

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2362
Responsible Officer:	Adam Susko
Land to be developed (Address):	<p>LOT 1 S/P 87024, 1 / 1105 Barrenjoey Road PALM BEACH NSW 2108</p> <p>LOT 1 S/P 87024, 1 / 1105 Barrenjoey Road PALM BEACH NSW 2108</p> <p>LOT 2 S/P 87024, 2 / 1105 Barrenjoey Road PALM BEACH NSW 2108</p> <p>LOT 2 S/P 87024, 2 / 1105 Barrenjoey Road PALM BEACH NSW 2108</p> <p>LOT 3 S/P 87024, 3 / 1105 Barrenjoey Road PALM BEACH NSW 2108</p> <p>LOT 3 S/P 87024, 3 / 1105 Barrenjoey Road PALM BEACH NSW 2108</p> <p>LOT 4 S/P 87024, 4 / 1105 Barrenjoey Road PALM BEACH NSW 2108</p> <p>LOT 4 S/P 87024, 4 / 1105 Barrenjoey Road PALM BEACH NSW 2108</p> <p>LOT 5 S/P 87024, 5 / 1105 Barrenjoey Road PALM BEACH NSW 2108</p> <p>LOT 5 S/P 87024, 5 / 1105 Barrenjoey Road PALM BEACH NSW 2108</p> <p>Lot CP SP 87022, 43 Iluka Road PALM BEACH NSW 2108</p> <p>LOT 1 S/P 87022, 1 / 43 Iluka Road PALM BEACH NSW 2108</p> <p>LOT 1 S/P 87022, 1 / 43 Iluka Road PALM BEACH NSW 2108</p> <p>LOT 2 S/P 87022, 2 / 43 Iluka Road PALM BEACH NSW 2108</p> <p>LOT 2 S/P 87022, 2 / 43 Iluka Road PALM BEACH NSW 2108</p> <p>LOT 3 S/P 87022, 3 / 43 Iluka Road PALM BEACH NSW 2108</p> <p>LOT 3 S/P 87022, 3 / 43 Iluka Road PALM BEACH NSW 2108</p> <p>Lot CP SP 87024, 1105 Barrenjoey Road PALM BEACH NSW 2108</p>
Proposed Development:	Demolition works and construction of a shop top housing development
Zoning:	B2 Local Centre
Development Permissible:	No
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP

Land and Environment Court Action:	Yes
Owner:	Owners of Strata Plan 87024
Applicant:	Forest Apartments Pty Limited

Application Lodged:	15/12/2021
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Mixed
Notified:	24/12/2021 to 08/02/2022
Advertised:	24/12/2021
Submissions Received:	62
Clause 4.6 Variation:	4.3 Height of buildings: 28.9%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 6,147,000.00
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EXECUTIVE SUMMARY

This report provides an assessment of the Development Application (DA) for demolition works, excavation of a basement and construction of a three-storey mixed-use building comprising Shop Top Housing and Serviced Apartments at 1105 Barrenjoey Road and 43 Iluka Road, Palm Beach.

From the inception of this scheme at a pre-lodgement meeting held in August 2018, Council raised concern regarding the permissibility of elements of the proposed land use and requested the applicant to obtain their own legal advice as to permissibility. To date (four years later) no such advice has been provided for Council's consideration, and based on Council's consistently held position that the arrangement and combination of land uses results in a prohibited form of development, that position remains unchanged.

The development has attracted significant public interest with some 62 submissions being received, generally objecting to the proposal on the grounds of its height, footprint, environmental impacts, traffic generation and amenity impacts on surrounding properties. Many of the submissions state that the proportions of the proposal make it incongruent with the established and desired pattern of development in the Palm Beach locale and these concerns are concurred with.

Council also holds concerns that the development of the land, which formally housed a service station for 40 years, may impact on nearby waterways and the environment through leachate contamination and dewatering. The site is within close proximity to the Pittwater waterway, which in this part has meadows of *Posidonia Australis*, an endangered species of seagrass that lies along Snapperman Beach. Council's Contamination Officers are not satisfied with the extent of contamination assessment carried out by the applicant, and so Council cannot be satisfied that the development would not have a harmful impact to an endangered species.

Council was advised in writing on 29 March 2022 that the applicant had filed a Class 1 Appeal in the Land and Environment Court of NSW against Council's deemed refusal of the DA. On 23 June 2022, a Section 34 Conciliation Conference was held, which was attended by many local residents. No agreement was reached between the parties and the appeal remains current.

The DA is being reported to the Northern Beaches Local Planning Panel (NBLPP) for determination as the notification of the proposal resulted in more than ten (10) submissions.

For the reasons detailed above and throughout this report, the assessment concludes with the recommendation that the NBLPP should **REFUSE** the DA.

PROPOSED DEVELOPMENT IN DETAIL

Development Consent is sought for demolition works, tree removal, excavation works and the construction of a three-storey mixed-use development atop a single level of basement car parking.

