

**STATEMENT OF  
ENVIRONMENTAL EFFECTS**

Proposed Shop Top Housing  
Development

**1749 - 1753 Pittwater Road and 4  
Bungan Lane  
MONA VALE**



NOTE: This document is Copyright. Apart from any fair dealings for the purposes of private study, research, criticism or review, as permitted under the Copyright Act, no part may be reproduced in whole or in part, without the written permission of Boston Blyth Fleming Pty Ltd, 1/9 Narabang Way Belrose NSW 2085.

# Statement of Environmental Effects

**PROPOSED SHOP TOP HOUSING DEVELOPMENT**

**1749 - 1753 PITTWATER ROAD AND 4 BUNGAN LANE, MONA VALE**

prepared under instructions from

Bellevue Co (Mona Vale) Pty Ltd & 1749 Pittwater Rd Pty Ltd

by

**Greg Boston**  
B Urb & Reg Plan (UNE) MPIA

**Boston Blyth Fleming Pty Ltd**  
**Town Planners**  
(ACN 121 577 768)  
Suite 1/9 Narabang Way  
Belrose NSW 2085  
Tel: (02) 99862535

**February 2025**

## **TABLE OF CONTENTS**

### **1.0 INTRODUCTION**

### **2.0 SITE DESCRIPTION AND CONTEXT**

2.1 The Site

2.2 The Locality and Adjoining Development

### **3.0 DEVELOPMENT PROPOSAL**

### **4.0 STATUTORY PLANNING FRAMEWORK**

4.1 Pittwater Local Environmental Plan 2014

4.1.1 Zone and Zone Objectives

4.1.2 Height of Buildings

4.1.3 Acid Sulfate Soils

4.1.4 Essential Services

4.2 Pittwater 21 Development Control Plan

4.2.1 Mona Vale Locality

4.2.2 General Controls

4.2.3 Development Type Controls

4.2.4 Locality Specific Controls

4.3 Pittwater 21 Development Control Plan - Compliance Table

4.4 State Environmental Planning Policy (Resilience and Hazards) 2021

4.5 State Environmental Planning Policy (Housing) 2021 – Design of Residential Apartment Development

4.6 State Environmental Planning Policy (Transport and Infrastructure) 2021

4.7 State Environmental Planning Policy (Sustainable Buildings) 2022

4.8 Section 4.15(1) Environmental Planning and Assessment Act 1979

### **5.0 CONCLUSION**

## **ANNEXURES**

**ANNEXURE 1** Clause 4.6 Variation - Height of Buildings

## 1.0 INTRODUCTION

This document has been prepared as a component of a development application proposing the construction of shop top housing 1749 - 1753 Pittwater Road, Mona Vale. The application seeks development consent for the demolition of the existing two storey commercial buildings on the site and the construction of a new five (5) storey development with ground level retail and 4 storeys of residential apartments above. Access to the proposed basement parking is via the adjacent Council carpark at 4 Bungan Lane with minor works required on this adjoining site.

We confirm that the application proposes the provision of 8 affordable housing apartments, representing a total gross floor area (GFA) of 604m<sup>2</sup> (Apartments 02, 07, 09, 11, 14, 17, 21 and 24), being 15% of total GFA of 4,006.3m<sup>2</sup>, in accordance with the affordable housing height incentive provisions contained within Chapter 2, Part 2, Division 1 Infill affordable housing of State Environmental Planning Policy (Housing) 2021 (SEPP Housing).

The proposal has been developed through detailed site and context analysis to ensure that development on this infill site responded appropriately to the constraints and opportunities associated with its laneway frontage and immediate proximity to the multi-level Bungan Lane public carpark. Particular consideration has also been given to the minutes arising from formal pre-DA discussions with Council. This report demonstrates the building is of exceptional design quality, affording high levels of amenity to future occupants, whilst responding appropriately to its immediate built form context in terms of setbacks, design and presentation.

Consideration has also been given to the minutes arising from formal pre-DA discussions with Council (PLM2024/0057). In this regard, the concerns expressed by the Council regarding the proposal's non-compliance with the building height standard have been remedied through the provision of affordable housing pursuant to the Chapter 2 SEPP (Housing) Affordable housing incentive provisions, with the majority of the proposal compliant with the bonus height provisions.

The proposed development will not give rise to any adverse residential amenity or streetscape consequences, with the density proposed entirely appropriate given the site's location within the Mona Vale commercial centre and immediate proximity to B-Line bus services. In preparation of this document, consideration has been given to the following:

- Environmental Planning and Assessment Act, 1979;
- Pittwater Local Environmental Plan 2014;
- Pittwater 21 Development Control Plan 2014;

- State Environmental Planning Policy (Housing) 2021 – Design of Residential Apartment Development;
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- State Environmental Planning Policy (Sustainable Buildings) 2022

Architectural drawings, including floor plans, elevations, and sections, have been prepared for the proposed development. A survey plan, shadow diagrams, traffic and parking assessment report, access assessment report, acoustic report, schedule of finishes, BCA assessment, geotechnical report, stormwater management plan, BASIX certificate, QS report, 3D images, and electronic model also accompany the application.

The proposal is permissible and generally in conformity with the General Development Type and Locality Specific Controls contained within the Pittwater 21 Development Control Plan (P21DCP) as reasonably applied to this form of development on this particular infill site. The land's topography makes strict compliance with the 16.9 metre height standard difficult whilst achieving an appropriate contextual fit and the orderly and economic use and development of land. The application relies on a clause 4.6 variation request for building height with sufficient environmental planning grounds to justify the variation sought. The clause 4.6 variation request is well founded.

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15(1) of the Environmental Planning and Assessment Act, 1979 (the Act). It is considered that the application, the subject of this document, is appropriate on merit and is worthy of the granting of development consent.

## 2.0 SITE DESCRIPTION AND LOCALITY

### 2.1 The Site

The subject site comprises of two lots within the Mona Vale commercial centre and is legally described as Lot 1, DP 715158, No. 1753 Pittwater Road, Mona Vale and Lot 2, DP 412869, No 1749 Pittwater Road, Mona Vale. Access to the proposed basement parking is via the adjacent Council carpark at 4 Bungan Lane with minor works required on a portion of this adjoining site legally described as Lot 2 DP 230780, Lot 2 DP 715158, Lot 102 DP 788439 and Lot 2 DP 1136849.

The site is located on the western side of Pittwater Road, approximately 30 metres south of Waratah Street. The site is irregular in shape, having a frontage and address to Pittwater Road of 18.73 metres, a secondary frontage to Bungan Lane of 21.195 metres, a depth of approximately 78 metres and an area of 1524 square metres. The site falls approximately 3.2 metres across its surface towards the Pittwater Road frontage. It contains no trees or remarkable site features, as depicted in the survey extracts in Figures 1 and 2 below.

