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NORTH SYDNEY COUNCIL REPORTS

NSLPP MEETING HELD ON 06/08/2025

Attachments:
1. Site Plan
2. Architectural Plans
3. Clause 4.6 Statement
4. View Sharing Diagrams

ADDRESS/WARD: 4 Holt Street, McMahons Point

APPLICATION No: 57/2025

PROPOSAL: Part demolition of existing structure and erection of new 3-storey

single dwelling with roof terrace and related landscaping

PLANS REF:

Plan No.	Rev	Description	Prepared by	Dated
B1000	F	Demolition Plan	Map Architects	01/05/2024
B1001	F	Ground Floor	Map Architects	01/05/2024
B1002	F	First Floor	Map Architects	01/05/2024
B1003	F	Second Floor	Map Architects	01/05/2024
B1004	F	Roof Plan	Map Architects	01/05/2024
B2100	F	Sth Elevation	Map Architects	01/05/2024
B2101	F	Nth Elevation	Map Architects	01/05/2024
B2102	F	E/W Elevation	Map Architects	01/05/2024
B3000	F	Sec AA	Map Architects	01/05/2024
B3001	F	Sec BB	Map Architects	01/05/2024

OWNER: Wenjing Shi

APPLICANT: Wenjing Shi C/- MAP Architects

AUTHOR: Jack Varka, Senior Assessment Officer

DATE OF REPORT: 14 July 2025

DATE LODGED: 28 March 2025

RECOMMENDATION: Approval

EXECUTIVE SUMMARY

This development application seeks consent for part demolition of existing structure and erection of new 3-storey single dwelling with roof terrace and related landscaping at 4 Holt Street, McMahons Point.

The application is reported to the North Sydney Local Planning Panel for determination as the application seeks a variation to the building height development standard by more than 10%. In accordance with the Minister's Directions the application must be determined by the Local Planning Panel.

The application was notified to adjoining properties and the Euroka Precinct Committee inviting comment between 18 April - 2 May 2025. There was one (1) submission received in response to notification.

The site is identified as Lot 104, DP 1185623. The site is rectangular in shape and has an area of 266m². The site is occupied by a a split level 1960's style industrial building. The building is located within the Union, Bank, and Thomas Street Conservation Area. No significant trees or vegetation is proposed to be removed as a result of the proposal.

The subject site has a maximum permitted building height of 8.5m pursuant to sub-clause 4.3(2) in *NSLEP 2013*. The existing building exceeds the building height standard, with a maximum height of 9.5m. This is a reduction in the height of the current approval (DA302/20) by approximately 500mm. The variation to the height standard is acceptable in this circumstance.

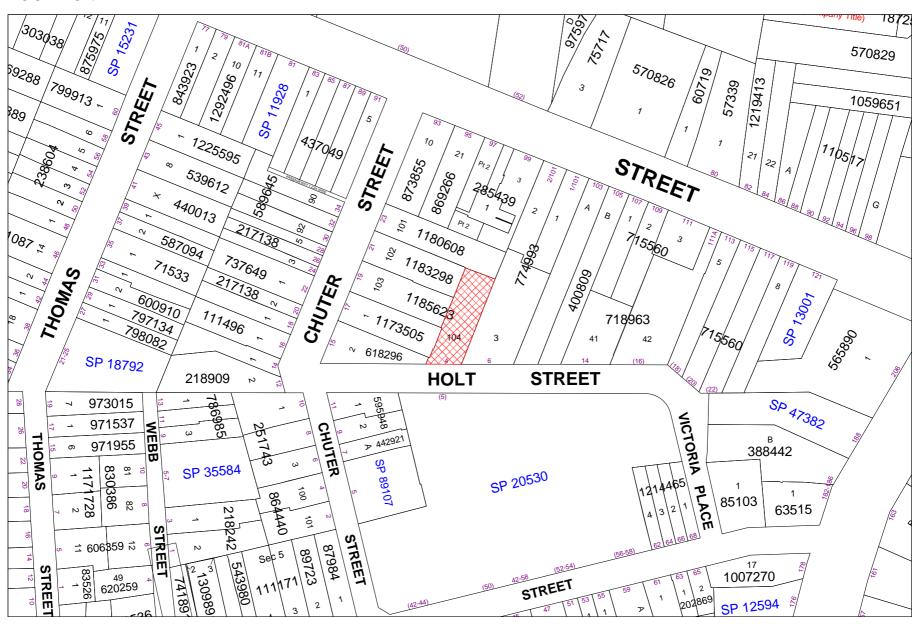
The development proposes the construction of a new dwelling house, and the works will not alter the existing natural landform. Privacy will be retained for neighbours with no direct overlooking into any key living areas. It is noted however that view corridors are present across the site from properties located north along Union Street. A detailed Tenacity view impact assessment has been undertaken as part of this assessment and has deemed that the impact is non-material/negligible.

Council's Heritage Officer has not supported the application stating that the development does not provide an appropriate or sympathetic response to the heritage context of the site and that the proposal is not acceptable on heritage grounds and revisions are recommended to ensure the remnant portion of the original industrial building retains its character and contribution to the conservation area. These revisions have been imposed by way of condition.

These design changes are recommended to improve the legibility of the original facade, which largely retains the pattern of development seen in the locality. It will also allow for reasonable contemporary additions without significantly compromising the heritage character of the conservation area.

Subject to the recommended design changes, the development application is considered to be reasonable in the circumstances and is recommended for **approval** subject to conditions.

LOCATION MAP



DESCRIPTION OF PROPOSAL

The applicant is seeking development consent for partial demolition and alterations and additions to the existing.

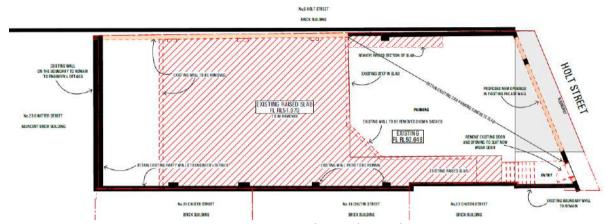


Figure 1: Proposed Demolition Plan

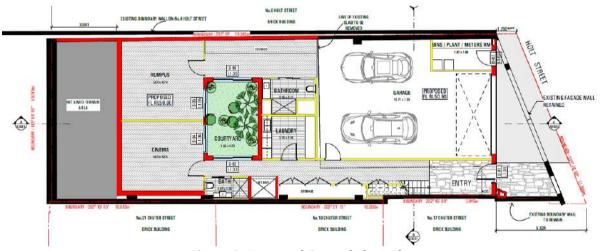


Figure 2: Proposed Ground Floor Plan



Figure 3: Proposed First Floor Plan

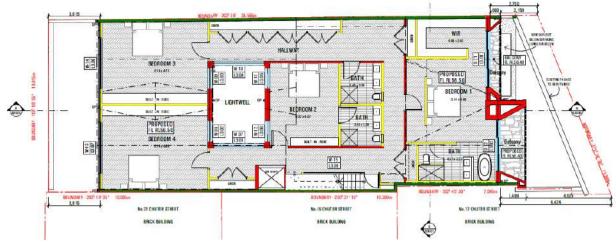


Figure 4: Proposed Second Floor Plan

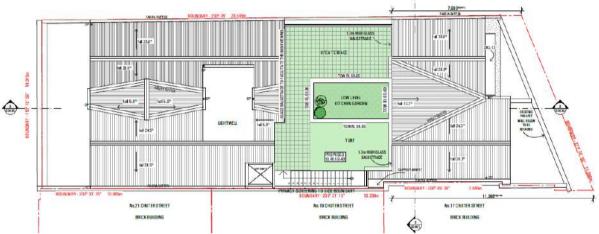


Figure 5: Proposed Roof Plan

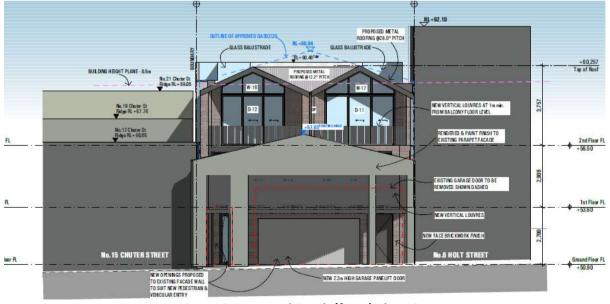


Figure 6: Proposed South (front) Elevation

SITE & LOCALITY

The subject site is known as Lot 104, DP 1185623, 4 Holt Street, McMahons Point. The site has an area of approximately 313m² and currently contains a split level 1960's style industrial building. The building currently has car parking for 6 stacked vehicles at ground level.

It is bound by Holt Street on the southern frontage, 15-19 Chuter Street on the western side, 23 Chuter to the north, 6 Holt to the east and a small area of private car park fronting Holt Streeton the southwest. A large at-grade carpark is located directly opposite the site in Holt Street which services the light industrial/commercial uses at 50 Victoria Street, McMahons Point.

The existing building is one a single storey building with Holt Street. The frontage is dominated by an existing roller shutter door with a smaller separate pedestrian entry door. The front façade consists of a glass front door, to access the garage and stairs, and a large industrial garage door. The façade is double brick painted white. The building is approximately 10m wide and 31.2m long with a gross floor area of approximately 266m².

Inside the building it is a split-level open plan industrial building with the southern section comprising of street level car. The floor to ceiling height in the car port garage is 6.70m, and the building houses 6 stacked vehicles. The northern section comprises an office tenancy area. The office tenancy area sits 1.7m above street level and is accessed via an internal flight of stairs on the western side of the building. Internally, the building has a cathedral ceiling extending from 5m above ground level at the edges of the building to 5.8m in the centre of the building. The building has a high open gable roof running north/south with a parapet wall on the east side. The parapet extends approximately 400 mm above the box gutter.

The building is set back approximately 1.2 m from the front boundary, consistent with the adjoining development, and is joined to the multiple premises on the west (17-21 Chuter Street) via a party wall, and to the north and east via a boundary wall.



Figure 7: Aerial Map

STATUTORY CONTROLS

Environmental Planning & Assessment Act 1979

NORTH SYDNEY LEP 2013

Zoning E3 Productivity Support

Item of Heritage No

In Vicinity of Item of Heritage Yes; I0460 (11 Chuter Street)
Conservation Area Union, Bank, Thomas Street

STATE ENVIRONMENTAL PLANNING POLICIES

SEPP (Biodiversity and Conservation) 2021

Chapter 6 – Water Catchments

- SEPP (Sustainable Buildings) 2022
- SEPP (Resilience and Hazards) 2021
 - Chapter 4 Remediation of Land

POLICY CONTROLS

North Sydney Development Control Plan 2013 North Sydney Local Infrastructure Contributions Plan

RELEVANT HISTORY

Previous Applications

DA 107/19 proposed 'partial demolition and substantial alterations and additions to an existing industrial styled building currently occupied by an office operation. The proposed additions principally comprise two additional levels to the existing split level single storey building'. The application was considered at the meeting of the North Sydney Local Planning Panel (NSLPP) on 6 November 2019. At the meeting, the Panel resolved to refuse the application as a result of building height standard breach, view loss, and was considered uncharacteristic to the conservation area.

Development Application No. 302/20 - Office Development

DA 302/20 proposed 'part demolition of existing building and construction of new three storey office premises'. The application was considered at the meeting of the NSLPP on 3 March 2021. At the meeting, the Panel approved the application noting satisfaction in the variation to the height standard, and was consistent with the objectives of the zone, continuing to serve the light industrial use characteristic of the locality.

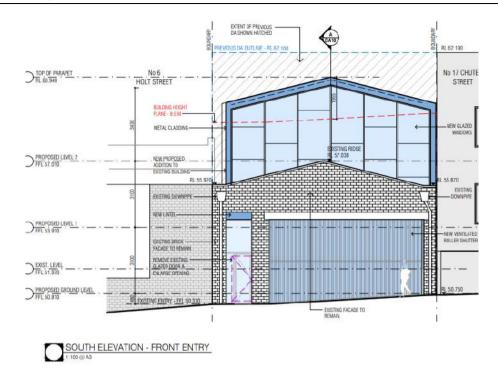


Figure 8: Approved street elevation under DA302/20

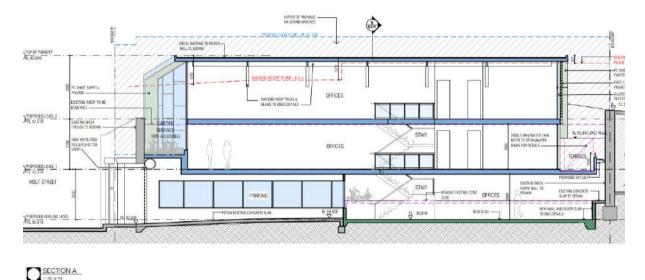


Figure 9: Approved long section detailing the façade and parapet retention to Holt Street, proposed finished levels and the glazing design

Current application

Date	Action
28 March	Lodgement
18 April – 2 May	Notification
31 March	Preliminary Review

REFERRALS

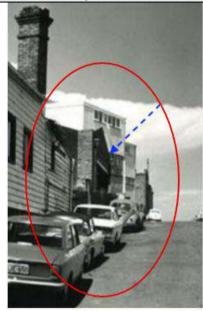
HERITAGE

The application has been referred to Council's Conservation Planner who provided the following comments:

Compliance Table		
Heritage and Conservation	Complies	Comments
B13.4 Development in the Vicinity of Her	itage Items	
13.4 Development in the Vicinity of Heritage Items	Yes	The single storey+ building on the site is a c1940 former industrial building with its primary frontage facing Holt Street (see images). It is in
Heritage context incl. evidence in the 1943 aer	ial image	the vicinity of two scheduled heritage items being 9 and 11 Chuter Street [I 0458 and I 0460]. The subject site is set to the northern side of Holt Street and to the rear of the heritage properties mitigating any direct impacts on significance in terms of setting and views.
A Section Products in the Control of		Brick detailing remains legible Access is asymmetrical to the façade and the pedestrian access is of a subservient scale.

Compliance Table Heritage and Conservation Complies Comments

B13.4 Development in the Vicinity of Heritage Items





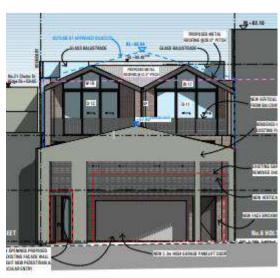
Looking east along Holt Street – in 1971 and more recently in 2025. The building has retained its form, massing, scale and relationship to Holt Street

Compliance Table				
Heritage and Conservation	Complies	Comments		
B13.6 Heritage Conservation Area				
R12 6 1 General phiectives				

No

B13.6.1 General objectives

O1 Ensure that development is designed to retain and complement the character and significance of the Union Bank and Thomas Streets conservation area.



See s13.6.3 Roofs below.

The building is from the significant period of development relating to the Union Bank and Thomas Streets conservation area and which has largely retained its original form (see images above). The elevation to Holt Street provides important and tangible evidence of the light industrial phase of development within the conservation area and within North Sydney generally. The proposed altered proportions to the existing façade are not supported because they detract from the character of the original building and will render its contribution within the conservation area as uncharacteristic. The pre-da advice dated 2 August 2024 including comments relating to the proposed roof form still stand.

Compliance Table		
Heritage and Conservation	Complies	Comments
B13.6 Heritage Conservation Area		
O3 Enable neutral items to be improved such that they contribute to the character of the heritage conservation area through the removal of unsympathetic and in appropriate elements, and reinstating missing details where appropriate.	No	The building is in sound condition but for some cracking in the brick joints on the front, western end of the wall. The retention and restoration of the brick façade and brick corbels is appropriate as is the removal of painted brickwork. to return it to its liver-coloured brickwork is supported. The decorative brick edges of the existing building are to be retained including the asymmetrical arrangement of the existing door and garage opening framed by the box gutters on either side. (See historic images incl commentary in s13.4).
O4 Encourage change that will remove uncharacteristic items or reduce the extent of their intrusion.	No	The proposed fenestration changes to the primary façade of the remnant light industrial building will render it as uncharacteristic and are not supported. The pre-da advice dated 2 August 2024 still stands.
13.6.2 Form, massing and scale		stin starius.
Provisions		
O1 Ensure new development has a compatible and complementary building form and scale to that which characterises the conservation area.	No	Contrary to the HIS prepared by Weir Philips Heritage dated January 2025, the changes to the existing street facing elevation do not
or improved outcome to neutral items or improved outcome to neutral items which were constructed in the core period of development by: (a) respecting original or characteristic	No	result in an acceptable level of impact on the existing industrial building which has a simple single storey form with an off-set and prominent primary opening + secondary pedestrian entrance giving the elevation an asymmetrical expression.
building patterns in terms of bulk, form, scale and height (b) minimising changes to original and characteristic features (c) removing unsympathetic and uncharacteristic changes and/or		Design-wise the proposed vertical emphasis to the existing industrial building and followed through to the new work versus a horizontal approach is not supported and the double-hipped roof form creates a busy
(d) reinstating characteristic details where there is physical or documentary evidence.		presentation to Holt Street. The approved form under DA302/20, although with a high level of glazing, has a profile that complements the existing gabled parapet of the industrial building. NB the inclusion of balconies is supported in principle (see s13.9.3)
		Conservation works that return the face- brickwork and make good the physical condition of the façade are supported.

(b) that the design respects the heritage

characteristics of the area

Compliance Table		
Heritage and Conservation	Complies	Comments
B13.6 Heritage Conservation Area		
J		No objection to the creation of a secondary door within the garage opening would be raised so that the overall character of the remnant portion of the light industrial building is retained and enhanced.
P9 New work may adopt a contemporary character	Yes	Approval of a contemporary addition set behind the existing façade and aligned with the adjoining commercial building was granted on 3 March 2021 under DA 302/2020. DA 302/20 as approved
12 C 2 Boofs		DA 302/20 as approved
13.6.3 Roofs Provisions		
O1 To maintain the characteristic roof profiles and roofing materials within a heritage conservation area	No	The current proposal was the subject of a pre-da discussing its approach in comparison to the approved DA302/20. Feedback from the pre-da did not support the domestic style double hipped roof form nor the extent of changes to the existing façade of the industrial host building. Retaining the existing openings of industrial building and for the form of the new contemporary element to have a flat roof reflecting the nature of the 'host' building was recommended. The pre-da advice dated 2 August 2024 still stands. See s13. 6.3
13.6.4 Additional storeys and levelsObjectivesO1 To ensure that the scale of the streetsorespected	ape and con	text of the heritage conservation area are
Provisions		
P1 Additional storeys or upper level additions are not supported in heritage conservation areas. P2 Despite P1, the consent authority may permit an additional storey or upper level	No	The building line of the new built element behind the frontage of the single storey light industrial building has been adjusted to be compatible with the building line of 6 - 8 Holt Street, a larger site with a two to three storey scale. The new building is proposed to be

changed to a double hip form. See s13.6.1/

s13.6.2/s13.6.3

Compliance Table		
Heritage and Conservation	Complies	Comments
B13.6 Heritage Conservation Area		
P3 Typically, additions should be set back behind the main roof lines and should be located substantially within the existing roof		No objection to the double hipped roof form to the rear of the building is raised. These works will not be visible in the public domain.
		In principle, the insertion of balconies to the new built element are supported – see s13.9.3 below.

