desirable, it is understood that the removal is necessary to allow for the construction of the proposed basement parking. Notably, the basement parking allows for the undergrounding of public parking spaces for the community which provides significant public domain, legibility and pedestrian movement benefits.
149. In order to allow for the development to be constructed the proposed tree removal is supported, however, a condition has been imposed which requires a total of 42 canopy trees to be planted at Council verges across street frontages and adjacent to the existing council care park.
150. The proposed excavation of the site is for the purpose of providing four (4) levels of basement for car parking. The excavation is considered appropriate to support the proposed development.

### ***Built Environment***

151. The siting, scale, bulk, and massing of the development are generally consistent with that anticipated for the site and represents a design that contributes positively to the character of the area.
152. Whilst the proposal exceeds the building height development standard of North Sydney Local Environmental Plan 2013, the extent of the variation is considered reasonable and acceptable on merit. A Clause 4.6 Objection has been submitted in support of the non-compliance.
153. The variation to the building height has been assessed and considering the proposal meets the objectives of the building height standard and the objective of the zone, and there are suitable planning grounds to justify the proposed contravention, the variation is supported. The proposal is consistent with State Environmental Planning Policy 65 Design Quality Principles and is considered to reflect the desired future planning and design outcome for the site.
154. Accordingly, the proposal is consistent with the existing and future desired character of the area precinct and is recommended for approval.

### ***Social Environment***

155. No adverse social impacts have been identified as part of the assessment. The provision of additional dwellings would provide for additional housing in close proximity to a local centre.
156. The provision of a new supermarket and other retail premises will contribute to the vibrancy of the centre.

### ***Economic Environment***

157. The proposed development will have no adverse economic impact, it will benefit in the longer term the sustainability of the Neutral Bay Town Centre and will in the immediate term contribute to maintaining jobs in the construction industry.



158. The proposed development will provide temporary employment through the construction of the development. In addition, the proposal will restore and increase employment associated with the use of the site.

***Suitability of the Site***

159. The site is located within the MU1 Mixed Use zone where shop top housing is a permissible form of development. The sites position within the Neutral Bay Town Centre makes it a prime location for the proposed development which will provide a supermarket, new retail premises and residential housing in an accessible location amongst a variety of employment opportunities.
160. The development responds to the context of the site and locality and suitably addresses the applicable development controls to provide a mixed use development which aligns with the desired character for the locality.

**SUBMISSIONS, REFERRALS AND THE PUBLIC INTEREST**

161. The revised application and accompanying documentation was placed on public exhibition from 22 November 2024 until 10 January 2025. In response to the second notification period a total of 250 submissions were received. From a review of submissions 17 of these were 'double ups', did not object, supported the proposal or did not relate to the proposed development. As such, a total of 233 actual submissions were received. From the total 233 submissions, 209 of these were in objection to the proposal and 24 were in support.

The concerns raised are summarised below:

- Loss of public benefit by the amended proposal which no longer includes the construction of the public plaza.
- Construction of private development on Council owned land without the provision of the public benefit.
- Relationship of this development with the Arkadia redevelopment of Site 2.
- Building height.
- Building setbacks to street frontages.
- Parking impacts during construction in relation to the removal of the public car park to allow for the excavation of the basement parking.
- Impact on small businesses through the removal of at-grade public parking and reduced circulation/access.
- Infrastructure availability to support the increased residential density.
- Environmental impacts in terms of tree removal.
- Access from the basement parking to the future public plaza and how it favours the Coles development rather than small businesses in the centre.
- Obstruction of views and removal of natural buffers.
- Impact on property values.
- Traffic congestion generated and potential vehicular and pedestrian safety issues.
- Loading arrangements including impacts of the truck hoist lift.
- Removal of outdoor public parking.
- Staging of the proposal does not support the community.
- Limited access points to the car park.
- Noise and dust impacts during construction.
- Noise impacts resulting from loading and parking during operation.
- Equitable access for pedestrians during construction and operation.
- Uncertainty of future redevelopment for the public plaza.

The above issues were considered in the assessment of the development application. A detailed review and response to the submissions is provided in a separate attachment to this report. As shown in the review all submissions received during the 2024 submissions period were considered in detail.

### **Application Referrals**

162. The application was referred to a number of external agencies and internal officers for comment as follows:

#### **Council Referrals**

##### Development Engineer

163. Council's Development Engineer has reviewed the proposal. Should the application be supported, draft conditions of development consent have been prepared.

##### Traffic Engineer

164. The DA was referred to Council's Traffic Engineer. Council's Traffic Engineer raised no objection to the proposal subject to conditions of consent.

##### Stormwater Engineer

165. The DA was referred to Council's Stormwater Engineer. Council's Stormwater Engineer raised no objection to the proposal subject to conditions of consent.

##### BCA/Access Officer

166. The DA was referred to Council's BCA/Access Officer. Council's BCA/Access Officer raised no objection to the proposal subject to conditions of consent.