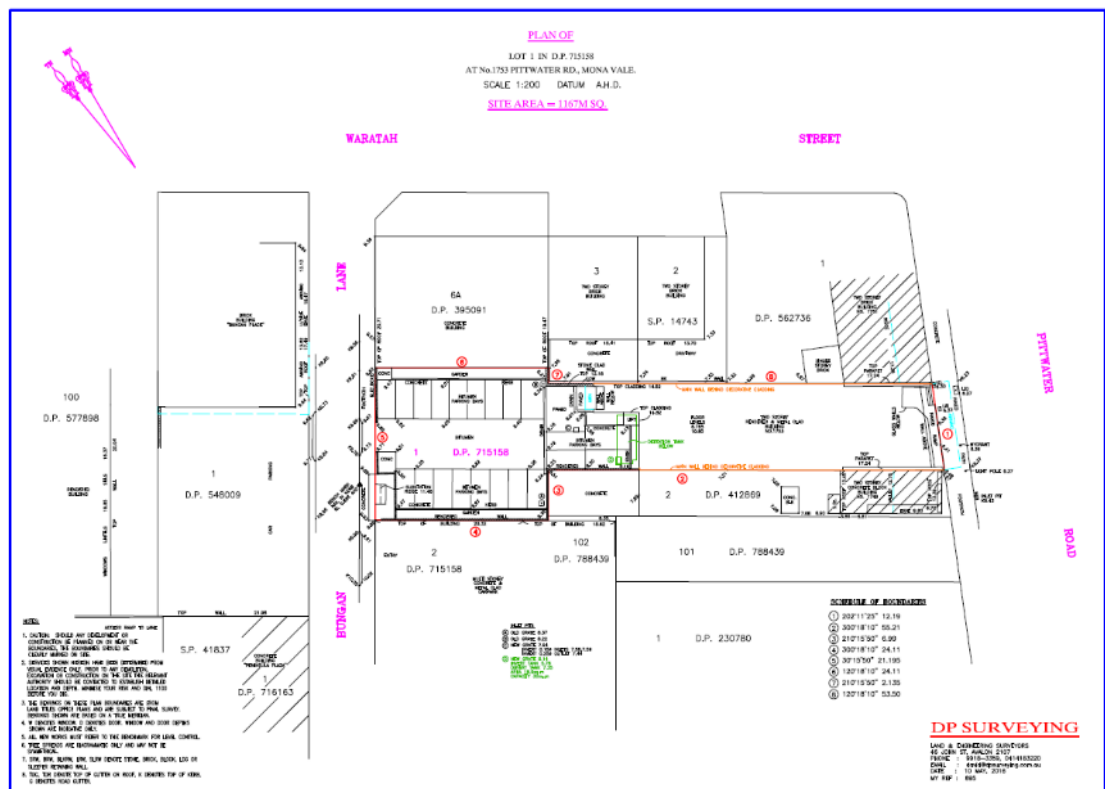


Figure 1 – Site survey – 1753 Pittwater Road, Mona Vale

No.1753 Pittwater Road is currently occupied by a 2-storey commercial building fronting Pittwater Road, which PRP Diagnostic Imaging, MLC Advice Centre, and an F45 gymnasium are currently tenants. The existing building is serviced by at-grade parking accessed from Bungan Lane for 22 vehicles, as depicted in the following photographs. A kiosk substation is located adjacent to the Bungan Lane frontage.

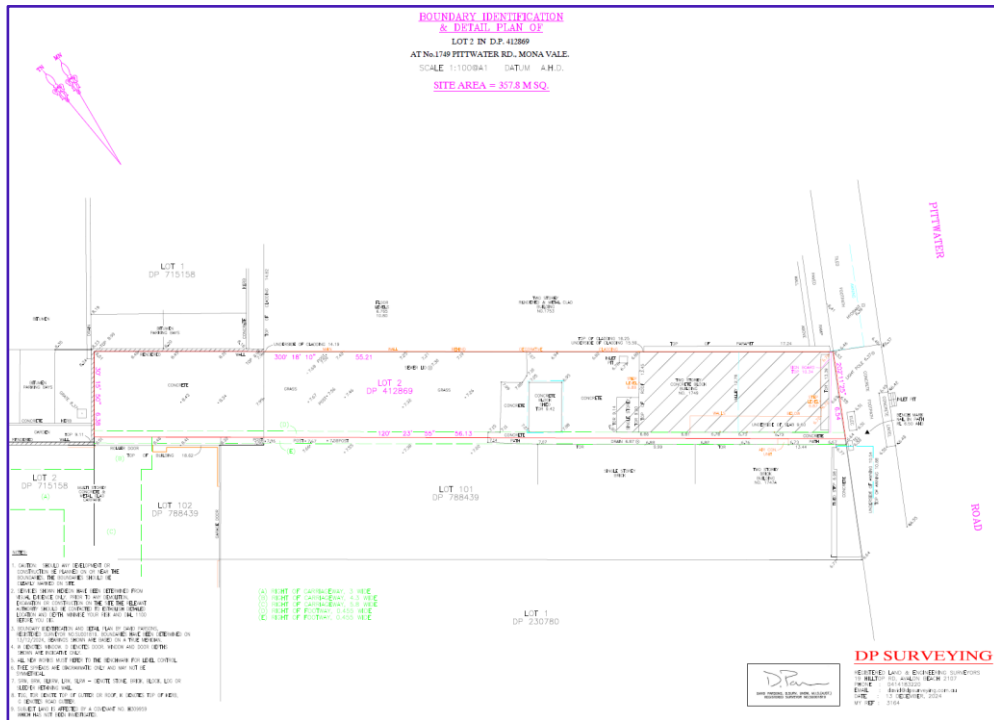


Figure 2 – Site survey – 1749 Pittwater Road, Mona Vale

No.1749 Pittwater Road is occupied by a vacant two-storey commercial building fronting Pittwater Road. The building is served by a two-space at-grade carpark at the rear of the site, which gains vehicular access via a right-of-way over the adjoining Council carpark.



Source: Google Maps

**Figure 3** – No 1753 as viewed from Pittwater Road



Source: Google Maps

**Figure 4** – 1753 Pittwater as viewed from Bungan Lane





**Figure 5** – 1749 Pittwater Road as viewed from Pittwater Road



**Figure 6** – 1749 Pittwater Road (identified by red arrow) as viewed from Bungan Lane

## 2.2 The Locality and Adjoining Development

The property is located within the Mona Vale Commercial Centre and broader Mona Vale Locality. The locality is described within P21DCP as follows:

*Strategically positioned at the convergence of routes north to Palm Beach, west to Church Point, and south to Warringah, Mona Vale became the centre of trade and travel in the Pittwater area during the nineteenth century. The Rock Lily Hotel operating from 1886 became a landmark coaching inn where horses were changed and travellers rested. Industries developed among farming settlements and market gardens, including a timber yard in Waratah Street, and blacksmith and boat-building at Winnererremy Bay. From 1947 to 1976, food for Taronga Zoo animals was grown on 40 acres of land in the vicinity of Darley Road, Bassett and Mona Streets. Residential development in the locality increased from the 1950s.*

*Since this time, the locality has developed with a mix of residential, retail/commercial, industrial, recreational, community and educational land uses. Today, Mona Vale centre is the main commercial centre for the Pittwater area.*

*Low-density residential development is built along the valley floor and slopes to the north, south and west of the locality. These areas are characterised by one and two-storey dwelling houses on 680-760 square metre allotments (some blocks may be smaller) to the south, east and north, increasing to 930-1,200 square metres on the valley floor and headland. The residential areas are of a diverse style and architecture, a common thread being the landscaped, treed frontages and subdued external finishes. Medium-density housing adjoins the Mona Vale Commercial Centre on Mona Vale Road, and extends along Darley Street, Park Street, Pittwater Road, Terrol Crescent and Golf Avenue.*

*The locality is serviced by the Mona Vale Commercial Centre, a major commercial, retail and community centre situated at the crossroads of Barrenjoey, Pittwater, and Mona Vale Roads. The Commercial Centre is focused around Mona Vale Village Park, Memorial Hall and Library. A hub of light industrial, automotive and like businesses adjoins the Commercial Centre to the north in the vicinity of Darley Road and Basset Streets.*



Source: Metro Maps

**Figure 7** – Aerial location/ context photograph

The properties to the north are occupied by mixed-use buildings, all with frontage to Waratah Street. The property to the southwest, accessed from Bungan Lane, is occupied by a recently constructed multi-level public carpark. The other properties to the southeast, having frontage and address to Pittwater Road, are occupied by two-story commercial buildings, as are the properties located directly opposite the subject site in Bungan Lane.