Compliance Table				
Heritage and Conservation	Complies	Comments		
B13.9 Controls for specific building ele	ements			
13.9.1 Skylights, solar panels and satellite dishes	No	There is potential to utilise skylights so that the amount of glazing in the Holt Street facing elevation can be reduced to a higher solid-to-void ratio compatible with 6-8 Holt Street		
13.9.3 Verandahs and balconies	Yes / No	Not objected to in principle but need to integrate with an appropriate new form that complements the light industrial character of the host building form — s13.6.1/ 13.628/ 13.6.3 above		
13.9.4 Materials, colours and finishes				
Provisions				
P8 Ensure materials, finishes and colours are compatible with the characteristic built elements of the heritage conservation area as described in the relevant Area Character Statement (refer to Part C of the DCP).	Yes	But for the proposed amount of glazing, the schedule of colours and materials is appropriate to the context of the site. A condition is recommended to ensure the materials, colours and finishes are consistent and complement the conservation area.		

Compliance Table					
Heritage and Conservation	Complies	Comments			
B13.11.5 Warehouse and industrial buildings					
O1 Ensure changes are sympathetic to significant fabric and building elements, and do not compromise heritage significance.	No	The changes to the existing openings in the front façade of the single storey industrial building are not supported as they will erode tangible evidence of industrial land use in the area and undermine its character and interpretive qualities within the conservation area. [See above] The pre-da advice dated 2 August 2024 still stands.			
O2 Allow for the interpretation of the significant original form and use of industrial buildings and places.	No	See above			
O3 Conserve important built elements and equipment including catheads, loading bays, structural systems, flooring, hoists and machinery, piers and wharves		See above.			

Conclusion and recommendation

With reference to the above, an assessment of the proposal has been undertaken in terms of NLEP 2013 Clause 5.10 Heritage conservation and NDCP 2013 Part B: Section 13 Heritage and Conservation. The Development does not provide an appropriate or sympathetic response to the heritage context of the site.

The proposal is not acceptable on heritage grounds and the following revisions are recommended to ensure the remnant portion of the original industrial building retains its character and contribution to the conservation area:

- a. The existing asymmetrical setting of the vehicular opening and secondary pedestrian entry and as framed by the box gutters and downpipes on either side as presented in the existing building façade of the light industrial building are to be retained. Details of a new garage door to fit into the existing opening and designed with a smaller secondary door set within it to access the garbage area are to be submitted to Council for approval.
- b. The proposed alignment of the new addition set behind the existing frontage of the light industrial building is to be compatible with the Holt Street alignment and complementary with the building at 6-8 Holt Street. The design of the new balconies are to be integrated to complement the industrial context and character of the host building and its setting amongst modern industrial buildings.
- c. That the fenestration pattern of the new built form is to be rationalized to increase the solid-to-void ratio of the new built form and its fit with the host building and the industrial context of the site, particularly the adjacent building at 6-8 Holt Street. The use of skylights to harvest natural light in lieu of large expanses of glazing in the Holt Street facing elevation are to be explored and reflect a more industrial feel to the new work.
- d. Details of the proposed conservation works to the front façade of the light industrial building are to be provided to Council including details of:
 - i. the removal of paint and making good of the brick façade and parapet form retention of the details of the corbelled brick edges
 - ii retention of the box gutters and downpipes framing the original building and contributing to retaining its character.

Planning comment:

The recommendations of Council's Conservation Planner are noted but not support in full. Consideration has been given to the preceding development consent applicable to the site under DA **302/20** and on the basis that the development provides for the adaptive reuse of a former warehouse building which has an appropriate transitional form between the existing three story built forms to the east of the site and single storey warehouse buildings to the west of the site.

The contemporary forms of the proposal, including face brick, rendered finishes, and colorbond roofing are an acceptable response to the site context; facilitates good design and improves upon the single pitched roof form of the previous approval. The introduction of a double pitched form at upper levels that is setback behind the fully retained industrial street façade of the site is an Appropriate design response which respects the contribution of the warehouse façade to the conservation area. The proposal has been designed in a way that would enable appropriate future development of ordinary land and would not detract from the conservation area. Metal roofs are characteristic of industrial buildings of any period.

The proposed glazing to Holt Street and dual pitching point design is exemplary of contemporary development which does not detract from any building from the significant era. The development is also separated from the more established character on Chuter Street or Union Streets, which are of greater significance with respect to the character of the Union, Bank and Thomas Street Conservation Area.

The proposed contemporary dwelling building represents the introduction of a well-designed and reasonable contemporary built form that protects the conservation context of the site, within the periphery of the Union, Bank & Thomas Streets Conservation area. The existing warehouse form will be interpretable through retention of the existing warehouse parapet and the set back of the southern façade. Introduction of face brick materiality and the reduction in the bulk form compared to the approved single pitch roof are better aligned with the desired character of the area and will work to further enhance the heritage value of the site.

The proposal is consistent with the planning controls for contemporary infill development expressed in Section 13.6.2 and 13.6.6 of the North Sydney DCP 2013 which permits infill development which is in keeping with the conservation context. Appropriate conditions have been recommended which have regard for the heritage significance of the site, the varied nature of surrounding developments and the conservation area.

ENGINEERING/TRAFFIC

The application has been referred to Council's Development Engineer who provided the following comments:

The proposal has been assessed in relation to:

- Traffic Management
- Stormwater
- Parking and Access
- Sediment and Erosion Control measures
- Excavation and Retaining Walls

In reference to the proposed development, the following matters have been considered:

Traffic Management:

Holt St and the access roads being Chuter St and Victoria St are all one-way traffic. Chuter St is signposted advising that the street is "unsuitable for large vehicles". CTMP to be assessed and approved by the Traffic Committee. Appropriate conditions can be imposed to achieve compliance with requirements.

Stormwater:

Appropriate conditions can be imposed to achieve compliance with requirements.

Parking and Access:

Appropriate conditions can be imposed to achieve compliance with requirements. No conditions applied.

Sediment and Erosion controls:

Appropriate conditions can be imposed to achieve compliance with requirements.

Excavation and Retaining Walls

Appropriate conditions can be imposed to achieve compliance with requirements. No conditions applied.

Planning comment:

The comments of Council's Engineering Team are endorsed and reflected in the determination of the application.

SUBMISSIONS

Original Plans

The application has been notified in accordance with Council's Community Participation Plan with adjoining properties and the Euroka Precinct notified between 18 April and 2 May 2025. In response to the notification Council received a total of one (1) submission to the proposal from the Lavendar Bay and Euroka Precinct secretary.

The following is a summary of issues raised in the submission:

Exceedance of the building height standard

CONSIDERATION

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

SEPP (Biodiversity & Conservation) 2021

Chapter 6 Water Catchments

The application has been considered against the relevant provisions for stormwater management and water quality in the Sydney Harbour Catchment. Conditions have been recommended to ensure appropriate management of water quality and stormwater flow.

SEPP (Resilience and Hazards) 2021

- Chapter 4 Remediation of Land

Section 4.6 of the SEPP requires the consent authority to consider whether the land is contaminated, and if so whether the land is suitable for the intended use or if there are any remediation measures required. Council's records indicate that the site has historically been used for industrial development therefore, the site is likely to contain contamination. A preliminary site inspection was prepared by Dr Upsilon Environments Pty Ltd on 8 March 2025 and submitted as part of the lodgement package.

The site has no notices, former or current, listed by the NSW EPA under the Contaminated Land Management Act 1997. Four contaminated sites are notified within 1km of the site; however, none are adjacent or pose any risk to potential migration of contaminants. An investigation into PFAS yielded no contaminated areas within 1km of the site. No contaminants such associated dry cleaners, mechanics/motor oils, or services stations were identified on the site. No contaminants or building rubble were identified in soil samples or on visual inspection of the site, or was any staining observed.

As such, the risk of contamination was deemed to be low and suitable for residential development. It is recommended that a waste contamination report be prepared for the spoils excavated from the site for off-site disposal in accordance with the NSW EPA Waste Classification Guidelines. Further onsite inspections and testing is also recommended by environmental consultants during construction.

SEPP (Sustainable Buildings) 2022

A valid BASIX Certificate (A1781445) has been submitted with the application to satisfy the Aims of the SEPP.

NORTH SYDNEY LOCAL ENVIRONMENT PLAN 2013

1. Permissibility

The site is zoned E3 Productivity Support under the provisions of the North Sydney Local Environmental Plan 2013 (NSLEP 2013). Development for the purposes of change of use and alterations and additions to a low density residential dwelling is permissible with the consent of Council.

2. Objectives of the zone

The objectives of the E3 zone are as follows:

- To provide a range of facilities and services, light industries, warehouses and offices.
- To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres.
- To maintain the economic viability of local and commercial centres by limiting certain retail and commercial activity.
- To provide for land uses that meet the needs of the community, businesses and industries but that are not suited to locations in other employment zones.
- To provide opportunities for new and emerging light industries.
- To enable other land uses that provide facilities and services to meet the day to day needs of workers, to sell goods of a large size, weight or quantity or to sell goods manufactured onsite.
- To encourage a mix of lower-scale housing types.
- To permit development that is compatible with the scale, intensity and character of the surrounding residential area.

The proposed development is generally consistent with the objectives of the zone on the basis that the residential land use is compatible with the variable nature of existing land uses in the locality, the single dwelling house is a lower-scale housing type, and the proposed development is compatible with the scale, intensity and character of the surrounding residential areas. The proposed development will provide a lower-scale housing type development to the zone which encourages a highly varied mix of land uses that meets the needs of the community.

The E3 zone reflects is a more permissive zone which encourages both non-residential and appropriate residential land uses to be provided. This reflects the pattern of development locally which includes a number of warehouse style conversions and adaptive reuse of former light industrial buildings, as well as a mixture of low impact non-residential land uses in operation nearby.

The loss of non-residential floor space to a residential land use is acknowledged, however the design of the building is considered to be reasonably adaptable to potential non-residential uses, given the clear expanses within the building, the adaptability of the floor layout, the inclusion of lift access over many floors, the proximity of the site to high frequency public transport and the and noting surrounding land uses include non-residential land uses. This adaptability is relevant to the zone and will enable different land uses to be accommodated should those uses be desired in the future.

3. Principal Development Standards

The proposal has been assessed against the principal development standards applicable to the development under NSLEP 2013 as follows:

Compliance Table -

North Sydney Local Environmental Plan 2013				
Site Area - 313m ² Proposed Control Complies				
Clause 4.3 – Heights of Building 9.5m 8.5m NO				

4. Height of Building

The subject site has a maximum permitted building height of 8.5m pursuant to sub-clause 4.3(2) in *NSLEP 2013*. The existing building has a maximum height of 9.5m which represents a 11.7% variation to the development standard. The proposal relies upon works undertaken that exceed the maximum permitted building height, however, are contained within the existing building envelope.



Figure 10: Height Blanket Diagram

To justify the use of the non-complying elements, a written request to vary the development standard made pursuant to Clause 4.6 in *NSLEP 2013* has been submitted and is assessed below.

5. Clause 4.6 - Contravention of a Development Standard

A written request to contravene the development standard for height has been submitted and has been considered below.

Clause 4.6(3)(a) Is compliance with the development standard unreasonable and unnecessary in the circumstances of the case?

The most common way to demonstrate that compliance with the development standard is unreasonable and unnecessary is to demonstrate that the objectives of the development standard are met notwithstanding the non-compliance. This is identified as test 1 in Wehbe. Wehbe v. Pittwater Council [2007] NSWLEC 827 ("Wehbe").

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

There is no retained natural topography on site, however, the existing building does have a step located within its mid-point which separates the existing parking and office level. The new additions include the removal of this step in the middle of the building, therefore assisting in reducing height within the building. Given the lack of this step having any visible external exposure, no objection is raised to the removal in the circumstances.

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

The proposal will result in some view impact to the Sydney skyline from adjoining sites, particularly from the mid floors of the residential buildings located to the north of the site on Union Street. The premises at Number 93, 95, 97 and 99 Union Street, McMahons Point were previous as part of the assessment of DA302/20 to establish the level of impact occurring from the proposal due to the significant outlook these dwellings enjoy over their rear boundaries. The applicant for the subject application has submitted a detailed analysis of the view impacts based on the information and photos provided, as seen in the figures below.

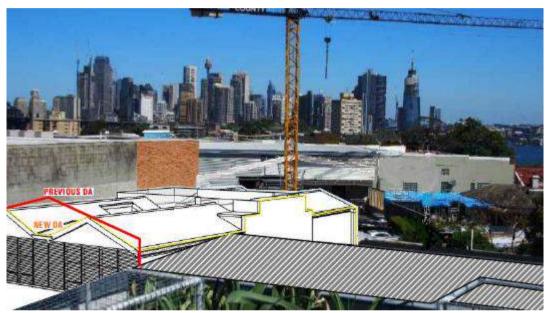


Figure 11: View from Terrace (95 Union Street)



Figure 12: View from 3rd Level Terrace (95 Union Street)

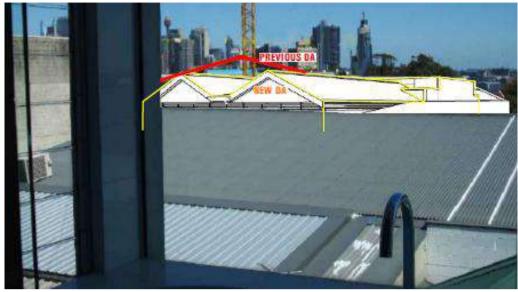


Figure 13: View from Mid-level Bedroom (95 Union Street)



Figure 14: View from Mid-level Bedroom (99 Union Street)

It was concluded in the previously approved application (DA302/20) that the view impact described to the Union Street dwellings affects only of two of the four adjoining dwellings. Impacts we assessed as similar across all four dwellings with the greatest impact to the study in 99 Union Street arising from compliant elements. A height compliant proposal did not provide for provide further material improvements to view impacts. Impacts to views were concluded to be acceptable in the circumstances.

The proposed development includes reducing the maximum building height by 950mm and increasing the setback to the rear boundary by 990mm to approximately 3.9m. Further to this, the perceived bulk has been reduced as a result in the change of roof form from a single pitch, as approved, to a double pitch.

The approved development DA302/20 was assessed as acceptable with respect to impacts to views. The reduced height increased rear setback, and scaled back roof form all work to further improve view sharing across the site as viewed from the properties at 93 - 99 Union Street.

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

The proposal will extend existing morning shadow of the existing building at 6 Holt Street, McMahons Point however this shadow principally falls over Holt Street. There is a dwelling at 15 Chuter Street, McMahons Point which would experience some additional ambient overshadowing from the subject proposal if it were to be constructed however this dwelling and its rear yard outdoor space is already overshadowed by an existing commercial building.

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

The site is not adjoined by any residential properties and the proposed development will not have any significant or unreasonable impact on the privacy of any surrounding property by virtue of any breach of the height control and is acceptable in this regard.

(1)(e) to ensure compatibility between development, particularly at zone boundaries,

The building lies at the transition point from the Union Bank and Thomas Street Conservation Area to the industrial buildings to the east and south. Whilst not a zone boundary, the subject proposal is considered to be appropriate in the context of the Conservation Area to the adjoining existing built forms.

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

The proposal is considered to be of an appropriate density in the circumstances as the zone encourages the development of low scale residential dwellings.

(1)(g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.

N/A.

Clause 4.6(3)(b) Are there sufficient environmental planning grounds to justify the variation

The written request has provided various environmental planning grounds to justify the variation on page 13 of the written request which are briefly summarised below.

- The extent of variation to the building height control is relatively minor and limited to a maximum of 1m.
- The proposed development (compared to the approved development) reduces the building height by 950mm.
- The site is not adjoined by any residential properties and the proposed development will have no significant or adverse impacts on any existing public or private views.
- The site is not adjoined by any residential properties and the proposed development will have no impact on the existing solar access to any residential property in the locality.
- The site is not adjoined by any residential properties and the proposed development will not have any significant or unreasonable impact on the privacy of any surrounding property.

- The proposed development has been carefully designed to retain and integrate the existing façade fronting Holt Street and provide a contemporary dwelling house offering a very high level of amenity.
- Strict compliance with the building height control would require unnecessary and unreasonable amendments to the building form that would compromise the architectural quality and composition of the building, reduce the amenity of the dwelling and serve no useful or necessary planning purpose in terms of streetscape composition or relationship with surrounding properties.
- A review of the Council's Register of Variations to Development Standards reveals that for the period between January 2020 and December 2023, Development Consent has been granted to approximately 165 DA's involving variations to the building height control.
- The proposed development achieves the relevant objectives of the E3 Productivity Support zone.
- The proposed development achieves the objectives of the building height control, notwithstanding the numerical variation.

The above environmental planning grounds are considered to be sufficient to justify the variation in the circumstances.

6. Heritage Conservation

The subject site is listed as a Heritage Item/located in a Conservation Area so the following planning objectives apply to the site:

- (a) to conserve the environmental heritage of North Sydney,
- (b to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

Detailed comments are provided under the Heritage referral of this report. Whilst the concerns of the heritage planner are noted, it is the conclusion of this assessment report that the proposed additions to the building in their current form will not cause detrimental impact upon the conservation area due to the reasonable bulk and scale and appropriate transitional form between the Conservation Area boundary to the commercial buildings to the east to the residential buildings to the west. The existing building form makes little in the way of meaningful contribution to the established character of the Conservation Area.

The additions will successfully integrate within the existing local street context and with the intended desired future character of the area. Accordingly, the additions are not considered to satisfy the objectives and standards in Clause 5.10(1) of NSLEP 2013.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN (NSDCP) 2013

The Development Control plan applies to the site so an assessment has been carried out below:

Compliance Table – Residential Development

Part B Section 1- Residential Development				
	complies	Comments		
1.3 Environmental Criteria				
1.3.1 Topography O3 To minimise the adverse effects of excavation on the amenity of neighbouring properties. P5 Excavation should not occur within 1m of any property boundary. Where excavation is required within 500mm of a property boundary, Council must not grant development consent unless it is satisfied that the proposed excavation will not result in adversely impacting upon the structural integrity of adjoining properties.	Yes	Subject to the imposition and satisfaction of such conditions recommended by Council's Engineer Council is satisfied that the proposed excavation is considered to be reasonable.		
1.3.6 Views	Yes	The Land & Environment Court has a well- established planning principle in respect of the assessment of impacts of development on views which was set out in Tenacity Consulting v Warringah Council (2004) NSWLEC 140 ("Tenacity"). The four steps assessment is adopted below: 1. Assessment of views affected (type, partial or whole view etc) 2. What part of the property are the views obtained (views across side boundaries are more difficult to protect, sitting or standing view) 3. Extent of impact on the whole of the property (negligible, minor, severe or devastating). Impact on views from Living areas is more significant than bedrooms or service areas. 4. Reasonableness of the proposal (If it complies with all planning controls, can a more skillful design be provided to reduce the impact?) The view can be assessed as a partial land-sea interface view of the Sydney CBD with slot/obstructed iconic views of the Sydney Harbour Bridge. Views are shared across the rear boundaries to the south from the properties at 95, 97, and 99 Union Street to the north of the site. Views are generally attained through rear facing windows of various habitable spaces (kitchen, living spaces), terraces, and bedrooms. The impact on the views at the locations above can be described as no material impact or negligible impact, with the building envelopes/forms detailed in Figures 11-14 as below the view corridors/sight lines. However, views from the bedroom at 99 Union Street can be described as minor as this room is located lower and therefore more obstructive.		