##### Landscape Officer

167. Council's Landscape Officer has reviewed the proposed development and has recommended refusal noting the following site conditions and impacts in their final referral response dated 14 April 2025:

*As detailed in previous LDO comments of 27/11/23 & 4/2/25 the proposal requires the removal of numerous mature public trees, with grossly inadequate replacement proposed.*

*Contrary to what is shown in lodged drawings, SEE, and supporting documentation, all public trees within and adjoining site boundaries (including existing council carpark) require removal. The DA does not include any restorative landscaping or tree planting works to what will remain of the existing council carpark on completion of site works. Such a proposal that permits complete removal of all council trees, with minimal conditioned replacement, and with reduced public area for any such future replacement, cannot be supported.*

##### Council's Planner Response:

Council's Landscape Officer raises a legitimate concern that mature trees are proposed to be removed without suitable replacement plantings. Notwithstanding this, it is acknowledged that the tree removal is necessary to allow for the construction of the proposed basement parking, particularly the undergrounding of the public parking spaces as desired by the area specific DCP.

Indeed, retention of these trees would result in a fundamentally different development outcome with regards to the basement parking levels, significantly reducing the amount of underground

public parking provided, which on balance would thwart achievement of the vision for the centre and future pedestrian plaza.

Notwithstanding this, the Applicant has not provided any details for replacement tree planting.

As such, Council's Landscape Officer has recommended conditions of consent in the event of DA approval, which seek to ensure appropriate management of trees and vegetation, provision of replenishment trees and to ensure an appropriate landscape response to the proposal.

#### Waste Development Officer

168. The application was referred to Council's Waste Development Officer for assessment and review. The Waste Development Officer raised no objection to the proposal subject to conditions of consent.

#### Environmental Health Officer

169. Council's Environmental Health Officer has reviewed the Preliminary Site investigation Report and the Noise Impact Assessment Report and raised no objection to the proposal subject to conditions of consent.

#### Heritage Consultant

170. The application was referred to Council's Heritage Consultant as the subject site is located in the immediate vicinity of locally listed heritage items. The Heritage Consultant raised no objection to the proposal and did not recommended any conditions of consent.

### **External Referrals**

#### Ausgrid

171. The application was referred to Ausgrid in accordance with Clause 2.48 of State Environmental Planning Policy (Transport and Infrastructure) 2021 who raised no objection to the proposal subject to the imposition of conditions.

#### Sydney Water

172. The proposal was referred to Sydney Water who raised no objection to the proposal subject to the imposition of conditions.

#### TfNSW (RMS)

173. The application was referred to TfNSW (RMS) in accordance with Clause 2.122 of State Environmental Planning Policy (Transport and Infrastructure) 2021. A formal response was provided on 11 October 2023, concurrence was obtained subject to the imposition of conditions if the application was to be supported.

### **Conclusion**

174. The proposal seeks consent for the demolition of existing supermarket and Grosvenor Lane car park and construction of a 4-storey mixed use and shop top housing development with 42 residential apartments, supermarket loading dock, liquor store and retail premises, 4 levels of basement parking including 189 retail parking spaces, 77 public parking spaces and 39 residential parking spaces, signage, associated civil and landscaping works and associated stratum subdivision.

175. The proposal has been assessed in accordance with Section 4.15 (1) of the Environmental Planning and Assessment Act, 1979.

176. The proposal has been assessed against the relevant provisions of the North Sydney Local Environmental Plan 2013 and the North Sydney Development Control Plan 2013. The proposal satisfies the key planning controls in the North Sydney Local Environmental Plan apart from Clause 4.3 Height of Buildings development standard. A Clause 4.6 Statement has been submitted with the application justifying the variation. In this case the variation is considered to be reasonable or necessary in the circumstances of this case and there are sufficient environmental planning grounds to support varying the control in this instance.
177. The proposal, as amended, has addressed a number of the concerns previously raised by Council, the Panel and the public and consideration has been given to the remaining relevant matters outlined in this report.
178. The proposed development is considered to satisfy the zone objectives for the MU1 Mixed use zone and the Clause 4.6 Statement and is considered to be well founded and in the public interest as there will be no direct and adverse environmental impacts generated by the variation sought. The proposal is considered to satisfy the objectives and requirements of Clause 4.3 of the North Sydney Local Environmental Plan 2013.
179. Following this assessment and having regard to the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979 (as amended), this application is recommended for approval subject to conditions.

#### **RECOMENDATION**

180. THAT the Sydney North Planning Panel, as the consent authority, accept the written request for a variation under Clause 4.6 of North Sydney Local Environmental Plan 2021, in relation to the Height of Buildings (Clause 4.3) as the variation sought is considered to be well founded and in keeping with the public interest as there will be no adverse environmental impacts generated by the variation sought.
181. THAT pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 (as amended) the Sydney North Planning Panel approve the development consent to DA258/23, as amended by the Applicant, for the demolition of existing supermarket and Grosvenor Lane car park and construction of a 4-storey mixed use and shop top housing development with 42 residential apartments, swimming pool, supermarket loading dock, liquor store and retail premises, 4 levels of basement parking including 189 retail parking spaces, 77 public parking spaces and 39 residential parking spaces, signage, associated civil and landscaping works and associated stratum subdivision.

#### **NOTE BY MANAGER DEVELOPMENT SERVICES**

This application has been assessed by an external Consultant Planner as part of the application as the site is Council owned and controlled land. This report is presented without material alteration from its originally drafted form and should be considered a truly independent review of the proposal.