Kitchener Park is located on the opposite side of Pittwater Road. The site is within short walking distance of the Mona Vale B-Line bus hub and a plethora of outdoor open space areas.



Source: Google Maps

**Figure 8** – Adjoining property to the north as viewed from Bungan Lane



Source: Google Maps

**Figure 9** – Adjoining multi-level Council carpark as viewed from Bungan Lane



Source: Google Maps

**Figure 10** – View looking south down Bungan Lane past subject site

### 3.0 DEVELOPMENT PROPOSAL

The proposal involves the demolition of all existing structures on the site, construction and strata subdivision of a five (5) storey shop top housing development comprising 36 apartments (12 x 1 bedroom, 13 x 2 bedroom and 11 x 3 bedroom) with 2 levels of basement parking for 88 car spaces. The proposed basement car parking will be accessed via the Council carpark from Bungan Lane and accommodate the 61 resident spaces, 12 resident visitor spaces and 15 retail/commercial tenant spaces. The proposed works are depicted on the following Architectural plans prepared by Gartner Trovato Architects:

No:	DRAWING LIST
A 00	COVER
A 01	SITE PLAN
A 02	BASEMENT 2
A 03	BASEMENT 1
A 04	LEVEL 1 - PITTWATER ROAD GROUND
A 05	LEVEL 2 - BUNGAN LANE GROUND
A 06	LEVEL 3
A 07	LEVEL 4
A 08	LEVEL 5
A 09	LEVEL 6
A 10	ELEVATIONS - NW & SE
A 11	ELEVATIONS - NE & SW
A 12	SECTION A & F
A 13	SECTION B,C,D & E
A 14	CONTEXT VIEWS 1
A 15	CONTEXT VIEWS 2
A 16	COURTYARD VIEWS

The application is accompanied by an Architectural Design Statement at ANNEXURE 1, with the resultant built form outcome summarised as follows:

#### Lower Basement B2

- This basement level includes 33 parking spaces, all of which are residential (including 7 accessible spaces);
- Bicycle storage for 7 bicycles;
- Motorbike parking for 3 x motorbikes
- Residential storage cages; and
- Lift and stair access to the levels above.

### **Basement Level B1**

- This basement level includes 37 parking spaces two (2) retail, eight (8) visitor and 27 of which are residential (including one accessible)
- Bicycle storage for 15 bicycles
- Motorbike parking for 3 x motorbikes
- Residential storage cages
- OSD and Rainwater tank
- Lift and stair access to the levels above.

### **Level 1**

- This ground floor level contains two retail tenancies with ramped pedestrian access from Pittwater Road
- Driveway access via the Council carpark to the south of the site
- A loading bay, 13 x retail car spaces and four (4) visitor spaces
- Bicycle storage for seven (7) bicycles
- OSD and Rainwater tank
- Lift and stair access to the levels above and below

### **Level 2**

- This level maintains the existing electrical substation and contains two retail tenancies either side of the substation, fronting Bungan Lane
- Two (2) internal, landscaped courtyards
- 4 x 3 bedroom residential apartments
- Two (2) residential lobbies with lift and stair access to the residential apartments above and basement parking below
- Resident and commercial waste storage areas.

### **Levels 3 and 4**

- These levels each incorporate a total of 10 apartments: 4 x 1 and 6 x 2 bedroom apartments, with the two-bedroom apartments also containing either a study or media room
- All apartments have direct access to front or rear-facing terraces and are accessed from three different circulation cores; and
- Lift and stair access to the levels above and below.

### **Level 5**

- This level has a total of 9 apartments: 3 x 1 and 6 x 2 bedroom apartments, with the two-bedroom apartments also containing either a study or media room
- All apartments have direct access to front or rear-facing terraces and are accessed from three different circulation cores

- Lift and stair access to the levels above and below.

### **Level 6**

- This level incorporates 2 x 3 bedroom apartments with primary living areas opening onto northwest-facing terraces.
- Rooftop, landscaped communal open space, a WC and including lift lobby and lift and stair access
- Solar panels on the rooftop of central building
- Lift and stair access to the levels below.

The proposal incorporates landscape planter elements at ground level to soften and screen the development as viewed from both street frontages.

Stormwater generated by the proposed development will be gravity-drained to both street frontages, as detailed in the stormwater management plans prepared by Barrenjoey Consulting Engineers.

The acceptability of the proposed access and parking arrangement is detailed in the accompanying traffic and parking assessment report prepared by Terraffic Pty Limited, and the excavation proposed within the accompanying geotechnical report prepared by EI Australia. The application is accompanied by a detailed schedule of materials, colours and finishes prepared by the project Architect.



## 4.0 STATUTORY PLANNING FRAMEWORK

### 4.1 Pittwater Local Environmental Plan 2014

#### 4.1.1 Zone and Zone Objectives

The subject property is zoned MU1 Mixed Use pursuant to the provisions of Pittwater Local Environmental Plan 2014 (PLEP 2014). The proposed development falls under the definition of 'Shop Top Housing' being:

***Shop top housing*** means one or more dwellings located above ground floor retail premises or business premises.

The interpretation of this definition was dealt with in the matter of *Hrsto v Canterbury City Council* (No. 20 [2014] NSWLEWC 121 where Justice Sheahan adopted Council's submissions at paragraphs 33 – 36 of the judgement namely;

33. .... a dwelling must be in the same building as the ground floor retail premises or business premises and on a floor of that building that is at a level higher than the top most part of the ground floor retail premises or business premises in order to be characterised as "shop top housing" as defined.

34. Residential development that has a floor level that is lower than the top most part of ground floor retail premises or business premises could not be properly characterised as "shop top housing".

35. The Respondent accepts that dwellings do not need to be directly or immediately above ground floor retail premises or business premises in order to be characterised as "shop top housing". If it was intended that "shop top housing" be limited to dwellings that are directly or immediately above ground floor retail premises or business premises it is expected that those words would have been included in the definition of the term 'shop top housing'.

36. The Respondent contends that dwellings must be in the same building as the ground floor retail premises or business premises for the purposes of the term "shop top housing". However, the Respondent accepts that a broad interpretation of the word "above" in the definition should be given which would suggest that the dwellings need only be at a floor level that is higher than the top of the ground floor retail or business premises and do not need to be contained in an envelope on the higher floor level that would be intersected by a line drawn vertically from within the envelope of the ground floor retail or business premises.

In this regard, all residential apartments are located entirely above the permissible ground-floor retail space below. As such, we have formed the considered opinion that the proposed development is appropriately defined as shop-top housing and permissible with consent.

The stated zone objectives are as follows:

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To provide an active day and evening economy encouraging, where appropriate, weekend and night-time economy functions.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*

The proposed development is not antipathetic to these objectives as it provides a ground floor retail use which will serve the needs of people who live in, work in and visit the local area, is located within short walking distance of the B-Line bus service, can accommodate uses which will strengthen the role of the centre as a place of employment and which is capable of providing an active day and night economy. The upper level residential apartments have a form and function which is compatible with the characteristics and uses of the site and its surroundings.