Part B Section 1- Residential Development			
complies Comments			
		The view impact described to the Union Street dwellings affects only one dwelling being 99 Union Street. A height compliant proposal would not provide for provide further material improvements to view impacts. Further to this, views are attained from a bedroom, which is not a high traffic space and therefore less desirable. Impacts to views are concluded to be acceptable in the circumstances.	
		It was also determined (previously in this report) that the development will not materially impact to existing high amenity views particularly from portions of the proposal in non-conformance with the Height control for the site. The proposal will promote the principle of view sharing and utilises design to make adequate preservation of views in the circumstances. A further reduction in height compared to the approved results in further preservation of the views potentially lost. View impact is supportable in the circumstances.	
1.3.7 Solar Access	No (acceptable on merit)	Due to the presence of the existing three storey building at 6 Holt Street, there is already considerable solar overshadowing occurring. The shadow, however, principally falls over Holt Street and the rear of 15 Chuter Street. The proposal has taken measures to ensure maximum solar access to the site, including provisions of a central courtyard/lightwell. The subject building does not result in any new material impact from this existing overshadowing. It is on the basis of the lack of new material impact to any surrounding	
		residential premises that no objection is raised to the proposal in this regard.	
1.3.8 Acoustic Privacy 1.3.10 Visual Privacy	No (acceptable on merit)	Generally, the proposal would not be considered to give rise to adverse visual or acoustic privacy impacts given that the site is not located directly adjacent to any residential properties. However, the roof terrace, with an area of approximately 60m² (29% of floor area below), is excessive in size. However, a precedence has been set with both 95 and 93	
		Union Street benefiting from large rooftop terraces, located to the northwest of the site. With these properties in mind, it is deemed that the proposal roof terrace is acceptable in this regard despite the non-compliances as the objective of the control can be attained and is unlikely to impact upon the visual privacy of nearby residential properties.	
		A condition is recommended to require no awnings, or umbrellas to be installed on the roof terrace or any furniture which exceeds a height of 1.6m above FFL for the terrace.	

	Part B Section 1- Residential Development			
	complies Comments			
1.4	Quality built form			
1.4.1	Context	Yes	The site lies in the industrial portion of the Union, Bank and Thomas Street Conservation Area. The subject proposal is considered to provide an adequate contextual response in the circumstances which transitions from the existing three storey building at 6 Holt Street to the single storey building on the corner of Holt and Chuter Street.	
1.4.3	Streetscape	Yes	The Holt Street streetscape of the existing building is intended to be altered to improve upon the pedestrian entry and visual permeability of the building. Whilst garages to front facades are generally not supported, this is an existing arrangement and accordingly acceptable in this instance.	
1.4.5	Siting	Yes	The proposed development is appropriately sited and would not dominate the street and is compatible with the immediate surrounding area.	
1.4.6	Setbacks	Yes	There will be no alteration to the existing ground floor external setbacks of the existing building and all additions are located over the existing building. The upper floor street and rear setbacks are considered to be an appropriate response in the circumstances.	
1.4.7	Form Massing Scale	Yes	The size of the proposed additions and alterations is considered to be acceptable and in keeping with the form of development expected within a Conservation area. The proposed works are set below the height of the main dwelling roof and would not be readily visible from the street. The height of the first floor addition additions has been	
			considered in greater detail, as discussed in the Building Height section in this report.	
1.4.8	Built Form Character	Yes	The proposed alterations and additions are located within the footprint of the existing building. The additions to the site will provide an appropriate transition between the existing three storey building at 6 Holt Street to the single storey building on the corner of Holt and Chuter Street and will directly align with the form and character of the industrial transition at the periphery of the conservation area.	
1.4.10	Roofs	Yes	The proposal will integrate a double pitched corrugated roof form. This is aligned with the materiality of the immediate locality as well as directly responding to the characteristic form of the immediate locality, being the transition between the McMahons Point Business Precinct and the conservation area.	

	Part B Section 1- Residential Development			
		complies	Comments	
1.5	Quality Urban Environment			
1.5.4	Vehicle Access and Parking	Yes	The proposal outlines two car parking spaces which is integrated within the hardstand space within the existing building.	
1.5.5	Site Coverage	No (acceptable on merit)	The proposal has a site coverage of 76% which represents 235.2m² of the site. This is a 26% variation to the control (50% maximum). Whilst the existing building is industrial in use, it has a site coverage of 95% (293.9m²). In considering the nature of the development, including the change of use from industrial to residential, and the existing footprint and siting of the current building, the proposed development materially reduces the site coverage and increases the landscaped area compared to both the existing building and the approved development. The proposal meets the objectives of the control in that the development will maintain a suitable balance of space that is in keeping the immediate context of the site and ensures that density of the building is maintained.	
	Landscape Area (min) & Un-built rea (max)	No (acceptable on merit)	The proposal has a landscaped area of 35m² which represents 11% of the total site area. This is a shortfall of 19%. The existing site provides for no landscaped area, being an industrial use. The proposal utilises the rear yard and creates an internal courtyard for provisions of landscaping space. In considering the nature of the development, and the building footprint and siting, the proposed variation to landscaped area is acceptable in this instance/ The proposal meets the objectives of the control which aims to create useable private open spaces within the site and control site density. The proposed unbuilt upon area of the site is 13% (40m²) and is compliant in this instance.	
1.5.10	Private and Communal Open Space	Yes	Due to the creation of an internal courtyard and retention of rear yard, the proposal provides for 49.5m² of private open space and is compliant with respect to the controls. The spaces will be of generally low amenity during the winter months due to the unavoidable and restricted nature of the site and overshadowing. The addition of the roof terrace will create a usable private open space of high amenity that will supplement the internal courtyard and rear yard. Due to the poor access to light, the roof terrace is required to provide viable and reliable open space.	
1.6	Efficient Use of Resources			
1.6.1	Energy Efficiency	Yes	A valid BASIX Certification has been submitted as part of the development application documentation.	

CHARACTER STATEMENTS – PART C

Lavendar Bay Planning Area

The application has been assessed against the relevant controls in Part C Section 9 Lavender Bay Planning Area - Union Thomas and Bank Street Conservation Area. The building is considered to be an appropriately scaled form between the adjoining character area of McMahons Point Business Precinct and the subject Conservation Area.

LOCAL INFRASTRCTURE CONTRIBUTIONS PLAN

The proposal is subject to Local Infrastructure Contributions in accordance with the North Sydney Local Infrastructure Contributions Plan (as amended). The required contribution has been calculated in accordance with the applicable contribution rates as follows

Applicable Contribution Type			
S7.12 contribution detail	Development cost:	\$960,740	
(payment amount subject to	Contribution:	\$9,607	
indexing at time of payment)			

Conditions requiring payment of contributions are included in the attached recommended conditions of consent.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

ENVIRONMENTAL APPRAISAL - CONSIDERED

EVALUATION: SECTION 4.15(1) ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

Matters for consideration prescribed by section 4.15(1) have been considered as outlined in the following table.

Matte	ers for consideration	Considered
(a)	The provisions of :	Yes
	(i) any environmental planning instrument,	
	(ii) any proposed instrument that is or has been the subject of public consultation,	Yes
	(iii) any development control plan,	Yes
	(iiia) any executed planning agreement or agreement offered by a developer, and	N/A
	(iv) the regulations (refer to s. 61 of the EP&A Regulation 2021.	N/A
(b)	The likely impacts of the development on built and natural environments, and social and economic impacts on the locality	Yes

(c)	The suitability of the site for the development.	Yes
(d)	Any submission made in accordance with the Act	Yes
(e)	The public interest.	Yes

The matters for consideration under the provisions of S.4.15(1) of the Act have been addressed throughout this report. Conditions of consent have been recommended to address all likely impacts arising from the development and to require compliance with applicable regulations.

PUBLIC INTEREST

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

SUITABILITY OF THE SITE

The proposal would be located in the E3 zone where low density residential development is a permissible form of development. Consequently, the proposal is considered to be suitable for the site having regard to the merits of the proposal as described in the above report.

SUBMITTERS CONCERNS

The concerns raised during the notification of the application have been reviewed and addressed in detail under the relevant headings above. The proposed amended development largely deals with the concerns raised in the submissions and are addressed, where relevant, below:

• Exceedance of the Building Height Control

Response: The extent of variation to the building height control is relatively minor and limited to a maximum of 1m, and (compared to the approved) reduces the building height by 950mm. The site is not adjoined by any residential properties and the proposed development will have no significant or adverse impacts on any existing public or private views, existing solar access to any residential property in the locality and will not have any significant or unreasonable impact on the privacy of any surrounding property.

CONCLUSION AND REASONS

The development application has been assessed against the *North Sydney Environmental Plan 2013* and the North Sydney Development Control Plan 2013 and generally found to be satisfactory.

From the reasons listed above, the proposal is unlikely to cause adverse material impacts to adjoining properties. The proposed works to the western elevation will maintain the amenity of the adjoining dwelling via site specific conditions.

Having regard to the provisions of Section 4.15 (1) of the Environmental Planning & Assessment Act 1979, the proposed development will not result in any unreasonable amenity or environmental impacts. The application is considered satisfactory and is recommended for approval.

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

The subject application was notified to adjoining properties and the local Precinct Committee. Where a issues were raised, these have been considered within this report. Appropriate conditions of consent area recommended to ensure the development will maintain the amenity of adjoining properties and the character of the conservation area.

RECOMMENDATION

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

THAT the North Sydney Local Planning Panel, exercising the functions of Council, assume the concurrence of the Secretary of The Department of Planning, Industry, and Environment and invoke the provisions of Clause 4.6 in *NSLEP 2013* with regards to the non-compliance with Clause 4.3 and grant consent to Development Application No. 57/2025 for part demolition of existing structure and erection of new 3 storey single dwelling on land at 4 Holt Street, McMahons Point subject to the attached Standard conditions and following site specific conditions:

Heritage Requirements

- A5. The following design amendments are required to improve the response to heritage context and to address amenity impacts:
 - a) The existing asymmetrical setting of the vehicular opening and secondary pedestrian entry and as framed by the box gutters and downpipes on either side as presented in the existing building façade of the light industrial building are to be retained.
 - b) Details of a new garage door to fit into the existing opening and designed with a smaller secondary door set within it to access the garbage area are to be submitted to Council for approval.
 - c) The proposed alignment of the new addition set behind the existing frontage of the light industrial building is to be compatible with the Holt Street alignment and complementary with the building at 6-8 Holt Street.
 - d) The design of the new balconies are to be integrated to complement the industrial context and character of the host building and its setting amongst modern industrial buildings.
 - e) The fenestration pattern of the new built form is to be rationalized to increase the solid-to-void ratio of the new built form and its fit with the host building and the industrial context of the site, particularly the adjacent building at 6-8 Holt Street.
 - f) Details of the proposed conservation works to the front façade of the light industrial building are to be provided to Council including details of:
 - i. The removal of paint and making good of the brick façade and parapet form retention of the details of the corbelled brick edges.
 - ii. Retention of the box gutters and downpipes framing the original building and contributing to retaining its character.

Amended plans incorporating the above design amendments must be prepared and submitted with the Construction Certificate. The Certifying Authority must also ensure that the building plans and specifications submitted, referenced on and accompanying the issued

Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To retain the heritage significance of the building, to preserve the character

of the conservation area)

Roof Terrace

13. The approved roof terrace is restricted from installing any additional structures to the space including awnings, umbrellas, or similar, or any furniture which exceeds a height of 1.6m above FFL.

(Reason: To ensure view corridors and view sharing is upheld)

JACK VARKA
SENIOR ASSESSMENT OFFICER

DAVID HOY TEAM LEADER

STEPHEN BEATTIE
MANAGER DEVELOPMENT SERVICES

NORTH SYDNEY COUNCIL CONDITIONS OF DEVELOPMENT APPROVAL 4 HOLT STREET, MCMAHONS POINT DEVELOPMENT APPLICATION NO. 57/25

A. Conditions that Identify Approved Plans

Development in Accordance with Plans/Documentation

A1. The development must be carried out in accordance with the following drawings endorsed with Council's approval stamp and other documentation listed in the tables to this condition, or cited by other conditions, and as amended by other conditions of this consent.

Plan No.	Rev	Description	Prepared by	Dated
B1000	F	Demolition Plan	Map Architects	01/05/2024
B1001	F	Ground Floor	Map Architects	01/05/2024
B1002	F	First Floor	Map Architects	01/05/2024
B1003	F	Second Floor	Map Architects	01/05/2024
B1004	F	Roof Plan	Map Architects	01/05/2024
B2100	F	Sth Elevation	Map Architects	01/05/2024
B2101	F	Nth Elevation	Map Architects	01/05/2024
B2102	F	E/W Elevation	Map Architects	01/05/2024
B3000	F	Sec AA	Map Architects	01/05/2024
B3001	F	Sec BB	Map Architects	01/05/2024

(Reason:

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

Plans on Site

A2. A copy of all plans endorsed with Council's approval stamp, specifications and documents (including the plans, specifications and documents submitted and approved with all Construction Certificates) must be always kept on site and be readily available for perusal by an officer of Council or the Principal Certifier.

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

(Reason:

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

No Demolition of Extra Fabric

A3. Alterations to, and demolition of the existing building shall be limited to that documented on the approved plans.

(Reason: To ensure compliance with the approved development)

External Finishes and Materials

A4. External finishes and materials must be in accordance with the submitted schedule prepared by MAP Architects and dated 1 May 2024 unless otherwise modified by Council in writing. Substitution of materials must not be undertaken, except where otherwise approved in writing by Council.

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

Heritage Requirements

- A5. The following design amendments are required to improve the response to heritage context and to address amenity impacts:
 - a) The existing asymmetrical setting of the vehicular opening and secondary pedestrian entry and as framed by the box gutters and downpipes on either side as presented in the existing building façade of the light industrial building are to be retained.
 - b) Details of a new garage door to fit into the existing opening and designed with a smaller secondary door set within it to access the garbage area are to be submitted to Council for approval.
 - c) The design of the new balconies are to be integrated to complement the industrial context and character of the host building and its setting amongst modern industrial buildings.
 - d) The fenestration pattern of the new built form is to be rationalized to increase the solid-to-void ratio of the new built form and its fit with the host building and the industrial context of the site, particularly the adjacent building at 6-8 Holt Street.
 - e) Details of the proposed conservation works to the front façade of the light industrial building are to be provided to Council including details of:
 - i. The removal of paint and making good of the brick façade and parapet form retention of the details of the corbelled brick edges.
 - ii. Retention of the box gutters and downpipes framing the original building and contributing to retaining its character.

Amended plans incorporating the above design amendments must be prepared and submitted to Council for written approval prior to the issue of the first Construction Certificate. The Certifying Authority must also ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To retain the heritage significance of the building, to preserve the character of the conservation area).

B. Matters to be completed before the lodgement of an application for a construction certificate

Construction and Traffic Management Plan (Major DAs and Sites with Difficult Access)

- B1. Prior to issue of any Construction Certificate, a Construction and Traffic Management Plan must be prepared. The following matters must be specifically addressed in this Plan:
 - a) A plan view (min 1:100 scale) of the entire site and frontage roadways indicating:
 - Dedicated construction site entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction-related vehicles in the frontage roadways;
 - ii. Signage type and location to manage pedestrians in the vicinity;
 - iii. The locations of any proposed Work Zones in the frontage roadways;
 - iv. Locations and type of any hoardings proposed;
 - v. Area of site sheds and the like;
 - vi. Location of any proposed crane standing areas;
 - vii. A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
 - viii. Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected; and
 - ix. The provision of an on-site parking area for employees, tradesperson and construction vehicles as far as possible.
 - b) A Traffic Control Plan(s) for the site incorporating the following:
 - i. Traffic control measures proposed in the road reserve that are in accordance with the TfNSW publication "Traffic Control at Work Sites Manual" and designed by a person licensed to do so (minimum TfNSW 'red card' qualification).
 - ii. The main stages of the development requiring specific construction management measures are to be identified and specific traffic control measures identified for each.
 - c) A detailed description and map of the proposed route for vehicles involved in spoil removal, material delivery and machine floatage must be provided, detailing light traffic roads and those subject to a load or height limit must be avoided at all times.

A copy of this route is to be made available to all contractors and must be clearly depicted at a location within the site.

- d) A Waste Management Plan in accordance with the provisions of Part B Section 19 of the North Sydney DCP 2013 must be provided. The Waste Management Plan must include, but not be limited to, the estimated volume of waste and method of disposal for the construction and operation phases of the development, design of on-site waste storage and recycling area and administrative arrangements for waste and recycling management during the construction process;
- e) Evidence of TfNSW concurrence where construction access is provided directly or within 20m of an Arterial and/or Classified Road;
- f) A schedule of site inductions to be held on regular occasions and as determined necessary to ensure all new employees are aware of the construction management obligations. These must specify that construction-related vehicles to comply with the approved requirements; and
- g) For those construction personnel that drive to the site, the Site Manager shall attempt to provide on-site parking so that their personnel's vehicles do not impact on the current parking demand in the area.

A suitably qualified and experienced traffic engineer or consultant must prepare the Construction and Traffic Management Plan.

As this plan has a direct impact on the local road network, it must be submitted to and reviewed by Council prior to the issue of any Construction Certificate. A certificate of compliance with this condition from Council's Development Engineers as to the result of this review must be obtained and must be submitted as part of the supporting documentation lodged with the Principal Certifier for approval of the application for a Construction Certificate.

The construction management measures contained in the approved Construction and Traffic Management Plan must be implemented prior to the commencement of, and during, works on-site.

All works must be undertaken in accordance with the approved Construction and Traffic Management Plan.

A copy of the approved Construction and Traffic Management Plan must be kept on the site at all times and be made available to any officer of the Council on request.

Note:

1) To apply for certification under this condition, an 'Application to satisfy development consent' must be prepared and lodged with North Sydney Council. North Sydney Council's adopted fee for certification of compliance with this condition must be paid upon lodgement.

- 2) Any use of Council property will require appropriate approvals and demonstration of liability insurances prior to such work commencing.
- 3) Failure to provide complete and detailed information may result in delays. It is recommended that your Construction and Traffic Management Plan be lodged with Council as early as possible.
- 4) Dependent on the circumstances of the site, Council may request additional information to that detailed in the condition above.

(Reason:

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

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

Dilapidation Report Damage to Public Infrastructure

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

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

The Applicant shall be responsible for the cost of repairing any public infrastructure damaged during the course of the development. No occupancy of the development shall be permitted until all such damage has been rectified.

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

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

Dilapidation Report Private Property (Excavation)

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

The dilapidation report and survey are to be prepared by a consulting structural/geotechnical engineer and a copy to be given to the owner of the relevant affected adjoining property.

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

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

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

(Reason: To record the condition of property/ies prior to the commencement of construction)

Dilapidation Survey Private Property (Neighbouring Buildings)

C3. A photographic survey and dilapidation report of adjoining property Nos. 6 Holt Street and 15, 17, 19, 21 & 23 Chuter Street detailing the physical condition of those properties, including, but not limited to, such items as walls, ceilings, roof, structural members within 3.0metres of the common property boundary, and other similar items, MUST BE submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate.

The survey and report are to be prepared by an appropriately qualified person and a copy to be given to the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Principal Certifier, prior to the issue of the relevant Construction Certificate.

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

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

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

(Reason: Proper management of records)

Structural Adequacy of Adjoining Properties

C4. A report prepared by an appropriately qualified and practising structural engineer detailing the structural adequacy of adjoining properties No's. 6 Holt Street and 17, 19, 21 & 23 Chuter Street, which certifies their ability to withstand the proposed works (including excavation) and outlines any measures required to be implemented to ensure that no damage will occur to adjoining properties during the course of the works, must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The measures outlined in the certified report must be complied with at all times.

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

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

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

Structural Adequacy of Existing Building

C5. A report prepared by an appropriately qualified and practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction shall be submitted to the Principal Certifier for approval prior to issue of the relevant Construction Certificate. The certified report must also include all details of the methodology to be employed in construction phases to achieve the above requirements. The methodology in the certified report must be complied with at all times.

(Reason: To ensure the structural integrity of the building is maintained)

Geotechnical Report

- C6. A report prepared by an appropriately qualified Geotechnical Engineer certifying that the existing rock formations and substrate on the site are capable of:
 - a) withstanding the proposed loads to be imposed;
 - b) withstanding the extent of the proposed excavation, including any recommendations for shoring works that may be required to ensure the stability of the excavation;
 - c) providing protection and support of adjoining properties; and
 - d) the provision of appropriate subsoil drainage during and upon completion of construction works

must be submitted for approval by the Principal Certifier prior to the issue of the relevant Construction Certificate.

Recommendations made in the certified report must be complied with at all times.

Building plans and specifications submitted for approval with the relevant construction certificate application must comply with (a), (b), (c) and (d), above, and the certified report, including relevant recommendations made in the said certified report.

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

Work Zone

C7. If a Work Zone is required a Work Zone permit is to be obtained from Council prior to the issue of any Construction Certificate.

Note: For major development, an application for work zone permit must be considered by the North Sydney Local Traffic Committee.

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

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

(Reason: Amenity and convenience during construction)

Maintain Property Boundary Alignment Levels

C8. Except where otherwise approved by Council, the property boundary alignment levels must match the levels which existed prior to the commencement of works. Plans and specifications which document existing and proposed levels adjacent to the site boundaries and which comply with the requirements of this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.

Plans and specifications which document existing and proposed levels adjacent to the site boundaries and which comply with the requirements of this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate.

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

Required Infrastructure Works - Roads Act 1993

C9. Prior to issue of the relevant Construction Certificate, engineering design plans and specifications must be prepared by a qualified civil design engineer. The plans and specifications must be to a detail suitable for construction issue purposes and must provide detail and specification for the following infrastructure works to be completed as part of the development.

Note: Application for approval of Infrastructure Works under this condition must be submitted to Council using the 'Application to satisfy development consent' form accompanied by payment of the adopted assessment/inspection fees.

Road Works

- a) Full frontage footpath and kerb/gutter are required (except in the location of the new layback)
- b) transitioning works of one footpath panel beyond both side boundaries is required to ensure uniformity in the footpath;
- c) the works will require reconstruction of the carriageway shoulder extending out 600mm from the gutter lip in AC10 50mm thick, adjacent to all new gutter works;

Drainage Works

Connection of the site stormwater system must be made directly to a newly constructed grated gully pit (with lintel), to front the site on Holt Street. To accommodate this requirement, the following drainage infrastructure works must be carried out on Council property at the Applicant's expense:

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

NOTE: Should the integrity of the existing Council pit located downstream of the site on Holt Street be compromised as a result of the new pipe connection, the pit must be reconstructed to the satisfaction of Council's Development Engineers.

Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate.

The Principal Certifier must not issue the relevant Construction Certificate without the formal written approval of Council (as Roads Authority) under *the Roads Act 1993*.

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

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

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

Obtain Driveway Crossing Permit under S.138 Roads Act 1993

C10. A driveway crossing and roads infrastructure works permit to suit the approved off-street parking facilities must be granted by the Council prior to the issue of the relevant Construction Certificate. In order to obtain a permit under s.138 of *the Roads Act 1993*, an application must be made to Council on the 'Vehicular Access Application' form with payment of the adopted assessment/inspection fees. Council will require civil design construction drawings and certification from the Applicant's Civil Engineer to verify design details and enable issue of the permit. The requirements of the permit must be complied with at all times.

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

- a) the vehicular access way must comply with AS 2890.1 and Council's current Vehicular Access Application Guidelines and Specification (gutter bridges not permitted) to ensure that a B85 vehicle will not scrape/strike the surface of the carriageway, layback, vehicular crossing or parking floor;
- b) the width of the vehicular layback must be approximately 9 metres (including the wings);
- c) the crossing (between the layback and the property boundary) must be placed on a single straight grade of approximately 4.5%, falling to the back of the layback;
- d) the gutter levels and boundary levels must match the existing levels and shall not be altered;
- e) the works will require reconstruction of the carriageway shoulder extending out 600mm from the gutter lip in AC10 50mm thick, adjacent to all new gutter works;
- f) any twisting of driveway access must occur entirely within the subject property;
- g) all inspection openings, utility services must be adjusted to match the proposed driveway levels;
- h) sections along centre-line and extremities are required at a scale of 1:50 to be taken from the centre-line of the roadway through to the parking area itself and must include all changes of grade and levels both existing and proposed;
- i) a longitudinal section along the gutter line at a scale of 1:50 showing how it is intended to blend the vehicular crossing with the existing kerb and gutter;
- j) a longitudinal section along the property boundary at a scale of 1:50 is required;
- k) the sections must show the calculated clearance to the underside of any overhead structure;

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

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

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

Stormwater Disposal - Drainage Plan

- C11. Prior to the issue of any Construction Certificate, site drainage plans must be prepared by a licensed plumber or drainage engineer. The site drainage plans must be designed in accordance with the following criteria:
 - a) compliance with BCA drainage requirements and current Australian Standards and guidelines;
 - b) stormwater runoff and subsoil drainage generated by the approved development must be done via direct connection in a controlled manner by gravity to the newly constructed standard grated gully pit in Holt Street;
 - new pipelines within council land (between the property boundary and the newly constructed standard grated gully pit fronting the subject site in Holt Street) shall be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0 millimetres and a section height of 100 millimetres;
 - d) prevent any stormwater egress into adjacent properties by creating physical barriers and surface drainage interception.

Drainage plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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

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

C12. Prior to the issue of the relevant Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$50,000 to be held by Council for the payment of the cost for the following relevant matters:

- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates,
- completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with this consent,
- c) remedying any defects in any such public work that arise within 6 months after the work is completed, and
- d) Council reserves the right to retain all bonds on infrastructure works relating to the completion of required Infrastructure work for a 12-month defect liability period. Council may elect to provide a lesser period for minor residential work.

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

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

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

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

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

Asbestos and Hazardous Material Survey

C13. A report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

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

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

The report must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate.

(Reason:

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

Local Infrastructure Contributions

C14. A monetary contribution pursuant to the provisions of section 7.12 (delete as appropriate) of the Environmental Planning and Assessment Act 1979 is to be paid to Council, in accordance with the North Sydney Council's Local Infrastructure Contributions Plan, to provide for local infrastructure improvements.

Based on the cost of development at the date of determination, the total contribution payable to Council is \$9,607.00.

Indexation

The monetary contribution required under this consent will be indexed between the date of the grant of the consent and the date on which the contribution is paid the time of payment in accordance with quarterly movements in the Consumer Price Index (All Groups Index) for Sydney as published by the Australian Bureau of Statistics.

Timing of Payment

The contribution must be paid to Council prior to issue of the relevant Construction Certificate for any work approved by this consent.

A copy of the North Sydney Local Infrastructure Contribution Plan 2020 can be viewed at North Sydney Council's Customer Service Centre, 200 Miller Street, NORTH SYDNEY, or downloaded via Council's website at www.northsydney.nsw.gov.au.

(Reason: To provide for local infrastructure identified in the *North Sydney Council Local Infrastructure Contributions Plan 2020*)

Security Deposit/Guarantee Schedule

C15. All fees and security deposits/guarantees in accordance with the schedule below must be provided to Council prior to the issue of the relevant Construction Certificate:

Security Deposit/Guarantee	Amount (\$)
Footpath Damage Bond	\$15,000.00
Infrastructure Damage Bond	\$35,000.00
TOTAL BONDS	\$50,000.00

Note: The following fees applicable

Fees	
Local Infrastructure Contributions	
TOTAL FEES	\$9,607.00

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

(Reason: Compliance with the development consent)

BASIX Certificate

C16. Under section 75 of the Environmental Planning and Assessment Regulation 2021, it is a condition of this development consent that all the commitments listed in BASIX Certificate No A1781445 for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate.

(Reason: To ensure the proposed development will meet the Government's

requirements for sustainability and statutory requirements)

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

Asbestos Material Survey

D1. Prior to the commencement of any works, a report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination, and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

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

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

The report must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate.

(Reason:

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

Commencement of Works' Notice

D2. Works in accordance with this development consent must not be commenced until the Applicant has given at least two days' notice to North Sydney Council of the person's intention to commence works in accordance with this development consent.

(Reason:

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

E. During Demolition and Building Work

Parking Restrictions

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

(Reason:

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

Road Reserve Safety

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

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

(Reason: Public Safety)

Temporary Disposal of Stormwater Runoff

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

(Reason: Stormwater control during construction)

Geotechnical Stability during Works

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

Geotechnical aspects of the development work, namely appropriate excavation method and vibration control, support and retention of excavated faces, and hydrogeological considerations must be undertaken in accordance with the recommendations of the geotechnical report required by this consent and all subsequent geotechnical inspections carried out during the excavation and construction phase.

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

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

construction)

Council Inspection of Public Infrastructure Works

- E5. During the works on public infrastructure reverting to Council's care and control, Council's development engineer may undertake inspections of the works at the following hold points:
 - a) Formwork for layback, kerb/gutter, footpaths;
 - b) Formwork and reinforcement for in-situ stormwater pits; and
 - c) Pipe connections prior to back filling

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

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

system)

No Work on Public Open Space

E6. No work can be undertaken within adjoining public lands (i.e., parks, reserves, roads, etc.,) without the prior written consent of Council. In this regard the Applicant is to liaise with Council prior to the commencement of any design works or preparation of a Construction and Traffic Management Plan.

(Reason: Protection of existing public infrastructure and land, and to ensure public

safety and proper management of public land)

Applicant's Cost of Work on Council Property

E7. The Applicant or the person, company or other entity that is acting upon this consent, must bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas.

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

Special Permits

E8. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development must occur entirely on the property.

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

1) On-street mobile plant

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

(Reason: Proper management of public land)

2) Hoardings

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

(Reason: Proper management of public land)

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

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

(Reason: Proper management of public land)

4) Kerbside restrictions, construction zones

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

(Reason: Proper management of public land)

Construction Hours (Commercial Centre and Mixed-use Zones)

E9. Construction activities and works approved under this consent must be restricted to within the hours stipulated in the following table:

Standard Construction Hours		
Day	Hours	
Monday - Friday	7.00am - 7.00pm	
Saturday	8.00am - 1.00pm	
Sunday Public holiday	No work permitted	

Construction activities for development approved under this consent must be carried out in accordance with the standard construction hours above, the EPA Noise Policy for Industry 2017 and any Construction Noise Management Plan required under this consent.

In the event of breach to the approved hours of construction, Council take may take enforcement action under Part 9 of *the Environmental Planning and Assessment Act 1979* and in accordance with Council's adopted Compliance and Enforcement Policy.

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

Out-of-hours' Work Permits

E10. Where it is necessary for works to occur outside those hours allowed by these conditions, an application may be made to Council's Customer Services Centre for a permit to carry out works outside of the approved hours. If a permit is issued, the works approved must be carried out in accordance with any requirements specified in the permit. Permits will only be approved if **public safety is not at risk**. Applications which seek a variation to construction hours solely to benefit the Applicant will require the lodgement and favourable determination of a modification application pursuant to the provisions of section 4.55 of the Environmental Planning and Assessment Act 1979.

Note:

- Failure to obtain a permit for work outside of the approved hours will result in onthe-spot fines being issued, or Council pursuing any action required (including legal proceedings) to have the out-of-hours' work cease, without prior warning.
- 2) Applications for out-of-hours' works should be lodged with Council no later than seven (7) calendar days prior to the date of the intended works.
- 3) Examples of activities for which permits may be granted include:
 - the erection of awnings,
 - footpath, road, and other infrastructure works which cannot be carried out for public convenience reasons within normal hours,
 - the erection and removal of hoardings and site cranes, and

- craneage of materials which cannot be done for public convenience reasons within normal working hours.
- 4) Examples of activities for which permits WILL NOT be granted include:
 - extended concrete pours
 - works which are solely to convenience the Applicant or client, and
 - catch up works required to maintain or catch up with a construction schedule.
- 5) Further information on permits can be obtained from the Council website at www.northsydney.nsw.gov.au.

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

Installation and Maintenance of Erosion and Sediment Controls

E11. Erosion and sediment controls must be installed and maintained at all times in accordance with the Sediment and Erosion Control Plan submitted and approved with the relevant Construction Certificate.

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

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

Sediment and Erosion Control Signage

E12. Most development consents require a durable sign to be displayed in a prominent location on construction sites during building works which displays information and warning of penalties should appropriate erosion and sedimentation control measures not be maintained.

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

Remedial Action Plan (Contaminated Land)

E13. The remediation work must be carried out in accordance with the Remedial Action Plan approved under this consent and all relevant guidelines issued under the Contaminated Land Management Act 1997.

(Reason: To ensure the proper management of contaminated land)

Prohibition on Use of Pavements

E14. Building materials must not be placed on Council's footpaths, roadways, parks or grass verges, (unless a permit is obtained from Council beforehand). A suitable sign to this effect must be erected adjacent to the street alignment.

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

Plant and Equipment Kept Within Site

E15. All plant and equipment used in the undertaking of the development/works, including concrete pumps, wagons, lifts, mobile cranes, hoardings etc., must be situated within the boundaries of the site (unless a permit is obtained from Council beforehand) and so placed that all concrete slurry, water, debris and the like must be discharged onto the building site, and is to be contained within the site boundaries.

Details of Council requirements for permits on public land for standing plant, hoardings, storage of materials and construction zones and the like are available on Council's website at www.northsydney.nsw.gov.au.

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

Asbestos Removal

E16. All demolition works involving the removal and disposal of asbestos must only be undertaken by contractors who hold a current SafeWork NSW Asbestos or "Demolition Licence," and a current SafeWork NSW "Class 2 (Restricted) Asbestos Licence" (or equivalent). Removal must be carried out in accordance with National Occupational Health and Safety Commission requirements.

(Reason: To ensure works are carried out in accordance with relevant SafeWork

NSW requirements)

Service Adjustments

E17. The adjustment or inclusion of any new utility service or facilities must be carried out by an appropriately qualified contractor in accordance with the requirements of the relevant utility authority.

These works shall be at no cost to Council. It is the Applicant's responsibility to contact the relevant utility authorities to ascertain the impacts of the proposal upon utility services prior to the commencement of any work, including demolition (including water, phone, gas and the like).

Council accepts no responsibility for any impact on, or influence upon, utility services provided by another authority.

(Reason: To ensure the service requirements are met)

F. Prescribed Conditions imposed under EP&A Act and Regulations and other relevant Legislation

National Construction Code

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

(Reason: Prescribed - Statutory)

Home Building Act

- F2. 1) Building work that involves residential building work (within the meaning and exemptions provided in *the Home Building Act 1989*) for which *the Home Building Act 1989* requires there to be a contract of insurance under Part 6 of that Act must not be carried out unless the Principal Certifier for the development to which the work relates, has given North Sydney Council written notice of the contract of insurance being issued, and of the following:
 - a) in the case of work for which a principal contractor is required to be appointed:
 - i) the name and licence number of the principal contractor, and
 - ii) the name of the insurer by which the work is insured under Part 6 of that Act, or
 - b) in the case of work to be done by an owner-builder:
 - i) the name of the owner-builder, and
 - ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
 - If arrangements for doing residential building work are changed while the work is in progress such that the information submitted to Council in accordance with this condition is out of date, work must cease, and no further work may be carried out unless the Principal Certifier for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

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

(Reason: Prescribed - Statutory)

Appointment of a Principal Certifier

F3. Building or excavation works in accordance with the development consent must not be commenced until the Applicant has appointed a Principal Certifier for the building work in accordance with the provisions of the Environmental Planning and Assessment Act 1979 and its Regulation.

(Reason: Statutory, to ensure appropriate safeguarding measures are in place prior

to the commencement of any building or excavation works)

Construction Certificate

F4. Building or excavation works in accordance with the development consent must not be commenced until the Construction Certificate for the relevant part of the work has been issued.

Note: For clarity, this condition does not apply to demolition of whole buildings and works. A Construction Certificate is not required for these works. Demolition is controlled by AS 2601-2001 - Demolition of Structures. This Australian Standard requires safeguards to be in place before demolition commences, including traffic control and management, which may form part of the Construction Traffic Management Plan. Vegetation may also be removed or cleared unless the development consent requires that specified vegetation must not be removed.

(Reason: Statutory, to ensure appropriate safeguards are in place prior to the commencement of any works)

Occupation Certificates

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

(Reason: Statutory compliance)

Critical Stage Inspections

F6. Building work must be inspected by the Principal Certifier at the critical stages prescribed by the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2021, and as directed by the appointed Principal Certifier.

(Reason: Statutory)

Commencement of Works

F7. Works in accordance with this development consent must not be commenced until the Applicant has given at least two days' notice to North Sydney Council of the intention to commence those works.

(Reason:

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

Excavation/Demolition

- F8. Excavation and demolition shall be carried out as follows:
 - All excavation and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
 - b) All excavation associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
 - c) Demolition work must be undertaken in accordance with the provisions of AS2601 Demolition of Structures.

(Reason:

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

Protection of Public Places

- F9. 1) A hoarding and site fencing must be erected between the work site and adjoining public place.
 - 2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
 - 3) The work site must be kept lit between sunset and sunrise, if it is likely to be hazardous to persons in the public place.
 - 4) Any such hoarding, fence or awning, is to be removed when the work has been completed.
 - 5) No access across public reserves or parks is permitted.

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

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

Site Sign

G.

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

(Reason: Prescribed - Statutory)

Prior to the Issue of an Occupation Certificate

Infrastructure Repair and Completion of Works

- G1. Prior to the issue of the relevant Occupation Certificate, any and all works relating to the development:
 - a) in the road reserve must be fully completed; and
 - b) to repair and make good any damaged public infrastructure caused as a result of any works relating to the development (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) must be fully repaired;

to the satisfaction of Council Engineers at no cost to Council. Council's development engineer must be contacted to arrange inspections of the completed works in the Public Domain.

(Reason: Maintain quality of Public assets)

Certification - Civil Works

G2. An appropriately qualified and practising Civil Engineer must certify to the Principal Certifier that the stormwater drainage system is constructed in accordance with this consent and the provisions of the applicable Australian Standard. A copy of the certificate must be submitted to Council (if it is not the Principal Certifier) upon completion of the development works and prior to the issue of the relevant Occupation Certificate.

(Reason: Compliance with the Consent)

Works as Executed Drawings and Video

G3. A works-as-executed survey drawing (WAE) of the completed stormwater drainage system must be obtained. The WAE survey drawing must show the alignment, depth and grade of the stormwater drainage pipelines, pits, and ancillary plumbing. The WAE survey drawing must be reviewed by a qualified and practising civil engineer and certification provided to the Principal Certifier that the as-built system achieves the design intent of the plans approved with the relevant Construction Certificate. Certification must be provided with the WAE survey drawing to the Principal Certifier prior to the issue of the relevant Occupation Certificate.