Accordingly, the consent authority can be satisfied that the development is permissible with consent in the zone and not antipathetic to the zone objectives as outlined.

#### **4.1.2 Height of buildings**

Pursuant to clause 4.3 of the PLEP the maximum height of development on the site is 13 metres. The stated objectives of this standard are as follows:

- (a) *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) *to minimise any overshadowing of neighbouring properties,*
- (d) *to allow for the reasonable sharing of views,*

- (e) to encourage buildings that are designed to respond sensitively to the natural topography,
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

Building height is defined as follows:

**building height (or height of building)** means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

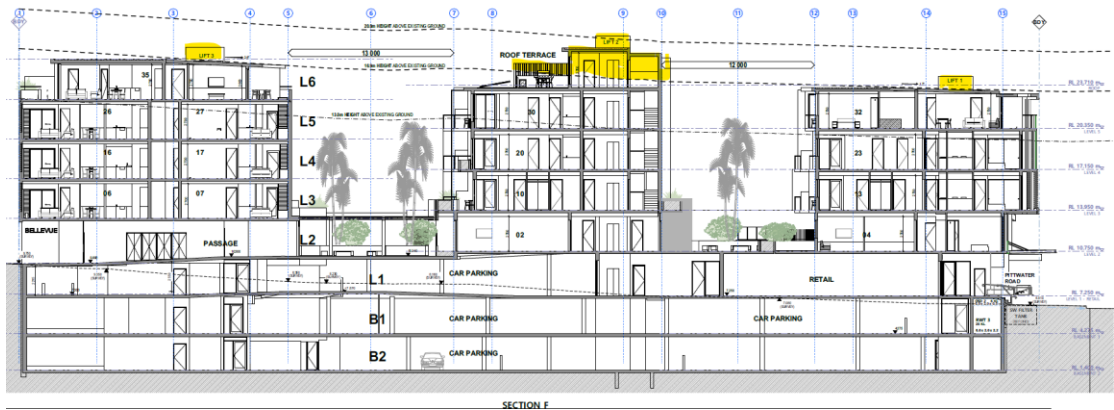
As previously indicated, the application proposes the provision of in-fill affordable housing apartments in accordance with the affordable housing height and FSR incentive provisions contained within Chapter 2, Part 2, Division 1 Infill affordable housing provisions of State Environmental Planning Policy (Housing) 2021 (Housing SEPP).

Applying the 30% building height incentive results in a maximum building height for development across the land of 16.9 metres.

Minor elements of the building breach the 16.9 metre Housing SEPP building height incentive standard by a maximum of 3.1m or 18.3%.

In this regard, it has been determined that all habitable floor space and roof forms sit comfortably below the 16.9-metre building height standard, with the building height breaching elements confined to the upper portion of the three lift structures and associated overruns. The most significant breach occurs on Lift 2, which has been extended to the roof level to provide disabled access to the proposed roof-top communal open space.

The development breaches the height standard to varying extents, from 1m (Lift 1 and Lift 3) to 3.1m (Lift 2 and rooftop facilities), representing a maximum breach of 18.3%. The breaching elements are depicted in the following section extract.



**Figure 11**– Section F showing 16.9m building height line with non-complying elements highlighted

Clause 4.6 of PLEP 2014 provides a mechanism by which a development standard can be varied. The objectives of this clause are:

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

Whilst the proposal requires the consent authority to give favourable consideration to a variation to the building height development standard, strict compliance is unreasonable and unnecessary having regard to the particular circumstances of the case, including the topography of the land which makes strict compliance with the building height standard difficult to achieve whilst facilitating the delivery of affordable housing in accordance with the objectives at clause 15A of the Housing SEPP.

The variation will facilitate the orderly and economic use and development of land and a contextually appropriate increase in residential density on a site identified for increased residential densities and upon which the affordable housing incentive provisions contained within the Housing SEPP apply. The accompanying clause 4.6 variation request is well-founded (**ANNEXURE 2**).

#### 4.1.3 Acid Sulphate Soils

Pursuant to clause 7.1 PLEP 2014 the portion of the site upon which the works are proposed is mapped as Class 5 on the Acid Sulfate soils map and within proximity of land mapped as Class 4. The proposal also involves excavation of up to 6.2 metres in depth.

In this regard, the application is accompanied by a Preliminary Geotechnical Assessment, dated 25 November 2024, prepared by EI Australia which address the issues of potential acid sulfate soils and geotechnical/ excavation impacts. Low acid sulfate soil risks were identified with a recommendation for an intrusive soil investigation, prior to construction.

#### **4.1.4 Essential Services**

Pursuant to clause 6.12, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,*
- (b) the supply of electricity,*
- (c) the disposal and management of sewage,*
- (d) stormwater drainage or on-site conservation,*
- (e) suitable vehicular access.*

We confirm that essential services and access are available to the proposed development without the need for augmentation.

### 4.3 Pittwater 21 Development Control Plan

This policy document came into effect on 1 February 2004. P21 DCP contains development controls for the design and construction of buildings and the development of land in Pittwater. The proposed development has been assessed against the relevant provisions of P21 DCP, as outlined in the following sections of this report.

#### 4.3.1 Mona Vale Locality

The property is located within the Mona vale Locality. The desired future character of the locality described as:

*The Mona Vale locality will contain a mix of residential, retail, commercial, industrial, recreational, community, and educational land uses.*

*Existing residential areas will remain primarily low-density with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancies will be located on the valley floor and lower slopes that has less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities.*

*Retail, commercial and light industrial land uses will be employment-generating. The Mona Vale commercial centre status will be enhanced to provide a one-stop convenient centre for medical services, retail and commerce, exploiting the crossroads to its fullest advantage and ensuring its growth and prosperity as an economic hub of sub-regional status. The permissible building height limit is increased to promote economic growth within the centre. The Mona Vale Hospital, as a regional facility servicing the Peninsula, is an essential part of the future local economy.*

*Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.*

*Future development will maintain a building height limit below the tree canopy and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.*

*The design, scale and treatment of future development within the Mona Vale commercial centre will reflect principles of good urban design. Landscaping will be incorporated into building design. Outdoor cafe seating will be encouraged.*

*Light industrial land uses in Darley and Bassett Streets will be enhanced as pleasant, orderly, and economically viable areas.*

*A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, and to enhance wildlife corridors.*

*Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved.*

*Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. Improved public transport, pedestrian accessibility and amenity, carparking and an efficient surrounding local network will support the commercial centre, moving people in and out of the locality in the most efficient manner. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities.*

The Architect has responded to the client brief to provide for an infill shop top housing development of exceptional design quality which appropriately addresses the desired future character of the Mona Vale Locality as it relates to development within the Town Centre. The development will not only provide a quality built form outcome on the site, and greater housing choice in this particular locality, but also reinforce the retail viability and pedestrian permeability of the centre through the activation of Bungan Lane.

The design, scale and treatment of the proposed development is compatible with the area and consistent with the desired future character statement as outlined.

#### **4.3.2 General Controls**

##### **Aboriginal Heritage Significance**

Having inspected the site and its immediate surrounds we confirm that it does not contain any exposed rock outcrops or evidence of middens. Accordingly, we have formed the considered opinion that the likelihood of encountering aboriginal heritage is extremely low and does not justify any further in investigation at this time.

##### **Dwelling Density and Subdivision – Shop Top Housing**

Pursuant to section B2.6 of P21DCP, a minimum of 25% of the Gross Floor Area (GFA) of the building shall be set aside for commercial/retail purposes. The commercial/retail component is to be calculated on the Gross Lettable Area (GLA). Shop top housing development may be strata subdivided.