The W.A.E. must be prepared satisfying the following:

CCTV inspection & Recording

- i. Must record completed details of all conduits that will revert to the care and control of Council,
- ii. Must be conducted in accordance with the Conduit Inspection Reporting Code of Australia WSA 05-2013.

The camera

- iii. The camera, transportation unit, distance measuring devices, illumination systems and ancillary equipment used to record the CCTV recording, must be suitable for the conduit size, material and conditions under which the inspection is undertaken.
- iv. The camera shall be steerable and be able to negotiate bends within the drainage pipe. The use of a pushrod camera may only be acceptable for pipe diameters less than 150mm or where a steerable camera cannot navigate.
- A colour camera shall be used which has remotely operated automatic and/or manual adjustment of the focus and iris to allow optimum picture quality to be achieved.
- vi. The camera lens shall be capable of viewing the extremities of the conduit and panning and or tilting to view the lateral connections and defects or features at and position around the conduit regardless of the direction of travel of the camera in the main conduit.
- vii. The adjustment of focus and iris shall provide a focal range from 15 mm to infinity. The distance along the conduit in focus from the initial point of observation shall be a minimum of four times the vertical height of the conduit.

4 HOLT STREET, MCMAHONS POINT DEVELOPMENT APPLICATION NO. 57/25

Page **28** of **29**

- viii. Where required, specialised instruments, apparatus and/or software shall be used to facilitate the measurement of parameters to determine acceptance. Hardware and software used in measuring the parameters shall be correctly calibrated for each application using the manufacturer's methods.
- ix. For circular or regular-shaped conduits, the camera shall be positioned centrally, ±10% of the vertical and horizontal diameter, within the conduit.

A copy of the WAE survey drawing and certification must be submitted to Council, if it is not the Principal Certifier.

(Reason: Compliance with the Consent)

Damage to Adjoining Properties

G4. All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.

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

Utility Services

G5. All utility services shall be adjusted to the correct levels and/or location/s required by this consent, prior to issue of the relevant Occupation Certificate. This shall be at no cost to Council.

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

Asbestos Clearance Certificate

- G6. For building works where asbestos-based products have been removed or altered, an asbestos clearance certificate signed by an appropriately qualified person (being an Occupational Hygienist or Environmental Consultant) must be submitted to and approved by the Principal Certifier (and a copy forwarded to Council if it is not the Principal Certifier) for the building work prior to the issue of the relevant Occupation Certificate. The asbestos clearance certificate must certify the following:
 - a) the building/land is free of asbestos; or
 - b) the building/land has asbestos that is presently deemed safe.

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

4 HOLT STREET, MCMAHONS POINT DEVELOPMENT APPLICATION NO. 57/25

Page **29** of **29**

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

(Reason: To ensure that building works involving asbestos-based products are safe

for occupation and will pose no health risks to occupants)

BASIX Completion Certificate

G7. In accordance with section 45 Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, prior to issuing the relevant Occupation Certificate the Principal Certifier must provide a BASIX completion receipt.

(Reason: To ensure compliance with the Regulations)

I. Ongoing/Operational Conditions

Single Occupancy

11. Nothing in this consent authorises the use of the premises other than for a single occupancy.

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

Minimum Headroom for Car Parking

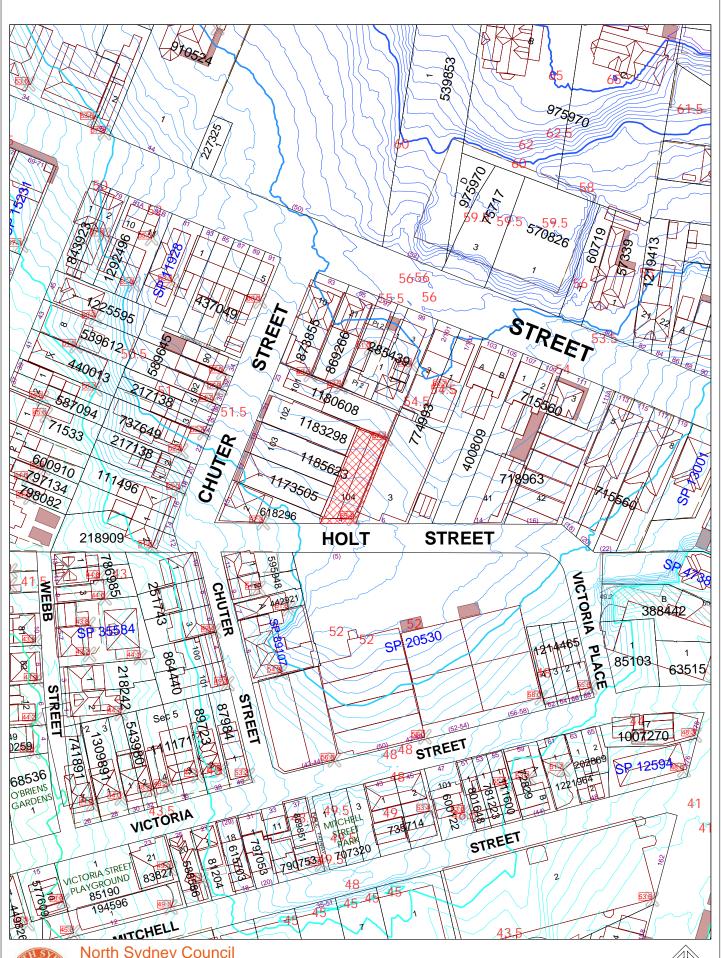
12. Minimum headroom of 2.2m must be provided over all car parking areas.

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

Roof Terrace

13. The approved roof terrace is restricted from installing any additional structures to the space including awnings, umbrellas, or similar, or any furniture which exceeds a height of 1.6m above FFL.

(Reason: To ensure view corridors and view sharing is upheld)





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

Scale: 1:1200 approx.



DEVELOPMENT APPLICATION FOR:

PROPOSED ALTERATIONS & ADDITION TO EXISTING BUILDING TO FORM A DOUBLE STOREY DWELLING AT:

Lot 104 DP1185623 No.4 Holt Street, McMAHONS POINT NSW 2060 Australia

DRAWING MOEX	
COVER SHEET I SITE AMALYSIS	B0000
SITE PLAN I SCP	80001
BASIX REQUIREMENTS	B0002
DEMOLITION - GROWND FLOOR PLAN	81000
PROPOSED GROUND FLOOR PLAN	81001
PROPOSED FIRST FLOOR PLAN	81002
PROPOSED SECOND FLOOR PLAN	B1003
PROPOSED ROOF PLAN	B1004
SOUTH ELEVATION (FRONT)	B2100
NORTH ELEVATION (REAR)	B2101
EAST & WEST ELEVATION	B2102
BUILDING HEIGHT PLANE COMPARISON	B2103
SECTION AA	B3000
SECTION B-8 & DETAIL 01	B3001
SHADOW DIAGRAMS	B6000
SUN STUDY IN COURTYARD	B5001
PROPOSED AREAS CALCULATION PLAN	B005



Alterations and Addition

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Certificate Prepared by	

DEVELOPMENT SCHEDULE

SITE AREA 309.4 m2

BUILDING FOOTPRINT

EXISTING:

295.30 m²

PROPOSED: 209,70 m²

(22M	AMENDMENT	DATE
A	Contact Dation - 01	25/06/2024
	PRE-DAPLANS	25/06/2014
C	Place for Consultits	29/09/2024
0	Roof Turrace Added	24/09/2024
1	OA Plans	\$111/2024
F	Survey Updated	21/01/2025

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ALTITUDE: 60.66*



Nonineted NSW Architects Rep. 8401 - Mark F. Alexs 640: 37 515 684 594 Saitz 4, Building II. 37 Alexandra St. Hunters HR 2110



Alterations and Additions

Certificate number: A1781445

This certificate confirms that the proposed development will meet the NSW government's requirements for sustainability, if it is built in accordance with the commitments set out below. Terms used in this certificate, or in the commitments, have the meaning given by the document entitled "BASIX Definitions" dated 10/09/2020 published by the Department, This document is available at www.bask.nsw.gov.au

Secretary

Date of issue: Wednesday, 29 January 2025 To be valid, this certificate must be todged within 3 months of the date of issue.



Project name	4 Holt Street, McMahons Point
Street address	4 HOLT Street MCMAHONS POINT 2060
Local Government Area	North Sydney Council
Plan type and number	Deposited Plan DP1185623
Lot number	104
Section number	ž.
Project type	THE PROPERTY OF SHIPLEY
Dwelling type	Dwelling house (attached)
Type of alteration and addition	The estimated development cost for my renovation work is \$50,000 or more, and does not include a pool (and/or spa).
N/A	N/A
Certificate Prepared by ass	tase complete before submitting to Council or PCA)
Name / Company Name; AENEC • 0	mce: 02 9994 8905

Project Specification	Form # AE0.3	Australian E:info@eenec.co	Energy Efficiency Co am.au	P:0416 316 204	AENEC
Project Address:	4 Holt Street, McMahons Point	1			
	ATION NUMBER: A1781445				
This Project Sp	ecification outlines ONLY some you must refer to E		ts. For the full list,		www.udnec.com.au
		External Walls S	pecification:		
Type	Material	Added Insulation	Colour	Detail	
Masopry	Brick Veneer	R1.16		As per drawings	13
Masonry	Cavity Brick	Nil		As per drawings	
MARKET STATE OF THE STATE OF TH	LIBERT MUSIC			1	
		Internal Walls s	pecification:		
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Type	Material	Added Insulation	Covering	Detail	
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Framed	As per Drawings	R0.90	-	Above outdoor air	
Masonry	Concrete	NII		Slab on ground	
		Window Spec	cification:		
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Aluminum		Single	7.63 or Lower	0.75 or Lawer	See HASIX
Aluminum		Single - Low E	S.70 or Lower	0.47 or Lower	See BASIX
Aluminum		Single - Low E	5.60 or Lower	0.36 or Lower	See BASIX
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Tollet Flush	3 star or no grater than 4 litres/flust				and/or wall openings to be
Kitchen taps	3 star no grater than Sitimin flow re-	is .		the 'SEALED'	
Bathroom taps	3 star no grater than 9it/min flow ran	te .			on is to be installed in
Rainwater tenk	N/A	Pool	N/A		with AS/NZS 4859.1
realnwater tank	IN/A	IF-OUI	luv.	4. All window	rs to comply with AS2047

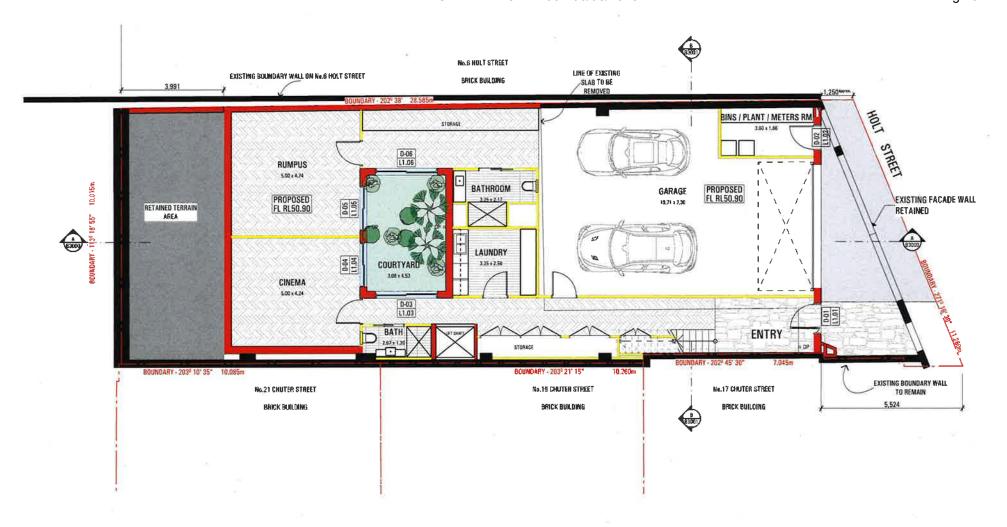
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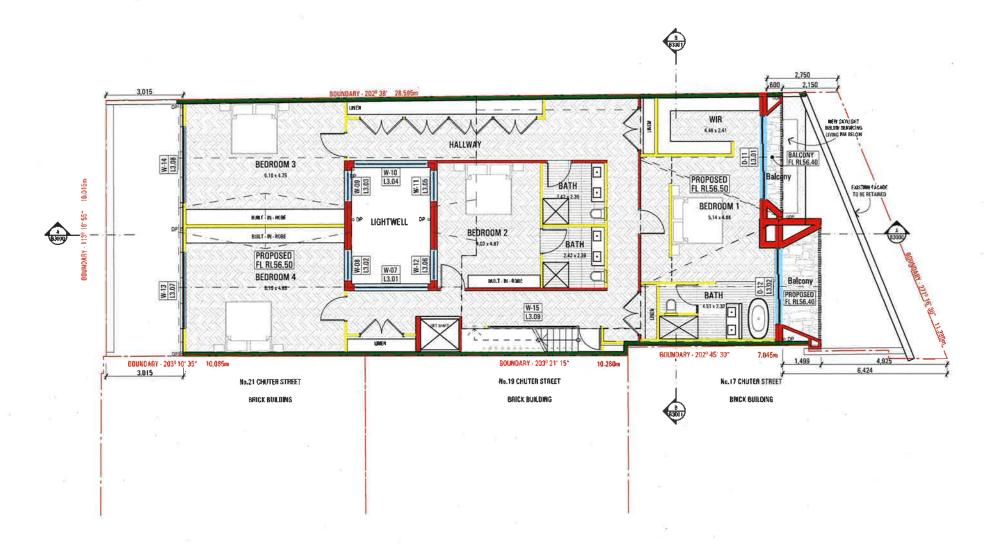


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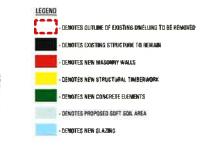






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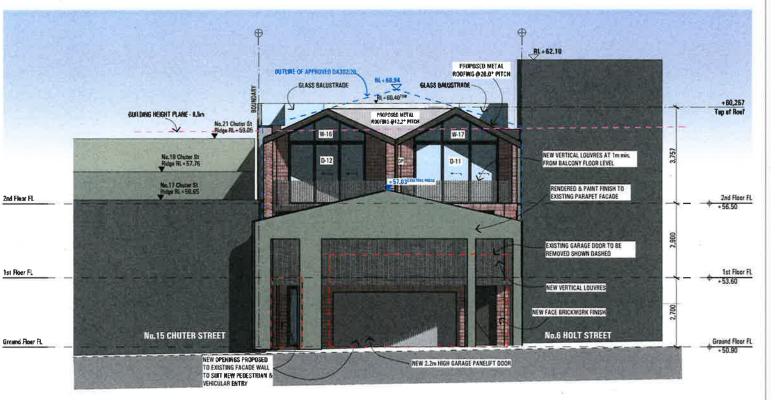
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ATTACHMENT TO LPP06 - 06/08/2025







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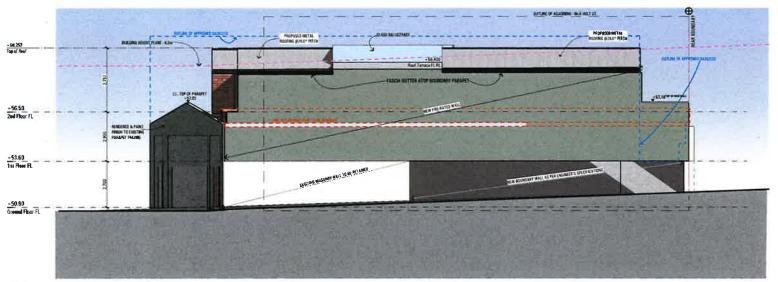
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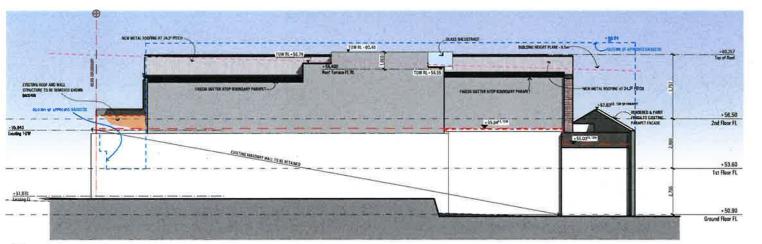


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ATTACHMENT TO LPP06 - 06/08/2025



EAST ELEVATION Scale 1:150



MATERIALS Page 67 **EXTERNAL MASONRY** STACKED BRICK FINISH FRONT RENDER FINISH BATTENS/SCREENING WINDOWS/FRAMES CHARCOAL FINISH WINDOW & DOOR FRAMES **ROOF/GUTTERS** COLORBOND SURFMIST CLIPLOCK ROOFING

WEST ELEVATION

Scale 1:150

ISSUE	AMENDMENT	DATE
A	Concept Design - 01	25/06/2024
3	PRE-DAPLANS	26/06/2024
C	Plans for Considints	29/04/2024
D	Roaf Terrace Added	24/09/2024
E	DA Plans	8/11/2024
f	Servey Updated	21)01/2025

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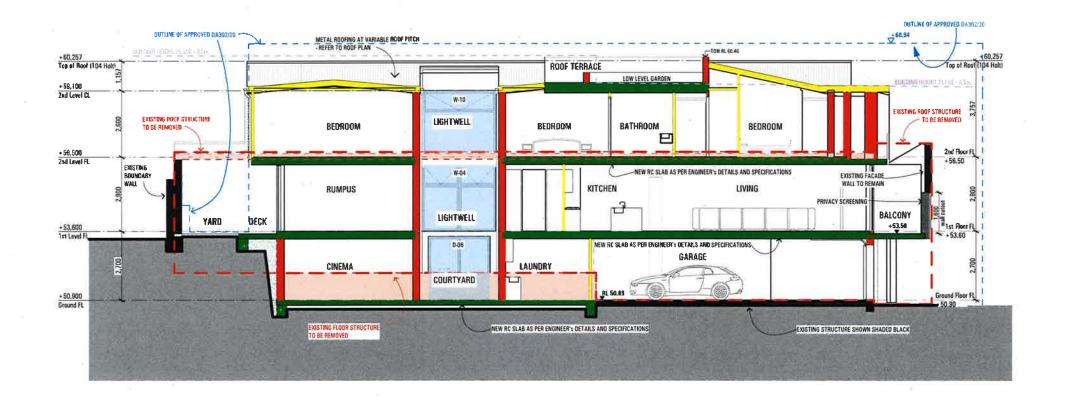




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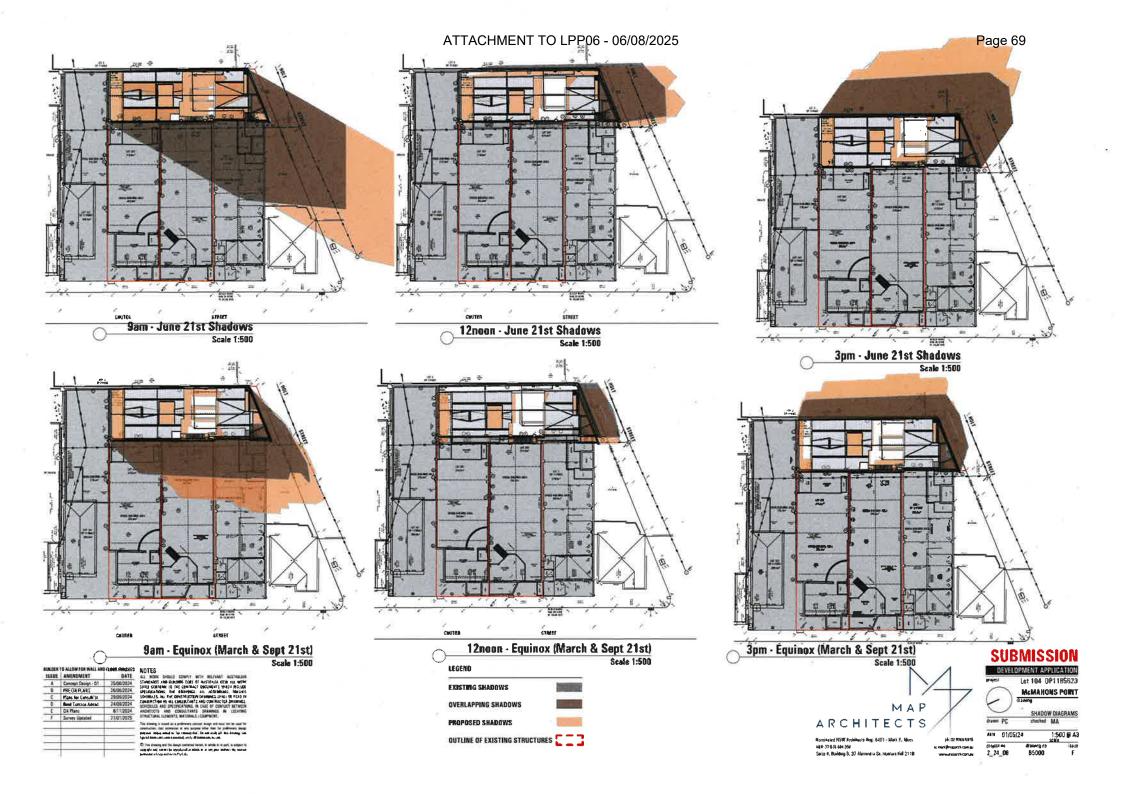












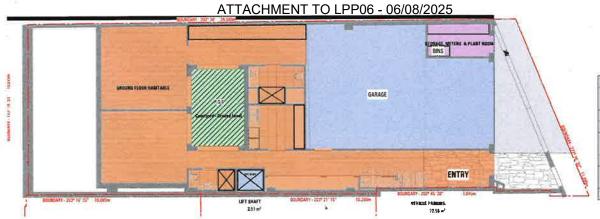


Table 1,2.1 - Numerical Comparison			
8 1	Approved Development	Proposed Development	Change
Gross Floor Atea	752,55m²	G23.51m4	- 129,04m²
Building Height	10.455 metres	9.92 metres	- 540mm
Rear Boundary Setback	0 – 3 metres	3.991 metres	+ 0,991 = 3,991 metres
Site Coverage	294.9m² (95.3%)	221.65m² (76.7%)	+73.05m²
Un-Built Upon Area	14.5m² (4.7%)	87.55m² (28,3%)	+ 73,05m²
Landscaped Area	0m² (0%)	35.4m² (11,4%)	+35.4m² (11.4%)

Ground Floor FL







ISUNE AMENDMENT

McMAHONS POINT

PROPUSED AREAS CALCULATION PLAN

ARCHITECTS

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Construction of Dwelling House

4 Holt Street, McMahons Point

Statement of Environmental Effects

18 February 2025

Ref: 24117/2

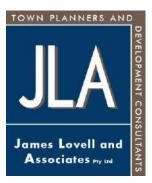


TABLE OF CONTENTS

1.	INTRODUCTION	1
1.1 1.2	PreambleBackground	1 2
1.3	Purpose	7
2.	SITE DESCRIPTION	9
2.1	Site Detail	9
2.2	Site Context	10
3.	PROPOSED DEVELOPMENT	13
3.1	General Description	13
4.	SECTION 4.15 ASSESSMENT	14
4.1	Environmental Planning Instruments	14
4.2	Proposed Environmental Planning Instruments	18
4.3	Development Control Plans	18
4.4	Planning Agreements	27
4.5	Impacts of the Development	27
4.6	Suitability of the Site	31
4.7	Public Interest	31
5.	CONCLUSION	32

LIST OF ATTACHMENTS

Attachment A Request to Vary the Building Height Control

1. INTRODUCTION

1.1 Preamble

This Amended Statement of Environmental Effects (SEE) has been prepared to accompany a Development Application (DA) to North Sydney Council for the construction of a dwelling house at No. 4 Holt Street), McMahons Point.

The subject site is located on the northern side of Holt Street between Victoria Place to the east and Chuter Street to the west. The site encompasses an area of 309.4m² and is rectangular in shape with a splayed frontage of 11.28 metres to Holt Street.



Figure 1: Location

The site is currently occupied by a split-level warehouse style building. The front portion of the building provides the building entry and off-street car parking for approximately six (6) vehicles, and the rear portion of the building provides commercial floor space and amenities within a raised floor level.

The proposed development comprises the construction of a dwelling house on the site, including the retention and integration of the existing front façade.

The ground floor level accommodates a rumpus, cinema and amenities. The first floor level accommodates the main living/dining room, kitchen,

games room, one (1) bedroom and amenities. The second floor level accommodates four (4) bedrooms and amenities.

The ground floor level includes a landscaped, centralised courtyard. The first floor level includes a balcony orientated towards Holt Street and a landscaped rear yard. The second floor level includes two (2) small balconies orientated towards Holt Street. Finally, a portion of the roof level is proposed as a terrace.

Off-street car parking is proposed for two (2) vehicles occupying a portion of the ground floor level.

The building form has been carefully designed to retain and integrate the existing façade fronting Holt Street and provide a contemporary dwelling house offering a very high level of amenity.

Further, the building form has been designed to negotiate the topographical conditions of the site and provide an overall height, bulk and scale that is compatible with the variable nature of surrounding development.

1.2 Background

Approved Development

On 3 March 2021, Council granted Development Consent (DA 302/20) for "Part demolition of existing building and construction of new three storey office premises".

The approved development included the retention and integration of the existing front façade, and the construction of a 3-storey building with a gross floor area of approximately 752.55m².

The approved building has a maximum height of 10.455 metres (RL60.94) and extends along the side boundaries and to the rear boundary at the ground floor level. The first and second floor levels provide a 3 metre setback to the rear boundary accommodating a hardstand terrace. The approved development does not include any landscaping.

The proposed development includes the retention and integration of the existing front façade, and the construction of a 3-storey building with a gross floor area of approximately 623.51m².

The proposed building extends to a maximum height of 9.92 metres (RL60.40) and extends along the side boundaries with a setback of 3.991 metres to the rear boundary. The rear setback includes deep soil landscaping of 21.15m².

A numerical comparison between the approved and proposed development is provided in Tabler 1.2.1 as follows:

Table 1.2.1 – Numerical Comparison				
	Approved	Proposed	Change	
	Development	Development		
Gross Floor Area	752.55m ²	623.51m ²	- 129.04m²	
Building Height	10.455 metres	9.92 metres	- 540mm	
Rear Boundary	0 – 3 metres	3.991 metres	- 0.991 – 3.991 metres	
Setback				
Site Coverage	294.9m ² (95.3%)	221.85m ² (76.7%)	- 73.05m ²	
Un-Built Upon	14.5m ² (4.7%)	87.55m ² (28.3%)	+ 73.05m ²	
Area				
Landscaped Area	0m² (0%)	35.4m ² (11.4%)	+35.4m ² (11.4%)	

Pre-Lodgment Meeting

The Applicant attended a pre-lodgment meeting with Council staff on 2 August 2024. At the time, the proposed development comprised the demolition of the existing building and the construction of a "dual occupancy (attached)".

The proposed development has subsequently been changed to the construction of a dwelling house on the site, including the retention and integration of the existing front façade.

In the circumstances, a significant number of issues raised in the Minutes of the meeting are no longer relevant or applicable to the proposed development.

Irrespective, the town planning related issues raised in the Minutes of the meeting are summarised and considered in Table 1.2.2 as follows:

Table 1.2.2 – Pre-Lodgment Meeting			
Council Comment	Response		
Building Height			
The Applicant is required to submit a	The approved building on the site extends		
Clause 4.6 statement that justifies the	to a maximum height of 10.455 metres		
contravention to the development	(RL60.94) and the proposed building is		
standard. Please note that whilst the	540mm lower and extends to a maximum		
proposal is subject to the previous	height of 9.92 metres (RL60.40). Further,		
industrial/commercial approval, the	the proposed building is 1.7 metres lower		
revised intended residential approval is	than the adjoining building to the east		
required to address the height breach in	(RL62.10). The DA is accompanied by a		
relation to the new residential proposal	"written request" to vary the building		
and the height control including the	height control pursuant to Clause 4.6 of		
appropriateness of introducing a new	the North Sydney Local Environmental		
height breach in the zone and the form of	Plan (LEP) 2013. The "written request"		
development.	demonstrates that the proposed		
	development achieves the objectives of		
	the building height control,		
	notwithstanding the numerical variation.		
Clause 6.6 – Du	al Occupancies		
The subject site has an area of 309.4m ² ,	The proposed development has been		
below the required 450m² specified	changed from a dual occupancy to a		
above. The subject site is below the	dwelling house and Clause 6.6 of the LEP		
minimum requirement by 140.6m ² or	does not apply.		
31.2%. A Clause 4.6 Statement is required			
to justify the proposal if a development			
application is lodged.			
Тород	raphy		
The proposal seeks to excavate up to 1.3m	The excavation proposed towards the rear		
below existing ground level for the Living	of the site is intended to balance the		
space and on the ground floor and	internal floor level, remove the elevated		
required footings. Council's DCP states	slab, and match the ground level at the		
that development should not result in the	front of the site. The excavation is located		
ground level (existing) to be altered by	below the building footprint above.		
more than 500mm above or below	Further, the extent of excavation is		
existing level. The Applicant is required to	materially less than the approved		
address the objectives of this section in	development on the site that extends to		
the SEE.	the same depth and to the rear boundary.		
Views			

Consideration should also be given to the

views to Sydney's Skyline, water views and

The approved building on the site extends

to a maximum height of 10.455 metres

possibly views to the Sydney Harbour Bridge for the neighbours to the rear of the site on Union Street particularly from the mid floors of those residential dwellings. The Applicant is required to submit a detailed view assessment to justify the proposal as a development application. (RL60.94) and the proposed building is 540mm lower and extends to a maximum height of 9.92 metres (RL60.40).

Irrespective, this SEE includes a detailed view assessment from the residential properties to the north along Union Street.

Solar Access

The proposal as a development application will require the Applicant to submit existing and proposed 'sun's eye' (or 'view of the sun') diagrams that demonstrate a minimum of 3 hours of direct sunlight at the winter solstice (21st June) is provided between the hours of 9am – 3pm to the windows of main internal living areas and principal private open space of the subject property and adjoining residential properties

The site is not adjoined by any residential properties. The DA is accompanied by existing and proposed "view from the sun" shadow diagrams. The shadow diagrams demonstrate that sunlight will penetrate to the habitable floor space through the centralised courtyard between midday and 3.00pm in midwinter and between 9.00am and 3.00pm during the equinox.

Internal Visual Privacy

The proposed works are likely to create a visual privacy impact between Unit A and Unit B. The party wall proposed between both units stop short of the full width of the deck (1.5m) which allows wider views to the rear yards.

The proposed development has been changed from a dual occupancy to a dwelling house and accordingly, there will be no internal overlooking between dwellings.

Form, Massing and Scale

The Applicant is required to justify in the SEE how the proposed dual occupancy is consistent in form, massing and scale of surrounding, characteristic buildings.

The proposed development includes reducing the gross floor area (compared to the approved development) by approximately 129.04m², reducing the maximum building height by 540mm, increasing the setback to the rear boundary by 0.991 – 3.991 metres, reducing the site coverage by 73.05m², increasing the un-built upon area by 73.05m² and increasing the landscaped area by 35.4m². Further, the proposed building is 1.7 metres lower than the adjoining building to the east (RL62.10).

The height, bulk and scale of the proposed development is compatible with the variable nature of surrounding development.

Lightwells and Ventilation

No window openings are proposed to the dual occupancy with the exception of the windows surrounding the lightwells. A lightwell that is fully open to the sky is proposed for both units A and B. Provision 1 of this section states that Council may consent to the use of lightwells, but only if certain criteria are met, including the requirement that the lightwell is not the primary source of natural daylight and ventilation to any habitable room.

The proposed development has been changed from a dual occupancy to a dwelling house. Further, the lightwell is fully open to the sky and has relatively generous dimensions of 3.08 x 4.53 metres. Irrespective, the lightwell is the primary source of light and ventilation to only the rumpus room, cinema and one (1) bedroom and all other habitable rooms have external light and ventilation sources.

Site Coverage

The proposal is non-compliant with the 40% (123.8m²) minimum landscaped area and 15% (46.4m²) maximum unbuilt-upon area (UBA) for a dual occupancy. The proposed landscaped area is 37.2m² or 12% which is under the requirement by 86.6m² or 28% which is unsatisfactory against Council controls. The proposed UBA is 41.1m² (13.3%) which is satisfactory

The existing building on the site provides a site coverage of approximately 95.3% and 0% landscaped area. The approved development provides a site coverage of 95.3% and a landscaped area of 0%. The proposed development provides a site coverage of 76.7% and a landscaped area of 11.4%. In the circumstances, the proposed development materially reduces the site coverage and increases the landscaped area compared to both the existing building and the approved development on the site.

Landscape Area

The Applicant is recommended to introduce some greenery to the 1.2m front setback.

The site does not currently include any greenery within the front setback and the approved development does not include any landscaping within the front setback. The Applicant has considered the potential to provide some greenery within the front setback, however it is not practical given the width of the site and the requirement to provide separate vehicular and pedestrian entrance. In any

event, greenery within the front setback is not characteristic of the existing development on the northern side of Holt Street.

Garbage Storage

The Applicant is required to detail in plans the location for garbage storage.

The Architectural Plans identify the location of the bin storage space adjacent to the off-street car parking spaces.

Character Area

The ACS specifies the form, massing and scale of rear additions to be submissive in scale, and behind and below the ridge line. The characteristic roof typology is skillion roof to rear extensions. The proposed dual occupancy maintains the same ridge height throughout the built structure that is inconsistent with the character statement.

The proposed development includes reducing the gross floor area (compared to the approved development) by approximately 129.04m², reducing the maximum building height by 540mm, increasing the setback to the rear boundary by 0.991 – 3.991 metres, reducing the site coverage by 73.05m², increasing the un-built upon area by 73.05m² and increasing the landscaped area by 35.4m². Further, the proposed building is 1.7 metres lower than the adjoining building to the east (RL62.10). The height, bulk and scale of the proposed development is compatible with the variable nature of surrounding development and consistent with the character statement for the locality.

The ACS specifies car accommodation to be single car parking in modest structures. The proposal seeks two parking spaces within each unit and the Applicant is required to justify the proposal within the SEE.

The width of the existing driveway entrance and garage door has been reduced, and the provision of off-street car parking on the site has been reduced.

1.3 Purpose

This SEE has been prepared pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and accompanying Regulation. To that end, it:

identifies the site and provides details of its locational context;

- describes the physical characteristics and design objectives of the proposed development;
- identifies the environmental planning instruments and policies that apply to the site and considers the proposed development against those that are relevant; and
- provides an assessment of the proposed development against the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

2. SITE DESCRIPTION

2.1 Site Details

The subject site formally comprises Lot 104 in Deposited Plan 1185623 and is commonly known as No. 4 Holt Stree8 Tobruk Avenue, Cremorne.

The site is located on the northern side of Holt Street between Victoria Place to the east and Chuter Street to the west. The site encompasses an area of 309.4m² and is rectangular in shape with a splayed frontage of 11.28 metres to Holt Street.

The site is currently occupied by a split-level warehouse style building. The front portion of the building provides the building entry and off-street car parking for approximately six (6) vehicles, and the rear portion of the building provides commercial floor space and amenities within a raised floor level.

The topography of the site has been partially modified to accommodate the existing structures on the site and generally rises towards the rear boundary with a level change of approximately 1 metres. The site does not accommodate any existing vegetation.



Photograph 1: Subject Site Viewed from Holt Street

2.2 Site Context

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



Figure 2: Site

The site is adjoined to the north by a single storey dwelling house (No. 23 Chuter Street) converted to commercial use incorporating an addition to the rear extending to the side and rear boundaries. The front setback to Chuter Street accommodates off-street car parking.



Photograph 2: Adjoining Development to the North

The site is adjoined to the east by a 3-storey commercial building (No. 6 Holt Street) extending to the side and rear boundaries. Off-street car parking is provided within a partially excavated lower ground floor level.



Photograph 3: Adjoining Development to the East

The site is adjoined to the west by a single-storey dwelling (No. 15 Chuter Street) converted to commercial use and a series of commercial buildings fronting Chuter Street (No's 15 – 21 Chuter Street).



Photograph 4: Adjoining Development to the West

The surrounding development to the south (on the opposite side of Holt Street) comprises the off-street car parking facilities related to a series of commercial buildings orientated towards Victoria Street.



Photograph 5: Surrounding Development to the South

3. PROPOSED DEVELOPMENT

3.1 General Description

The proposed development is illustrated in the Architectural Plans prepared by *MAP Architects*, dated 8 November 2024.

The proposed development comprises the construction of a dwelling house on the site, including the retention and integration of the existing front façade.

The ground floor level accommodates a rumpus, cinema and amenities. The first floor level accommodates the main living/dining room, kitchen, games room, one (1) bedroom and amenities. The second floor level accommodates four (4) bedrooms and amenities.

The ground floor level includes a landscaped, centralised courtyard. The first floor level includes a balcony orientated towards Holt Street and a landscaped rear yard. The second floor level includes two (2) small balconies orientated towards Holt Street. Finally, a portion of the roof level is proposed an accessible terrace.

Off-street car parking is proposed for two (2) vehicles occupying a portion of the ground floor level.

The building form has been carefully designed to retain and integrate the existing façade fronting Holt Street and provide a contemporary dwelling offering a very high level of amenity.

Further, the building form has been designed to negotiate the topographical conditions of the site and provide an overall height, bulk and scale that is compatible with the variable nature of surrounding development.

4. SECTION 4.15 ASSESSMENT

The heads of consideration incorporated in Section 4.15 of the *Environmental Planning and Assessment Act 1979* comprise:

- any environmental planning instrument;
- any proposed environmental planning instrument that is or has been the subject of public consultation and that has been notified to the consent authority;
- any development control plan;
- any planning agreement that has been entered into, or any draft planning agreement that a developer has offered to enter into;
- any matters prescribed by the Regulations that apply to the land to which the development application relates;
- the likely impacts of the development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality;
- the suitability of the site for the development;
- > any submissions made in accordance with the Act or the Regulations; and
- > the public interest.