The proposed development results in 450 square metres of retail/commercial, representing 11.2% of total GFA.

Despite the retail/commercial GFA shortfall as a percentage of the total, the proposed development maintains commercial uses at ground level, at both street frontages. The centre's commercial viability will not be affected in the short or long term, and residents can continue to be provided with a full range of services and facilities.

##### **Contaminated Land and Potentially Contaminated Land**

Pursuant to clause B3.6 Council shall not consent to the carrying out of any development on land unless it has considered the provisions of SEPP No. 55 – Remediation of Land (SEPP 55). In this regard, the likelihood of encountering contaminated soils on the subject site is extremely low given the following:

- The subject site and surrounding properties have not been previously used by any potentially contaminating land uses involving activities that may have posed the threat of contamination, i.e. the properties have not been used for the purposes listed under Table 1 of the contaminated land planning guidelines of SEPP 55.
- The subject site and surrounding land were not previously zoned to allow for any uses or activities listed in Table 1 of the contaminated land planning guidelines of SEPP 55.



- The subject site and surrounding land are not currently zoned to allow for any uses or activities listed in Table 1 of the contaminated land planning guidelines of SEPP 55.
- The subject site does not constitute land declared to be an investigation area by a declaration of force under Division 2 of Part 3 of the Contaminated Land Management Act 1997.

Given the above factors, no further investigation of land contamination is warranted. The site is suitable for the proposed shop-top housing development in its present state. Therefore, pursuant to the provisions of SEPP 55, the Council can consent to the development on the land.

### **Flood Prone Land**

We note that Bungan Lane has been identified as being potentially affected by drainage infrastructure failure flooding; however, we note that all floor levels and basement entrances are designed to be above the predicted flood level. No objection is raised to the imposition of a condition in this regard.

### **Stormwater Management**

Stormwater generated by the proposed development will be gravity-drained to both street frontages, as detailed in the stormwater management plans prepared by Barrenjoey Consulting Engineers.

### **Off-street Vehicular Parking Requirements**

The acceptability of the proposed access and parking arrangement is detailed in the accompanying traffic and parking assessment report prepared by Terrafic Pty Limited. In relation to parking, the report states:

*The proposed development satisfies the DCP with the provision of 88 off-street parking spaces comprising 61 resident spaces, 12 visitor spaces and 15 retail tenant spaces.*

*As noted in the foregoing, the proposed access from the Council carpark will be secure therefore restricting access by retail shoppers. The 15 retail parking spaces proposed in the basement will, therefore, be reserved for tenants only.*

The proposal also provides adequate Bicycle and motorbike parking.

The traffic report concludes that the development has no unacceptable parking implications.

## **Site Works Management**

In accordance with Part B8, appropriate measures are to be undertaken to address the impacts of construction and demolition, erosion and sedimentation management, waste minimisation, site fencing and security, works in the public domain, and traffic management where required.

The site's adequate area and dimensions do not impose any unusual construction or on-site material storage difficulties. The site works will be managed in accordance with the Protection of The Environment Operations Act 1997, with appropriate erosion and sedimentation control, construction fencing, and air pollution controls being implemented. Appropriate traffic management procedures will be implemented where necessary.

### **4.2.3 Development Type Controls**

#### **Landscaping**

Pursuant to clause C1.1 for shop top housing above ground, gardens are to be incorporated into each dwelling at all levels (other than ground level) with a minimum of 4 square metres of landscaped area provided as a feature at the ground level of the front building facade. Landscaping is to be provided at the front and rear of the development.

The accompanying plans nominate a 21 square metre landscape area adjacent to the Pittwater Road frontage and an 11 square metre landscape area adjacent to the Bungan Lane frontage.

In addition, two landscaped internal courtyards provide the residential units with light, outlook, ventilation, and cooling.

#### **Safety and Security**

In accordance with clause C1.2 building design should allow visitors who approach the front door to be seen without the need to open the door. Buildings and the public domain are designed to enable occupants to overlook public places and communal areas to maximise casual surveillance. Building entrances are to be clearly visible from the street, easily identifiable and appropriately lit.

The proposed development has been designed to provide easily identifiable separate entrances to the residential and commercial floor spaces, which will be appropriately lit. Internal living areas overlook public places and communal areas to maximise casual surveillance strictly following the control.

## **View Sharing**

Pursuant to clause C1.3, all new developments are to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties.

Due to the nature of the surrounding topography, the proposed development will not adversely impact scenic views.

## **Solar Access**

In accordance with Clause C1.4, the main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21<sup>st</sup>. Windows to the principal living areas of the proposal and windows to the principal living area of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21<sup>st</sup> to at least 50% of the glazed area.

The application is accompanied by shadow diagrams prepared by the project Architect which demonstrate that the proposal will not shadow any adjoining residential property at any time between 9 am and 3pm on 21<sup>st</sup> June. The majority of shadowing will fall over the adjacent public carpark.

## **Visual Privacy**

Pursuant to clause C1.5, private open space, recreation areas and living rooms of the proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9m by building layout, landscaping, screening devices or greater spatial separation. Elevated decks, verandas and balconies should incorporate privacy screens where necessary and should, where possible, be located at the front or rear of the building.

Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.

The majority of the terraces have been orientated to the front or rear of the site. Where necessary, fixed and angled louvred privacy screens have been introduced to maintain appropriate levels of visual privacy without compromising solar access. Habitable rooms within the development are more than 12m apart.

Appropriate levels of visual privacy will be provided.

## **Acoustic Privacy**

The proposed development has been designed to comply with Clause C1.6 of the policy and the relevant provisions of the Protection of the Environment Operations Act, 1997 and State Environmental Planning Policy (Transport and Infrastructure) 2021. In this regard, the application is accompanied by an acoustic report prepared by Acoustic Dynamics, which assesses the performance of the development against the above criteria and concludes:

*“Further to our site survey, noise monitoring and measurements, our review of the relevant acoustic criteria and requirements, and our calculations, Acoustic Dynamics advises that the proposal be designed to comply with the relevant acoustic criteria of the Northern Beaches Council, the NSW DPIE, the NSW EPA, the ABCB and Australian Standards with the incorporation of our recommendations detailed within this report.*

*It is our opinion that the acoustic risks associated with the proposal can be adequately controlled, and the amenity of all residents and neighbouring properties can be satisfactorily protected.”*

## **Private Open Space**

Pursuant to Clause C1.7, for Shop Top Housing, residential flat buildings and multi-dwelling housing, private open space at upper levels in the form of front/rear or internal courtyard balconies and terraces are required. The dimensions of the balcony should be sufficient so that the area can be usable for recreational purposes (i.e., a minimum area of 10m<sup>2</sup> and a minimum width of 2.4 metres). First floor balconies along the side boundary must be designed to limit overlooking and maintain the privacy of adjoining residences.

The DCP controls cannot derogate from the provisions of the ADG; in this regard, please refer to the accompanying ADG assessment. The proposal complies with such provisions, with all private open space directly accessed from the adjacent living areas.

## **Accessibility**

Pursuant to clause C1.9, 20% of units shall be adaptable pursuant to Silver Level Liveable Housing Guideline. Further, development shall include the design and construction of works in the public domain to ensure accessibility for the full frontage of the site to any public road and to ensure access to the site from the public domain.

The application is accompanied by an access report prepared by Jensen Hughes which details the developments' compliance with the relevant provisions and standards and contains the following conclusion:

*The Premises Standards and BCA contains the minimum standards for building construction and safety, and therefore generally stipulates minimum dimensions which must be met. Jensen Hughes' assessment of the plans and specifications has been undertaken to ensure the minimum dimensions have been met.*

*The designer, builder and project manager should ensure that the minimum dimensions are met onsite, and consideration needs to be given to construction tolerances for wall setouts, applied finishes and skirtings to corridors and bathrooms, for example, tiling bed thicknesses, luminance reflectance values of matt surfaces compared to reflective surfaces and the like which can adversely impact on critical matters such as access for people with disabilities, stair and corridor widths, luminance contrasts etc.*

No objection is raised to an appropriately worded condition requiring compliance with the requirements of clause 4.0 as contained within the Jensen Hughes report.

### **Waste and Recycling Facilities**

Clause C1.12 states that all waste and recycling receptacles are to be stored within the property boundaries. Where a residential development consists of three or more dwellings, a communal waste and recycling enclosure shall be provided. These are to be provided at or behind the front, side, and rear setback requirements and located for convenient collection access.

Separate retail and residential garbage storage is located at the ground and basement 1 levels. The garbage storerooms are appropriate size for the proposed commercial and residential use of the building and will not be visible from a public place.

### **Storage Facilities**

In accordance with clause C1.15, a lockable storage area of a minimum of 8 cubic metres per dwelling shall be provided.

All apartments have compliant storage space split between apartment and basement storage areas.

## **Undergrounding of Utility Services**

Clause C1.20 requires that all utility services are to be placed underground for the total frontage of the site to any public road. The DCP contains the following variation provisions:

*Based on technical practicalities and advice from the energy supplier the merit for not proceeding with undergrounding of utility services will be considered for the following circumstances subject to achieving the outcomes of this control:*

- *electricity wires carrying 16,000 volts, 33,000 volts or more, and/or*
- *short lengths of overheads of two spans or less*

There are no power poles or overhead power lines located adjacent to either frontage.

### **4.2.4 Locality Specific Development Controls**

The subject site is located in the Mona Vale Locality. The developments performance against the relevant locality specific controls is discussed below.

#### **Character as Viewed from Public Place**

In accordance with this control, buildings that front the street must have a street presence and incorporate design elements compatible with the locality's design themes. Blank street facades without windows will not be permitted.

The development appropriately addresses both Pittwater Road and Bungan Lane. It presents an articulated built form that is architecturally designed and enhances the current streetscape. Landscape areas are provided to both street frontages, which will soften and screen the development as viewed from the public domain. These provisions are satisfied.

#### **Building Colours, Materials and Construction**

A schedule of finishes accompanies the application. The development incorporates external colours, materials and finishes which are consistent with the predominant colours of development in the Mona Vale locality.

## Front Building Line

These provisions require a 3.5 metre setback at ground level up to 8.49m in height, then 6.0 to that part of the building 8.5m and greater above ground level (existing). The stated objectives of these controls are as follows:

- *Achieve the desired future character of the Locality.*
- *Equitable preservation of views and vistas to and/or from public/private places.*
- *The amenity of residential development adjoining a main road is maintained.*
- *Vegetation is retained and enhanced to visually reduce the built form.*
- *Vehicle manoeuvring in a forward direction is facilitated.*
- *To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*
- *To encourage attractive street frontages and improve pedestrian amenity.*
- *To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.*

The proposal provides predominantly nil setbacks to both street frontages, with some variety provided by angled balconies and recessed commercial units. With regard to the stated objectives of the control, strict compliance is considered both unreasonable and unnecessary given the following:

- The proposed setbacks are contextually responsive given that both immediately adjoining developments, including the recently constructed public car park building, maintain a nil front setback to Bungan Lane. The setbacks proposed will not be perceived as inappropriate or jarring in such context;
- The development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment;
- The proposal is consistent with the desired future character of the Mona Vale Locality, particularly as it relates to the Mona Vale Commercial Centre;
- Both street frontages are appropriately activated;
- The setbacks proposed will not compromise public or private views;
- Appropriate visual and acoustic residential amenity is achieved through the setbacks proposed;
- The proposed setbacks facilitate the planting of a feature tree within the setback area, which, coupled with the planter box

elements located along the edges of the terraces, will soften and screen the development as viewed from the public domain.

- The development will enhance the existing streetscape and promote a scale and density that is in keeping with the height of the surrounding built and natural environments.

Such setbacks satisfy the control's objectives in terms of streetscape and pedestrian movement and appropriately respond to the spatial characteristics of the existing urban environment.

Such variation succeeds pursuant to section 4.15(3A)(b) of the Act, which requires the Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the objects of DCP standards for dealing with that aspect of the development.

### **Side and Rear Building Line**

These provisions enable a nil setback to both adjoining side boundaries with the proposal compliant with such provisions. The setbacks proposed will not compromise the development potential of the adjoining properties.



## 4.3.5 Pittwater 21 Development Control Plan - Compliance Table

Area 11678m <sup>2</sup>	Control	Proposed	Compliance
<b>General Controls</b>			
<b>Housing Density</b>	Min 25% retail/commercial	11.2%	No Acceptable on merit
<b>Carparking</b>	60 resident 12 visitor 15 retail	61 resident 12 visitor resident 15 retail/commercial	Yes Yes Yes
<b>Development Type Controls</b>			
<b>Solar Access</b>	Min 3 hours	No adverse shadowing	Yes
<b>Private Open Space</b>	Min 10m <sup>2</sup>	All balcony areas > than 10m <sup>2</sup>	Yes
<b>Accessibility</b>	25% of units adaptable	Objectives satisfied. Refer to the Access report prepared by Jensen Hughes	Yes
<b>Energy/ Water Conservation</b>	BASIX Certificate	BASIX Certificate obtained	Yes
<b>Storage</b>	Min 8 cubic metres per unit	Exceeded for all units	Yes
<b>Locality Specific Development Controls</b>			
<b>Front Building Line</b>	3.5 metre setback at ground level up to 8.49m in height, then 6.0 to that part of the building 8.5m and greater above ground level (existing).	Variable setbacks are provided as justified in section 4.2.4 of this report.	No Acceptable on merit
<b>Side and rear Boundary Setbacks</b>	Nil setback to side boundary	Nil setbacks proposed	Yes

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

Chapter 4 of SEPP (Resilience and Hazards) applies to all land and aims to provide for a state-wide planning approach to the remediation of contaminated land.

Clause 4.6(1)(a) of this policy requires the consent authority to consider whether land is contaminated. The site has been used for residential purposes for an extended period of time with no known prior land uses. In this regard, the potential for contamination is considered to be extremely unlikely.

The site is not identified as a contaminated site on the NSW EPA's list of notified sites, nor is it in the vicinity of any listed sites. The consent authority can be satisfied that the subject site is suitable for the proposed development.

As such, the proposed development is consistent with the provisions of Chapter 4 of this policy.

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

#### **4.1.1 Affordable housing**

The application proposes the provision of an additional 8 affordable housing apartments, representing a total GFA of 604m<sup>2</sup> or >15% of total GFA, in accordance with the affordable housing height and FSR incentive provisions contained within Chapter 2, Part 2, Division 1 Infill affordable housing of State Environmental Planning Policy (Housing) 2021 (Housing SEPP).

We note that the objective of this division is to facilitate the delivery of new infill affordable housing to meet the needs of very low, low and moderate income households.