4.1 Environmental Planning Instruments

The proposed development is subject to the following environmental planning instruments:

- 1. State Environmental Planning Policy (SEPP) (Resilience and Hazards) 2021;
- 2. State Environmental Planning Policy (SEPP) (Sustainable Buildings) 2021; and
- 3. North Sydney Local Environmental Plan (LEP) 2013.

SEPP (Resilience and Hazards) 2021

Clause 4.6 specifies that a consent authority must not consent to the carrying out of development on land unless it has considered whether the land is, or is likely to be contaminated, and if the land is, or is likely to be contaminated, whether the land requires remediation before the land is developed for the proposed use.

The site is currently used for commercial purposes, and evidently has not been zoned or used for industrial, agricultural or defense purposes at any time in the lands recent history.

In the circumstances, there is no evidence to suggest that the land is likely to be contaminated to the extent that would render it unsuitable for residential use.

SEPP (Sustainable Buildings) 2021

SEPP (Sustainable Buildings) 2021 aims to encourage sustainable residential development. The DA is accompanied by a compliant BASIX Certificate which demonstrates the proposed development will meet the relevant requirements for sustainability.

North Sydney LEP 2013

The site is zoned E3 – Productivity Support pursuant to the North Sydney Local Environmental Plan (LEP) 2013, and "dwelling houses" are permissible in the zone with the consent of Council.

Further, in BGP Properties Pty Limited v Lake Macquarie Council [20024] NSWLEC 399 McClellan CJ found that "Although the fact that a particular use may be permissible is a neutral factor, planning decisions must generally reflect an assumption that, in some form, development which is consistent with the zoning will be permitted".

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

The objectives of the zone of relevance to residential development are expressed as follows:

- To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres.
- To encourage a mix of lower-scale housing types.
- To permit development that is compatible with the scale, intensity and character of the surrounding residential area.

The proposed development is generally consistent with (or not antipathetic to) the objectives of the zone on the basis that the residential land use is compatible with the variable nature of existing land uses in the locality, the single dwelling house is a lower-scale housing type, and the proposed development is compatible with the scale, intensity and character of the surrounding residential areas.

Clause 4.3 specifies a maximum building height of 8.5 metres and the proposed building extends to a maximum height of 9.92 metres.

The approved building on the site extends to a maximum height of 10.455 metres (RL60.94) and the proposed building is 540mm lower and extends to a maximum height of 9.92 metres (RL60.40). Further, the proposed building is 1.7 metres lower than the adjoining building to the east (RL62.10).

In the circumstances, a "written request" to vary the building height control pursuant to Clause 4.6 of the LEP has been prepared to accompany the DA (Attachment A).

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

Clause 5.10 requires the consent authority to consider the impact of the proposed development on the heritage significance of any heritage items or heritage conservation areas.

The site is not identified as a heritage item. The site is located within the *Union, Bank and Thomas Streets Conservation Area* and there are heritage items in the vicinity of the site.

The DA is accompanied by a *Statement of Heritage Impact (Weir Phillips Heritage and Planning)* which concludes that:

This Statement of Heritage Impact for No. 104 Holt Street, McMahon's Point has been prepared to accompany a Development Application for alterations and additions to the dwelling on the site.

The site is not listed as a heritage item but is located within the Union, Bank, Thomas Street Conservation Area listed by the North

Sydney LEP 2013. The subject site is in the vicinity of multiple locally listed heritage items, but it is not in the vicinity of any state listed heritage items.

The proposed works will have an acceptable impact on the site's contribution to the Union, Bank, Thomas Street Conservation Area which is deemed to have a "neutral" contribution. The proposed additions are compatible with the scale of the building in the immediate area which are typically larger than those throughout the wider HCA. The proposal will retain an understanding of the original parapet as a remnant of the industrial area within this section of McMahons Point.

The proposed rear addition will not be visible from the principal view corridors of the HCA towards the site along Holt Street. T proposed works will read from Holt Street as a thoughtfully and skilfully designed contemporary rear addition and will be in place of the existing, former factory/workshop.

The proposed works will fulfil the aims and objectives of the North Sydney LEP 2013 and the North Sydney DCP 2013 by improving the quality and amenity of subject site while respecting the surrounding contributory elements of the Area in which it lies.

Clause 6.10 requires the consent authority to consider any detrimental impacts on existing drainage patterns, soil stability, and natural features of the site, the likely future use of the land, the quality of the fill or excavated material, the amenity of neighbouring properties, the source of any fill material and the destination of any excavated material, the likelihood of disturbing Aboriginal objects or relics, any adverse impacts on any waterway, drinking catchment or environmentally sensitive area.

The DA is accompanied by *Stormwater Management Plans* (*SYJ Consulting Engineers*) which demonstrate the proposed method of stormwater management for the site.

The earthworks associated with the proposed development will be undertaken in accordance with standard engineering and geotechnical practice, and normal precautions will be taken during the construction period to ensure there are no adverse environmental impacts associated with the proposed earthworks.

Finally, a search of the AHIMS provided by the New South Wales (NSW) Department of Environment and Heritage reveals that no "Aboriginal sites" or "Aboriginal Places" have been recorded within a 200 metre radius of the site.

The LEP does not incorporate any further controls of specific relevance to the proposed development.

4.2 Proposed Environmental Planning Instruments

There are no proposed environmental planning instruments of specific relevance to the proposed development.

4.3 Development Control Plans

The site is subject to the following development control plan:

1. North Sydney Development Control Plan (DCP) 2013.

North Sydney DCP 2013

The North Sydney DCP 2013 is generally intended to supplement the provisions of the North Sydney LEP 2013. The relevant provisions of Part B of the DCP comprise the controls relating to residential development (Section 1) and the relevant provisions of Part C of the DCP comprise the controls relating to the *Union, Bank, Thomas Street Conservation Area* within the *Lavender Bay Planning Area* (Section 9).

Section 3.42 of the *Environmental Planning and Assessment Act 1979* specifies that the provisions of a DCP "are not statutory requirements".

Further, Section 4.15(3A)(b) specifies that the consent authority "is to be flexible in applying" the provisions of a DCP, and "allow reasonable alternative solutions that achieve the objectives of those standards for dealing with that aspect of the development".

Part B: Section 1 – Residential Development

The relevant provisions¹ of Section 1 of the DCP are considered in Table 4.3.1 as follows:

Table 4.3.1 – North Sydney DCP 2013		
Part B – Section 1: Residential Development		
Control	Proposed	Satisfactory
1.2 – Social Amenity		
Population Mix	Population Mix	Yes
Provide flexible indoor and	The proposed dwelling includes	
outdoor spaces.	flexible indoor and outdoor	
	spaces.	
Maintaining Residential	Maintaining Residential	Yes
Accommodation	Accommodation	
Existing residential density should	The residential density on the site	
not be reduced.	is being increased.	
1.3 – Environmental Criteria		
Topography	Topography	Yes
Habitable rooms should be	The habitable rooms are located	
located above existing ground	above existing ground level.	
level.		
Excavation should not occur	The excavation proposed within 1	Yes
within 1 metre of any boundary,	metre of the boundaries will be	
unless the excavation will not	carried out in accordance with	
adversely impact upon the	geotechnical advice to ensure the	
structural integrity of adjoining	structural integrity of the	
properties.	adjoining properties is	
	maintained.	
Views	Views	Yes
Design development to not	The character statement identifies	
unreasonably obstruct views	"views to Berry's Bay" and "slot	
identified in the relevant character	views over and between buildings	
statement.	throughout area". The approved	
	building on the site extends to a	
	maximum height of 10.455 metres	
	(RL60.94) and the proposed	

¹ The relevant provisions of the DCP comprise those which relate specifically to the proposed development and/or those which would not normally be required and/or provided as Conditions of Consent and/or as part of a Construction Certificate.

	building is 540mm lower and	
	extends to a maximum height of	
	9.92 metres (RL60.40). A detailed	
	view loss assessment is included	
	in Section 4.5 of this SEE.	
Development should be designed	The proposed development will	Yes
to maximise the sharing of views	not have any significant or	
from surrounding properties and	unreasonable impacts on any	
public places.	existing public or private views.	
Solar Access	Solar Access	Yes
Maintain 3 hours of solar access	The site is not adjoined by any	
between 9am and 3pm to solar	residential properties and the	
panels, windows of main internal	proposed development will have	
living areas, principal private open	no impact on the existing solar	
space and any communal open	access to any residential property	
space areas on the subject site	in the locality.	
and adjoining residential		
properties.		
Acoustic Privacy	Acoustic Privacy	Will comply
New dwellings shall comply with	The proposed dwellings will	
the noise intrusion criteria	comply with the noise intrusion	
specified in Table B1.2.	criteria in Table B1.2.	
Design buildings and position	The building construction and	Yes
rooms to reduce noise	layout of rooms will minimise	
transmission.	noise transmission.	
Locate windows and doors away	The site is not affected by any	Yes
from external noise sources.	significant noise sources.	
Use materials with low noise	The building construction utilises	Yes
penetration properties.	materials with low noise	
	penetrating properties.	
Locate bedrooms and private	The site is not affected by any	Yes
open space away from noise	significant noise sources.	
sources.		
Visual Privacy	Visual Privacy	Yes
Locate windows to avoid direct or	The site is not adjoined by any	
close views of adjoining dwellings.	residential properties	
Limit the width and depth of any	The site is not adjoined by any	Yes
deck, patio or terrace located	residential properties and the	
greater than 1m above ground	balconies above ground level are	
level (existing) where privacy and	accessed from a bedroom and	
loss of views is an issue and	living room and orientated	

consider using screen devices	towards the street frontage.	
where relevant.	towards the street frontage.	
Private or communal open spaces	The proposed development	Appropriate
on roofs may be considered if the	includes a terrace occupying a	Design
space is designed such that there	portion of the roof level, with an	Solution
is no potential for existing or	area of approximately 60.18m ²	Solution
future overlooking of the space	and 29.7% of the floor area of the	
and subsequent noise and privacy	storey below. The site is not	
issues, the space is setback at	adjoining by any residential	
least 1m from the extent of the	properties, and the roof terrace is	
external enclosing walls to the	substantially recessed behind the	
	, and the second	
floor level below, and the space	front and rear building	
does not exceed 50% of the floor	alignments. The proposed	
area of the storey immediately below or 18m ² , whichever is the	development includes a rear	
lesser, and there is no other	courtyard, however the courtyard	
·	is not accessible directly to/from	
appropriate ground level space	the main living areas. Further, the	
for outdoor recreation off a	retention of the existing front	
primary living room.	façade limits the ability to provide	
	a larger area of private open	
	space directly accessible to/from	
4.4. O P. P. P. F	the main living areas.	
1.4 – Quality Built Form	Characteristic	Van
Streetscape	Streetscape	Yes
Retain and maintain existing	There is no sandstone kerb and	
sandstone kerb and guttering.	guttering across the frontage of	
	the site.	.,
Existing street trees are to be	There are no street trees in the	Yes
maintained.	vicinity of the site.	
Siting	Siting	Yes
Site buildings within a single	The proposed development	
building form, addressing the	provides a single building form	
street.	designed to address the street	
	frontage.	
Dwelling entries should be clearly	The entrance to the dwelling will	Yes
identifiable from the street.	be clearly visible from the street.	
Front Setback	Front Setback	Yes
The front setback must match the	The proposed development	
alignment of the primary facades	maintains and integrates the	
of buildings on adjoining	existing front façade.	
properties.		

Side Setback	Side Setback	Appropriate
Side setbacks should be 900mm	The proposed development	Design
for 1st storey, 1.5 metres for 2nd	maintains the side setbacks of the	Solution
storey and 2.5 metres for 3 rd	existing and approved	
storey.	development on the site. Further,	
	the established pattern of	
	buildings in the immediate vicinity	
	of the site includes buildings built	
	to the side boundaries.	
Rear Setback	Rear Setback	Yes
Rear setbacks should match those	The proposed development	
of adjoining properties.	increases the rear boundary	
	setback of the existing and	
	approved buildings on the site,	
	and the proposed setback is	
	compatible with (and larger than)	
	the setbacks of the adjoining	
	properties.	
Form, Massing and Scale	Form, Massing and Scale	Yes
The finished floor height should	The finished floor level does not	
not exceed 1 metre above ground	exceed 1 metre above ground	
level (existing).	level (existing).	
Finished floor to ceiling heights	The proposed development	Appropriate
are to be a minimum of 2.7	provides internal floor to floor	Design
metres.	levels of 2.6 – 2.9 metres, and the	Solution
	final floor to ceiling heights will	
	be subject to engineering advice	
	to ensure compliance with the	
	National Construction Code.	
Facades facing the street should	The front façade is not dominated	Yes
not be dominated by large	by large expanses of glass.	
expanses of glass.		
Built Form Character	Built Form Character	Yes
Balconies are to be incorporated	The balconies are incorporated	
within the building envelope.	within the overall building	
	envelope.	
Dwelling Entry	Dwelling Entry	Yes
Dwelling entries should be clearly	The entrance to the dwelling will	
identifiable from the street.	be clearly visible from the street.	
Roofs	Roofs	Yes
Buildings should incorporate a	The area character statement	

	_	
pitched roof, except where	suggests that buildings should	
another roof form is identified in	provide pitched, skillion, hipped	
the area character statement.	or gabled roofs. The proposed	
	development retains and	
	integrates the existing front	
	façade, and provides a double	
	pitched roof with gable ends.	
Colours and Materials	Colours and Materials	Yes
Natural colours and muted and	The palette of external materials	
earth tones should be used for	and finishes includes a	
major areas of the building.	predominance of natural and	
	muted tones.	
Front Fences	Front Fences	Yes
Front fences should not exceed 1	A front fence is not required or	
metre in height, with	proposed.	
consideration given to a higher		
side fence on corner allotments.		
1.5 – Quality Urban Environment		
Safety and Security	Safety and Security	Yes
Maximise views of the street,	Views will be maintained to the	
dwelling entries and communal	street and the dwelling entrance.	
areas.		
Maintain site lines along	Site lines will be maintained along	Yes
pathways.	the pathways.	
Vehicular Access and Car	Vehicular Access and Car	Yes
Parking	Parking	
Comply with the parking	The proposed car parking	
requirements within Section 10.	provision complies with the	
	maximum car parking provision of	
	2 spaces per dwelling (3 or more	
	bedrooms) specified within	
	Section 10.	
No parking should be	The proposed car parking is	Yes
underground unless that is not	located at the same level as the	
the most appropriate solution for	existing garage.	
parking.		
Driveway and pedestrian access	The driveway and pedestrian	Yes
must be separated.	entrances are separated.	
Garages, carports or other	The off-street car parking spaces	Yes
1	occupy a portion of the ground	

located between the primary	floor level and are not located	
street frontage and the primary	between the street frontage and	
street façade.	the front façade.	
Do not compromise streetscape,	The existing vehicular access	Yes
building form, landscaped area or	driveway is being maintained.	163
	driveway is being maintained.	
heritage significance through vehicle access.		
Site Coverage	Site Coverage	Appropriate
Maximum site coverage of 50%.	The proposed development	Design
Waximum site coverage of 50%.	provides a site coverage of 76.7%.	Solution
	The existing building on the site	Solution
	provides a site coverage of	
	approximately 95.3% and the	
	approved development provides	
	a site coverage of 95.3%. In the	
	circumstances, the proposed	
	development materially reduces	
	the site coverage and increases	
	the landscaped area compared to	
	both the existing building and the	
	approved development on the	
	approved development on the	
Landscaped Area and Un-Ruilt	site.	Annronriate
Landscaped Area and Un-Built	site. Landscaped Area and Un-Built	Appropriate Design
Upon Area	site. Landscaped Area and Un-Built Upon Area	Design
Upon Area Minimum landscaped area of 30%	site. Landscaped Area and Un-Built Upon Area The proposed development	
Upon Area Minimum landscaped area of 30% and maximum unbuilt-upon area	site. Landscaped Area and Un-Built Upon Area The proposed development provides a landscaped area of	Design
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Excavation	Excavation	Will Comply
Development that includes	The excavation associated with	
excavation must preserve land	the proposed development will	
stability of the site and adjoining	be undertaken in accordance with	
land, not disrupt natural drainage	geotechnical advice to preserve	
patterns, and avoid or minimise	land stability, maintain drainage	
adverse effects on other	patterns, and minimise adverse	
properties.	effects on other properties.	
Landscaping	Landscaping	Yes
Retain existing trees where	The site does not accommodate	
possible.	any trees and the approved	
	development on the site does not	
	include any trees. The proposed	
	development includes new	
	landscaping within the centralised	
	courtyard and the rear yard.	
Plant the largest growing and	The proposed landscaping has	Yes
longest lived trees appropriate to	been chosen to reflect the site	
the site conditions.	conditions.	
Private and Communal Open	Private and Communal Open	Yes
Space	Space	
Minimum area of private open	The proposed development	
space of 40m² where provided at	includes private open space at the	
ground level.	rear of the site with an area of	
	40m ² . Further, there are two (2)	
	balconies directly access to/from	
	the main living areas and a roof	
	terrace with an area of 60.18m ² .	
Maximise solar access and	The open space will receive good	Yes
privacy.	solar access and maintain an	
	appropriate level of privacy.	
Private open space should be	The open space includes	Yes
directly accessible off a main	balconies that are located directly	
living area.	off the main living areas.	
Garbage Storage	Garbage Storage	Yes
Provide on-site garbage storage	The garages provide sufficient	
for 1 x 60 litre bin and 1 x 140 litre	space to accommodate 1 x 60 litre	
bin.	bin and 1 x 140 litre bin.	
Site Facilities	Site Facilities	Yes
Provide open air clothes drying	Drying facilities can be	
facilities in a sunny location,	accommodated within the rear	

adequately screened from the	courtyard if required.	
street.		
Provide a lockable mailbox.	A lockable mailbox will be located	Will comply
	adjacent to the building entrance.	
1.6 – Efficient Use of Resources		
Energy Efficiency	Energy Efficiency	Yes
Submission of a compliant BASIX	The DA is accompanied by a	
Certificate.	compliant BASIX Certificate.	
Passive Solar Design	Passive Solar Design	Appropriate
Locate the main daytime living	The main living areas are	Design
areas on the northern side.	orientated towards the south to	Solution
	capitalise on the superior outlook	
	and views in that direction.	
	Irrespective, the proposed	
	building includes a relatively large	
	internal lightwell intended to	
	maximise light and air penetration	
	through the building.	
Ensure north facing living room	The proposed dwellings do not	Yes
windows receive at least 3 hours	include north facing living room	
of sunlight between 9am and	window and the proposed	
3pm during the winter solstice.	development will have no impact	
	on the solar access to any	
	residential properties.	
Natural Ventilation	Natural Ventilation	Yes
Locate windows and openings on	Windows and openings are	
opposing walls.	located on corresponding walls,	
	and the dwellings will be naturally	
	cross ventilated.	
Provide ceiling fans for use in	Ceiling fans will be installed if	Will comply
summer.	required by the occupant.	
Waste Management and	Waste Management and	Yes
Minimisation	Minimisation	
Submission of a Waste	The DA is accompanied by a	
Management Plan.	Waste Management Plan.	

Part C: Section 9 – Union, Bank, Thomas Street Conservation Area

The site is located in the *Union, Bank, Thomas Street Conservation Area* within the *Lavender Bay Planning Area*.

The Characteristic Building Elements include "Two and three storey attached dwellings with front verandahs" and "Rear additions behind and below the ridge line, submissive in scale".