Pursuant to clause 15C(1), this division applies given that residential flat development is permissible with consent on the land pursuant to PLEP 2014, the proposed affordable housing component is at least 10% and all of the development is carried out within an accessible area, as defined, being within 400m walking distance of a regularly serviced bus stop.

We confirm that in accordance with clause 15C(2) the 30% FSR bonus proposed in accordance with these provisions is in addition to the 10% affordable housing provision calculated in accordance with clause 6.11 of PLEP 2014.

Pursuant to clause 16, the maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the land plus an additional floor space ratio of up to 30% based on the minimum affordable housing component calculated in accordance with subsection (2).

The application proposes to take advantage of the 30% additional floor space ratio incentive with 15% of the total GFA available pursuant to these provisions provided as affordable housing. The proposal satisfies this FSR incentive provision subject to the imposition of standard conditions, including that prescribed by clause 21, requiring the affordable housing component to be managed by a registered community housing provider for a period of at least 15 years commencing on the day an occupation certificate is issued for the development.

Pursuant to clause 16(3), as the development includes residential flat buildings, the maximum building height for a building used for residential flat buildings is the maximum permissible building height for the land plus an additional building height that is the same percentage as the extra floor space ratio permitted under subsection (1). Accordingly, a 30% building height incentive applies to the development.

In this regard, clause 4.3 PLEP prescribes a maximum building height for development across the land of 13m. Applying the 30% building height incentive results in a maximum building height for development across the land of 16.9m.

It has been determined that the lift overruns on all buildings breach the 16.9m Housing SEPP building height incentive standard by a maximum of:

- Pittwater Road Building Lift 1 - 1m or (5.9%)
- Central Building Lift 2 - 3.1m or 18.3%
- Bungan Lane Building Lift 3 - 1m or (5.9%)

The breaching elements are depicted in the section below:



**Figure 15** – Section F depicting minor non-compliant projecting elements above 16.9m

Whilst the proposal requires the consent authority to give favourable consideration to a variation to the building height development standard, strict compliance is unreasonable and unnecessary with regard to the particular circumstances of the case, including the topography of the land, which makes strict compliance with the building height standard difficult to achieve whilst facilitating the delivery of affordable housing in accordance with the objectives at clause 15A of the Housing SEPP.

The variation will facilitate the orderly and economic use and development of land and a contextually appropriate increase in residential density on a site identified for increased residential densities and upon which the affordable housing incentive provisions contained within the Housing SEPP apply. The accompanying clause 4.6 variation request is well-founded (**ANNEXURE 2**).

Clause 19 of SEPP Housing contains nondiscretionary development standards which if complied with prevent the consent authority from requiring more onerous standards for the matters listed.

Clause 19(2)(a) prescribes a minimum site area of 450m<sup>2</sup> which is complied with.

Clause 20(3) contains design requirement including the need for the consent authority to consider whether the design of the residential development is compatible with the desired future character of the precinct. For the reasons outlined within this submission we consider that the proposal is compatible with the desired future character of the precinct have regard to the in-fill affordable housing incentive provisions of SEPP Housing.

#### **4.1.2 Design of residential apartment development**

Chapter 4—Design of residential Apartment development within SEPP Housing applies to new residential flat buildings, the substantial redevelopment/refurbishment of existing residential flat buildings, and the conversion of an existing building to a residential flat building.

The proposed development is for the erection of a five (5) storey development with four (4) ground-level retail units and four levels of residential apartments above, containing 36 dwellings. As per the definition of a 'Residential Flat Building,' these provisions apply to the proposed development.

Clause 147(1)(a) of the SEPP requires any development application for residential flat development to be assessed against the design principles contained in Schedule 9. The proposal's compliance with the design quality principles is detailed in the accompanying Architect Design Verification Statement.

Pursuant to clause 147(1)(b) of the SEPP Housing, in determining a development application for consent to carry out residential flat development, the consent authority is required to take into consideration the Apartment Design Guide (ADG). In this regard, an ADG compliance assessment accompanies this application.

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

The proposed works constitute 'BASIX affected development', as defined by the EP&A Regulation. The application is accompanied by a BASIX Certificate demonstrating that the proposed development can meet relevant performance criteria.

#### **4.8 Matters for Consideration Pursuant to Section 4.15(1) of the Environmental Planning and Assessment Act 1979 as amended**

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15 of the Environmental Planning and Assessment Act 1979:

##### **4.8.1 The provision of any planning instrument, draft environmental planning instrument, development control plan or regulations.**

The proposal is permissible and generally in conformity with the General, Development Type and Locality Specific Controls contained within Pittwater 21 Development Control Plan (P21DCP) as reasonably applied to this form of development on this particular infill site. The topography of the land makes strict compliance with the 13 metre height standard contained in Pittwater Local Environmental Plan 2014 (PLEP) standard difficult whilst achieving an appropriate contextual fit and the orderly and economic use and development of land. In this regard, the application relies on a clause 4.6 variation request for building height with sufficient environmental planning grounds to justify the variation sought. The clause 4.6 variation request is well founded.

##### **4.8.2 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economical impacts in the locality.**

###### *Context and Setting*

- i) *What is the relationship to the region and local context on terms of:*
- *the scenic qualities and features of the landscape?*
  - *the character and amenity of the locality and streetscape?*
  - *the scale, bulk, height, mass, form, character, density and design of development in the locality?*
  - *the previous and existing land uses and activities in the locality?*

The architect has responded to the client brief to provide for a shop top housing development of exceptional design quality. The development will not only provide a quality built form outcome on the site and provide greater housing choice in this particular locality but also ensure that the commercial and retail viability of this centre is maintained.

- ii) *What are the potential impacts on adjacent properties in terms of:*
- *relationship and compatibility of adjacent land uses?*

- *sunlight access (overshadowing)?*
- *visual and acoustic privacy?*
- *views and vistas?*
- *edge conditions such as boundary treatments and fencing?*

The proposed development incorporates appropriate design elements to ameliorate potential amenity impacts to adjoining properties. These issues have been discussed in detail in the body of this report.

#### *Access, transport and traffic*

*Would the development provide accessibility and transport management measures for vehicles, pedestrians, bicycles and the disabled within the development and locality, and what impacts would occur on:*

- *travel demand?*
- *dependency on motor vehicles?*
- *traffic generation and the capacity of the local and arterial road network?*
- *public transport availability and use (including freight rail where relevant)?*
- *conflicts within and between transport modes?*
- *traffic management schemes?*
- *vehicular parking spaces?*

The proposed development provides appropriately for commercial and resident parking and has good access to public transport.

#### *Public domain*

The proposed development will contribute positively to the public domain.

#### *Utilities*

Existing utility services will adequately service the development.

#### *Flora and fauna*

The application is accompanied by landscape details which depict the proposed landscape regime for the site.

#### *Waste*

Normal domestic and commercial waste collection applies to this development.

#### *Natural hazards*

The site is not affected by any known hazards other than minor localised flooding. Appropriate conditions will ensure the development is safe from such minor hazard.

#### *Economic impact in the locality*

The proposed development will provide temporary employment through the construction phases and employment opportunities in the future ground floor commercial space.

#### *Site design and internal design*

- i) *Is the development design sensitive to environmental conditions and site attributes including:*
- *size, shape and design of allotments?*
  - *the proportion of site covered by buildings?*
  - *the position of buildings?*
  - *the size (bulk, height, mass), form, appearance and design of buildings?*
  - *the amount, location, design, use and management of private and communal open space?*
  - *landscaping?*

The impact of the proposal with respect to design and site planning is positive. The scheme is in accordance with the thrust of the planning regime and will result in a shop top housing development of exceptional design quality.

- ii) *How would the development affect the health and safety of the occupants in terms of:*
- *lighting, ventilation and insulation?*
  - *building fire risk – prevention and suppression/*
  - *building materials and finishes?*
  - *a common wall structure and design?*
  - *access and facilities for the disabled?*
  - *likely compliance with the Building Code of Australia?*

The proposed development will comply with the provisions of the Building Code of Australia as required by Clause 98 of the Environmental Planning and Assessment Regulation 2000. There will be no detrimental effects on the occupants through the building design which will achieve the relevant standards pertaining to health and safety.

#### *Construction*



- i) *What would be the impacts of construction activities in terms of:*
- *the environmental planning issues listed above?*
  - *site safety?*

The development will be carried out in accordance with the provisions of the Protection of the Environment Operations Act 1997. Normal site safety measures and procedures will ensure that no site safety or environmental impacts will arise during construction.

#### **4.8.3 The suitability of the site for the development.**

*Does the proposal fit in the locality?*

- *are the constraints posed by adjacent developments prohibitive?*
- *would development lead to unmanageable transport demands and are there adequate transport facilities in the area?*
- *are utilities and services available to the site adequate for the development?*

The adjacent development does not impose any development constraints. The site is well located with regard to utility services and public transport, so there will be no excessive levels of transport demand created.

*Are the site attributes conducive to development?*

The site has no special physical or engineering constraints and is suitable for the proposed development.

#### **4.7.4 Any submissions received in accordance with this Act or the regulations.**

It is envisaged that any submissions made in relation to the proposed development will be appropriately assessed by Council.

#### **4.7.5 The public interest.**

It is considered that the public interest is best served in providing certainty in the planning process by encouraging the development of good design that satisfies the outcomes contained within the adopted legislative framework. In this regard, the development is consistent with the objectives of the relevant planning provisions, despite variations to the numeric controls, and therefore, the development is considered to be in the public interest.

The development is of a high quality architectural design that provides a positive contribution to the streetscape and is compatible with the form and character established by development within the centre. The development improves the public domain interface of the site through the provision of an active ground floor Bungan Lane retail frontage. These outcomes are achieved without compromising the amenity of surrounding development. For these reasons the development is considered to be in the public interest.

## 5.0 CONCLUSION

This Statement of Environmental Effects (SoEE) has been prepared in support of a development application proposing the demolition of the existing site structures and the construction of a shop top housing development comprising 4 ground floor retail tenancies, with 36 residential apartments above basement parking. The proposal seeks approval for 12 x 1, 13 x 2 and 11 x 3 bedroom apartments. The two basement levels contain 61 residential spaces, 12 residential visitor spaces and 15 retail spaces. The application also proposes the implementation of an integrated site landscape regime and the strata subdivision of the completed development.

We confirm that the application proposes the provision of 8 affordable housing apartments, representing a total gross floor area (GFA) of 604m<sup>2</sup> (Apartments 02, 07, 09, 11, 14, 17, 21 and 24), being 15% of total GFA of 4,006.3m<sup>2</sup>, in accordance with the affordable housing height incentive provisions contained within Chapter 2, Part 2, Division 1 Infill affordable housing of State Environmental Planning Policy (Housing) 2021 (SEPP Housing).

The proposal has been developed through detailed site and context analysis to ensure that development on this infill site responded appropriately to the constraints and opportunities associated with its laneway frontage and immediate proximity to the multi-level Bungan Lane public carpark. Particular consideration has also been given to the minutes arising from formal pre-DA discussions with Council. This report demonstrates the building is of exceptional design quality, affording high levels of amenity to future occupants, whilst responding appropriately to its immediate built form context in terms of setbacks, design and presentation.

Consideration has also been given to the minutes arising from formal pre-DA discussions with Council and Council's Design and Sustainability Advisory Panel (PLM2024/0057). In this regard, the concerns expressed by Council and DSAP regarding the proposal's non-compliance with the building height standard have been remedied through the provision of affordable housing pursuant to the Chapter 2 SEPP (Housing) Affordable housing incentive provisions, with the proposal generally compliant with the bonus height provisions.

The final design provides for a building of exceptional design quality which respond to the irregular geometry of the site and its topography in a highly articulated and modulated building form which responds appropriately to its prominent urban island location and immediate built form context. The development will provide diversity in housing choice on a site ideally suited to medium density housing.

The proposal is permissible and generally in conformity with the Housing SEPP height incentive provisions applicable to this form of development on this particular site and compliant with the Controls contained within the Pittwater 21

Development Control Plan with regard to the form of development anticipated where development takes advantage of the affordable housing incentive provisions. We note that Planning Circular PS 23-003 relates to infill affordable housing pursuant to the Housing SEPP with this document containing the following commentary:

*In some cases, the uplift afforded under the Housing SEPP may compromise the ability for a development to achieve strict compliance with local controls contained within a Local Environmental Plan (LEP) or Development Control Plan (DCP). Flexibility should be applied in these instances in order to balance local outcomes with the delivery of more affordable housing.*

*In light of the Government's commitments under the Accord, consent authorities are reminded to consider the delivery of market housing and affordable housing when considering the social impacts and the public interest of a development, as required under section 4.15 of the Environmental Planning and Assessment Act 1979 (the Act).*

*While in many cases the provisions in another EPI will continue to apply when assessing in-fill affordable housing development, development outcomes should be balanced against the Government's policy intent to realise more affordable housing in accordance with the Accord.*

*For example, when considering solar access controls contained within the applicable Local Environmental Plan (LEP), the objective of preserving solar access should be considered whilst facilitating the delivery of affordable housing, which is an objective under clause 15A of the Housing SEPP.*

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15(1) of the Environmental Planning and Assessment Act, 1979 as amended. It is considered that the application, the subject of this document, is appropriate on merit and is worthy of the granting of development consent for the following reasons:

- The accompanying plans depict a contextually compatible building form which appropriately responds to the surrounding zone boundary interface and which maintains acceptable residential amenity impacts in terms of views, solar access and privacy.
- The identified non-compliances with the building height, front setbacks, and percentage of commercial GFA have been acknowledged and appropriately justified with regard to the associated objectives. Such variations succeed pursuant to section 4.15(3A)(b) of the Act which requires Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the

objects of DCP standards for dealing with that aspect of the development.

- Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191, we have formed the considered opinion that most observers would not find the proposed development offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment.
- The proposed development is consistent with the desired future character of the MU1 Mixed Use zone as it relates to the Mona Vale. The proposal will increase the supply and diversity of housing choice, including affordable housing, on a site ideally suited to increased residential densities.
- The proposal facilitates the delivery of affordable housing in accordance with the objectives at clause 15A of the Housing SEPP.
- Although the application requires Council to give favourable consideration to a variation to the height of building standard the accompanying clause 4.6 demonstrates that strict compliance is unreasonable and unnecessary and that sufficient environmental planning grounds exist to justify the variation sought including the consistency of building height of recently approved development in the immediate vicinity.
- The proposal will increase the supply and diversity of housing choice on a site ideally suited to increased residential densities.

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended. It is my opinion that the application should be granted development consent subject to conditions.

**Boston Blyth Fleming Pty Limited**



**Greg Boston**  
B Urb & Reg Plan (UNE) MPIA  
**Director**

## **ANNEXURE 1**

Clause 4.6 variation request - Height of buildings

Circulated separately