The *Characteristic Building Elements* generally relate to existing residential dwellings and alterations and additions to the existing dwellings (rather than the construction of a new dwellings).

Irrespective, the building form has been carefully designed to retain and integrate the existing façade fronting Holt Street and provide a contemporary dwelling house offering a very high level of amenity.

Further, the building form has been designed to negotiate the topographical conditions of the site and provide an overall height, bulk and scale that is compatible with the variable nature of surrounding development.

4.4 Planning Agreements

There are no planning agreements of specific relevance to the proposed development.

4.5 Impacts of the Development

The site is not adjoined by any residential properties, circumstances in which the proposed development will have no significant or adverse impacts in terms of overshadowing and visual privacy.

The building form has been carefully designed to retain and integrate the existing façade fronting Holt Street and provide a contemporary dwelling house offering a very high level of amenity.

Further, the building form has been designed to negotiate the topographical conditions of the site and provide an overall height, bulk and scale that is compatible with the variable nature of surrounding development.

In a physical sense, the proposed development includes reducing the gross floor area (compared to the approved development) by approximately $129.04m^2$, reducing the maximum building height by 540mm, increasing the setback to the rear boundary by 0.991 - 3.991

metres, reducing the site coverage by 73.05m², increasing the un-built upon area by 73.05m² and increasing the landscaped area by 35.4m².

Further, the proposed building is 1.7 metres lower than the adjoining building to the east (RL62.10). The height, bulk and scale of the proposed development is compatible with the variable nature of surrounding development and consistent with the character statement for the locality.

The Council Assessment Report (dated 3 March 2021) prepared in relation to the approved development (DA 302/20) on the site includes the following comments in relation to impacts on existing views:

The premises at Number 93, 95, 97 and 99 Union Street, McMahons Point have been inspected to establish the level of impact occurring from the proposal due to the significant outlook these dwellings enjoy over their rear boundaries. Views available and impacts are comparable across all four dwellings. The impacts to Number 95 and 99 Union Street, McMahons Point are discussed in detail.

The impact on the existing views was considered on the basis of the *Planning Principles* established in *Tenacity Consulting v Warringah Council NSWLEC 140* was variously characterised as "negligible", "minor", "not material" and "moderate".

In that regard, the impact described as "moderate" relates to the rear study/living room of No. 99 Union Street and the Assessment Report notes that "even if the building height was reduced to compliant building height, the impact would be comparable".

The Assessment Report reached the following conclusions in relation to the impacts on existing views:

The view impact described to the Union Street dwellings affects only of two of the four adjoining dwellings. Impacts are assessed as similar across all four dwellings with the greatest impact to the study in 99 Union Street arising from compliant elements. A height compliant proposal would not provide for provide further material improvements to view impacts. Impacts to views are concluded to be acceptable in the circumstances.

The Assessment Report included a series of photographic images depicting the impact of the approved development on the existing views from a number of rooms within the existing dwellings at No's 95 and 99 Union Street.

The Project Architects have used the same photographic images to depict the impact of the proposed development (including a comparison with the approved development) on the existing views from the same locations at No. 95 and 99 Union Street.

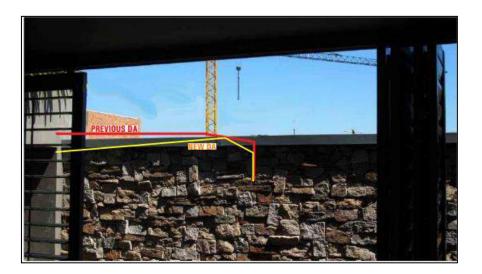
The following photographic images relate to No. 95 Union Street:



Photograph 6: View from Third Level Terrace (No. 95 Union Street)



Photograph 7: View from Mid-Level Bedroom (No. 95 Union Street)

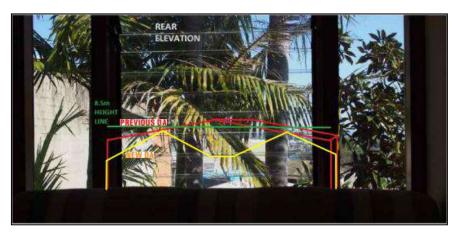


Photograph 8: View from Ground Level Living Room (No. 95 Union Street)

The following photographic images relate to No. 99 Union Street:



Photograph 9: View from Third Level Terrace (No. 99 Union Street)



Photograph 10: View from Mid-Level Bedroom (No. 99 Union Street)

The photographic images demonstrate that the proposed development will have less impact than the approved development on the existing views from all locations in the dwellings at both No's 95 and 99 Union Street.

In the circumstances, the proposed development will have no significant or adverse impacts on any existing private views. Further, the proposed development will have no impact on any existing public views.

4.6 Suitability of the Site

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

The proposed development will provide a very good standard of residential accommodation and is capable of being accommodated on the site without imposing any significant or unreasonable impacts on the amenity of surrounding land.

4.7 Public Interest

The proposed development generally serves the public interest in terms of providing a very good standard of residential accommodation and is capable of being accommodated on the site without imposing any significant or unreasonable impacts on the amenity of surrounding land.

5. CONCLUSION

The subject site is located on the northern side of Holt Street between Victoria Place to the east and Chuter Street to the west. The site is currently occupied by a split-level warehouse style building.

The proposed development comprises the construction of a dwelling house on the site, including the retention and integration of the existing front façade.

The ground floor level accommodates a rumpus, cinema and amenities. The first floor level accommodates the main living/dining room, kitchen, games room, one (1) bedroom and amenities. The second floor level accommodates four (4) bedrooms and amenities.

Off-street car parking is proposed for two (2) vehicles occupying a portion of the ground floor level.

The building form has been carefully designed to retain and integrate the existing façade fronting Holt Street and provide a contemporary dwelling house offering a very high level of amenity.

Further, the building form has been designed to negotiate the topographical conditions of the site and provide an overall height, bulk and scale that is compatible with the variable nature of surrounding development.

The proposed development includes reducing the gross floor area (compared to the approved development) by approximately 129.04m², reducing the maximum building height by 540mm, increasing the setback to the rear boundary by 0.991 – 3.991 metres, reducing the site coverage by 73.05m², increasing the un-built upon area by 73.05m² and increasing the landscaped area by 35.4m².

The proposed development will provide a very good standard of residential accommodation and is capable of being accommodated on the site without imposing any significant or unreasonable impacts on the amenity of surrounding land.

ATTACHMENT A

Request to Vary the Building Height Control

INTRODUCTION

Clause 4.3 of the North Sydney LEP 2013 specifies a maximum building height of 8.5 metres and the proposed building extends to a maximum height of 9.92 metres.

The approved building on the site extends to a maximum height of 10.455 metres (RL60.94) and the proposed building is 540mm lower and extends to a maximum height of 9.92 metres (RL60.40).

The portion of the proposed and approved buildings that extend above the building height control are identified below.



Figure 1 – Proposed Variation to the Building Height Control

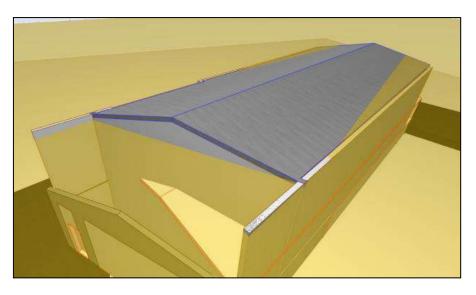


Figure 2 – Approved Variation to the Building Height Control

In the circumstances, this "written request" to vary the building height control pursuant to Clause 4.6 of the LEP.

CLAUSE 4.6 OF THE NORTH SYDNEY LEP 2013

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

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

Clause 4.6(2) of the LEP specifies that "development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument".

Clause 4.6(3) specifies that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

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

CONTEXT AND FORMAT

This "written request" has been prepared having regard to "Varying development standards: A Guide" (August 2011), issued by the former

Department of Planning, and relevant principles identified in the following judgements:

- Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;
- ➤ Wehbe v Pittwater Council [2007] NSWLEC 827;
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90;
- Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248;
- Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7;
- Moskovich v Waverley Council [2016] NSWLEC 1015;
- ➤ Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118:
- Hansimikali v Bayside Council [2019] NSWLEC 1353;
- ▶ Big Property Group Pty Ltd v Randwick City Council [2021] NSWLEC 1161;
- ➤ HPG Mosman Projects Pty Ltd v Mosman Municipal Council [2021] NSWLEC 1243; and
- Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2019] NSWCA 130.

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

- 1. The objectives and purposes of the standard are achieved notwithstanding non-compliance with the development standard.
- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
- 3. The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
- 4. The development standard has been 'virtually abandoned or destroyed' by the Councils own actions in granting consents

- departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
- 5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

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

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

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

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

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

shoes. Irrespective, an objection can also satisfy a number of the referable tests.

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

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

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

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

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

The decision suggests that the requirement that the consent authority be satisfied the proposed development will be in the public interest because

it is "consistent with" the objectives of the development standard and the zone, is not a requirement to "achieve" those objectives. It is a requirement that the development be 'compatible' with them or 'capable of existing together in harmony'. It means "something less onerous than 'achievement'".

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

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

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

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

Similarly, in HPG Mosman Projects Pty Ltd v Mosman Municipal Council [2021] NSWLEC 1243, Commissioner O'Neill found that "The desired future character of an area is not determined and fixed by the applicable development standards for height and FSR, because they do not, alone, fix the realised building envelope for a site. The application of the compulsory provisions of cl 4.6 further erodes the relationship between numeric standards for building envelopes and the realised built character of a locality (SJD DB2 at [62]-[63]). Development standards that determine building envelopes can only contribute to shaping the character of the locality (SJD DB2 at [53]-[54] and [59]-[60])".

ASSESSMENT

<u>Is the requirement a development standard?</u>

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

What is the underlying object or purpose of the standard?

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

- (a) to promote development that conforms to and reflects 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.

In relation to objective (a), the proposed development has been designed to negotiate the topographical conditions of the site. The excavation proposed towards the rear of the site is intended to balance the internal floor level, remove the elevated slab, and match the ground level at the front of the site. The excavation is located below the building footprint above.

Further, the extent of excavation is materially less than the approved development on the site that extends to the same depth and to the rear boundary.

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

The proposed development includes reducing the gross floor area (compared to the approved development) by approximately 129.04m², reducing the maximum building height by 540mm and increasing the setback to the rear boundary by 0.991 – 3.991 metres.

The Council Assessment Report (dated 3 March 2021) prepared in relation to the approved development (DA 302/20) on the site includes the following comments in relation to impacts on existing views:

The premises at Number 93, 95, 97 and 99 Union Street, McMahons Point have been inspected to establish the level of impact occurring from the proposal due to the significant outlook these dwellings enjoy over their rear boundaries. Views available and impacts are comparable across all four dwellings. The impacts to Number 95 and 99 Union Street, McMahons Point are discussed in detail.

The impact on the existing views was considered on the basis of the *Planning Principles* established in *Tenacity Consulting v Warringah Council NSWLEC 140* was variously characterised as "negligible", "minor", "not material" and "moderate".

In that regard, the impact described as "moderate" relates to the rear study/living room of No. 99 Union Street and the Assessment Report notes that "even if the building height was reduced to compliant building height, the impact would be comparable".

The Assessment Report reached the following conclusions in relation to the impacts on existing views:

The view impact described to the Union Street dwellings affects only of two of the four adjoining dwellings. Impacts are assessed as similar across all four dwellings with the greatest impact to the study in 99 Union Street arising from compliant elements. A height compliant proposal would not provide for provide further material improvements to view impacts. Impacts to views are concluded to be acceptable in the circumstances.

The Assessment Report included a series of photographic images depicting the impact of the approved development on the existing views from a number of rooms within the existing dwellings at No's 95 and 99 Union Street.

The Project Architects have used the same photographic images to depict the impact of the proposed development (including a comparison with the approved development) on the existing views from the same locations at No. 95 and 99 Union Street.

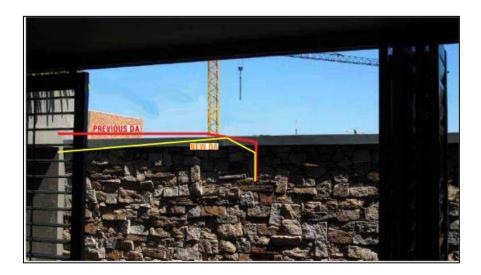
The following photographic images relate to No. 95 Union Street:



Photograph 6: View from Third Level Terrace (No. 95 Union Street)



Photograph 7: View from Mid-Level Bedroom (No. 95 Union Street)



Photograph 8: View from Ground Level Living Room (No. 95 Union Street)

The following photographic images relate to No. 99 Union Street:



Photograph 9: View from Third Level Terrace (No. 99 Union Street)



Photograph 10: View from Mid-Level Bedroom (No. 99 Union Street)

The photographic images demonstrate that the proposed development will have less impact than the approved development on the existing views from all locations in the dwellings at both No's 95 and 99 Union Street.

In the circumstances, the proposed development will have no significant or adverse impacts on any existing private views. Further, the proposed development will have no impact on any existing public views.

In relation to objective (c), the site is not adjoined by any residential properties and the proposed development will have no impact on the existing solar access to any residential property in the locality.

In relation to objective (d), the site is not adjoined by any residential properties and the proposed development will not have any significant or unreasonable impact on the privacy of any surrounding property.

In relation to objective (e), the site is not located at a zone boundary. In any event, the proposed development has been carefully designed to retain and integrate the existing façade fronting Holt Street and provide a contemporary dwelling house offering a very high level of amenity.

Further, the building form has been designed to negotiate the topographical conditions of the site and provide an overall height, bulk and scale that is compatible with the variable nature of surrounding development.

In relation to objective (f), the proposed development includes reducing the gross floor area (compared to the approved development) by approximately 129.04m^2 , reducing the maximum building height by 540mm, increasing the setback to the rear boundary by 0.991-3.991 metres, reducing the site coverage by 73.05m^2 , increasing the un-built upon area by 73.05m^2 and increasing the landscaped area by 35.4m^2 .

Further, the building form has been designed to negotiate the topographical conditions of the site and provide an overall height, bulk and scale that is compatible with the variable nature of surrounding development.

In relation to objective (g), the site is zoned E3 – Productivity Support and objective (g) does not apply to the proposed development.

In summary, the proposed development achieves the objectives of the building height control, notwithstanding the numerical variation.

<u>Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?</u>

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

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

The proposed development achieves the objectives of the building height control, notwithstanding the numerical variation.

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

The objectives and purpose of the building height control remain relevant and appropriate, and the proposed development achieves the objectives of the building height control, notwithstanding the numerical variation.

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

The proposed development achieves the objectives of the building height control, notwithstanding the numerical variation.

Further, strict compliance with the building height control would require unnecessary and unreasonable amendments to the building form that would compromise the architectural quality and composition of the building, reduce the amenity of the dwelling and serve no useful or necessary planning purpose in terms of streetscape composition or relationship with surrounding properties.

4. The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

The building height control has not specifically been abandoned or destroyed by the Council's actions. Irrespective, the Council has adopted an orderly but flexible approach to the implementation of development standards (including the building height control).

In that regard, a review of the Council's Register of Variations to Development Standards reveals that for the period between January 2020 and December 2023, Development Consent has been granted to approximately 165 DA's involving variations to the building height control.

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

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

The zoning of the land remains relevant and appropriate. Irrespective, strict compliance with the building height control would require unnecessary and unreasonable amendments to the building form that would compromise the architectural quality and composition of the buildings, reduce the amenity of the dwelling and serve no useful or necessary planning purpose in terms of streetscape composition or relationship with surrounding properties.

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

The adjectival phrase "environmental planning" is not defined but would refer to grounds that relate to the subject matter, scope and purpose of the Environmental Planning and Assessment Act 1979, including the objects set out in Section 1.3 (Initial at 23).

The objects of the Act are expressed as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

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

- the extent of variation to the building height control is relatively minor and limited to a maximum of 1.42 metres;
- the proposed development (compared to the approved development) reduces the building height by 540mm;
- the proposed development (compared to the approved development) reduces the gross floor area by approximately 129.04m², increases the setback to the rear boundary by 0.991 3.991 metres, reduces the site coverage by 73.05m², increases the un-built upon area by 73.05m² and increases the landscaped area by 35.4m²;
- the site is not adjoined by any residential properties and the proposed development will have less impact on the existing views from the surrounding properties to the north than the approved

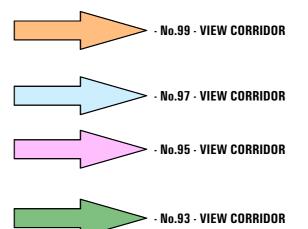
- development, and no significant or adverse impact on any public views;
- the site is not adjoined by any residential properties and the proposed development will have no impact on the existing solar access to any residential property in the locality;
- the site is not adjoined by any residential properties and the proposed development will not have any significant or unreasonable impact on the privacy of any surrounding property;
- the proposed development has been carefully designed to retain and integrate the existing façade fronting Holt Street and provide a contemporary dwelling house offering a very high level of amenity;
- strict compliance with the building height control would require unnecessary and unreasonable amendments to the building form that would compromise the architectural quality and composition of the building, reduce the amenity of the dwelling and serve no useful or necessary planning purpose in terms of streetscape composition or relationship with surrounding properties;
- the proposed development will promote good design and the amenity of the built environment which is a recently incorporated object of the Act: "(g) to promote good design and amenity of the built environment";
- the Council has adopted an orderly but flexible approach to the implementation of development standards (including the building height control) in appropriate circumstances, including when the objectives of the standard are achieved, notwithstanding numerical variations;
- a review of the Council's Register of Variations to Development Standards reveals that for the period between January 2020 and December 2023, Development Consent has been granted to approximately 165 DA's involving variations to the building height control;
- the proposed development achieves the relevant objectives of the
 E3 Productivity Support zone; and
- the proposed development achieves the objectives of the building height control, notwithstanding the numerical variation.

CONCLUSION

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

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







Н	View Sharing Diagram Updated	22/07/2025

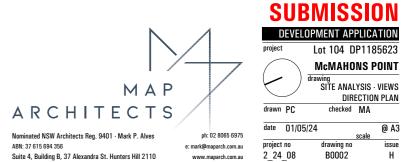
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ALL WORK SHOULD COMPLY WITH RELEVANT AUSTRALIAN
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SCHEDULES AND SPECIFICATIONS. IN CASE OF CONFLICT BETWEEN
ARCHITECTS AND CONSULTANTS DRAWINGS IN LOCATING
STRUCTURAL ELEMENTS, MATERIALS / EQUIPMENT.

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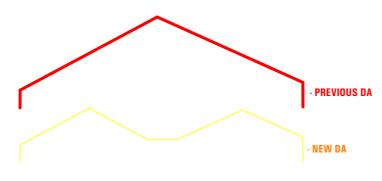
95 Union Street, McMahons Point view from third level upper open terrace



99 Union Street, McMahons Point View from third level

BUILDER TO ALLOW FOR WALL AND FLOOR FINISHE ISSUE AMENDMENT DATE		
G	View Sharing Diagram added	12/02/2025
Н	View Sharing Diagram Updated	22/07/2025

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99 Union Street, McMahons Point view from mid-level rear bedroom



95 Union Street, McMahons Point view from mid-level (kitchen)





SUBMISSION Lot 104 DP1185623 McMAHONS POINT VIEW SHARING DIAGRAMS B0003