Specifically, the proposal seeks consent for:

- Demolition of all structures on site and removal of all vegetation.
- Excavation of approximately 4,443.9m³ to a depth of between 3.2m and 4m across the site.
- Construction of one level of basement car parking accommodating 32 car parking spaces, inclusive of ten tandem spaces.
- Construction of a three (3) storey building comprising of:

Ground Floor Level

- Five (5) retail units with a combined gross floor area (GFA) of 262m².
- Three (3) x one bedroom serviced apartments.
- Combined residential and commercial waste storage room.
- Outdoor dining to Barrenjoey Road and private courtyards to Iluka Road.

First Floor Level

- Five (5) x three bedroom residential apartments.

Second Floor Level

- Three (3) x three bedroom residential apartments.

The development is appropriately described as a *Mixed-Use development*, being that it comprises of several different land uses, as detailed later in this report.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers,

State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone B2 Local Centre
 Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
 Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
 Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
 Pittwater 21 Development Control Plan - B2.6 Dwelling Density and Subdivision - Shop Top Housing
 Pittwater 21 Development Control Plan - B3.6 Contaminated Land and Potentially Contaminated Land
 Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
 Pittwater 21 Development Control Plan - C1.3 View Sharing
 Pittwater 21 Development Control Plan - C1.4 Solar Access
 Pittwater 21 Development Control Plan - C1.10 Building Facades
 Pittwater 21 Development Control Plan - C1.12 Waste and Recycling Facilities
 Pittwater 21 Development Control Plan - C1.24 Public Road Reserve - Landscaping and Infrastructure
 Pittwater 21 Development Control Plan - C1.25 Plant, Equipment Boxes and Lift Over-Run
 Pittwater 21 Development Control Plan - C2.11 Signage
 Pittwater 21 Development Control Plan - C2.12 Protection of Residential Amenity
 Pittwater 21 Development Control Plan - D12.5 Front building line
 Pittwater 21 Development Control Plan - D12.8 Building envelope

SITE DESCRIPTION

Property Description:	LOT 1 S/P 87024 , 1 / 1105 Barrenjoey Road PALM BEACH NSW 2108 LOT 1 S/P 87024 , 1 / 1105 Barrenjoey Road PALM BEACH NSW 2108 LOT 2 S/P 87024 , 2 / 1105 Barrenjoey Road PALM BEACH NSW 2108 LOT 2 S/P 87024 , 2 / 1105 Barrenjoey Road PALM BEACH NSW 2108 LOT 3 S/P 87024 , 3 / 1105 Barrenjoey Road PALM BEACH NSW 2108 LOT 3 S/P 87024 , 3 / 1105 Barrenjoey Road PALM BEACH NSW 2108 LOT 4 S/P 87024 , 4 / 1105 Barrenjoey Road PALM BEACH NSW 2108 LOT 4 S/P 87024 , 4 / 1105 Barrenjoey Road PALM BEACH NSW 2108 LOT 5 S/P 87024 , 5 / 1105 Barrenjoey Road PALM BEACH NSW 2108 LOT 5 S/P 87024 , 5 / 1105 Barrenjoey Road PALM BEACH NSW 2108 Lot CP SP 87022 , 43 Iluka Road PALM BEACH NSW 2108 LOT 1 S/P 87022 , 1 / 43 Iluka Road PALM BEACH NSW 2108 LOT 1 S/P 87022 , 1 / 43 Iluka Road PALM BEACH NSW 2108 LOT 2 S/P 87022 , 2 / 43 Iluka Road PALM BEACH NSW 2108
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Detailed Site Description:	<p>The site is legally identified as Lot CP SP 87024 and Lot CP SP 87022 and is commonly known as No. 1105 Barrenjoey Road, Palm Beach and No. 43 Iluka Road, Palm Beach, respectively.</p> <p>The site has a triple-road frontage, being bound by Barrenjoey Road to the east and Iluka Road to the north and west. The site adjoins 39 Iluka Road, Palm Beach to the south, commonly known as <i>Iluka Apartments</i>.</p> <p>The site has a total surveyed area of 1,366.5m² and presently accommodates a part-two/part-three storey development comprising commercial premises at ground level and residential accommodation on the levels above. The site does not have basement car parking.</p>

Map:



SITE HISTORY

- Pre-1959, the site may have been used for the purpose of boat building with an associated slipway across Iluka Road to the Pittwater waterway.
- From 1959 until the early 1990's a service station existed on the subject site.
- Records pertaining to a DA for the construction of the current building on site cannot be located, however from aerial imagery available it is evident that the building was constructed between 1992 and 1994.

- **PLM2018/0150**

On 2 August 2018, the applicant attended a pre-lodgement meeting (PLM) with Council to discuss a proposal for demolition works and the construction of a shop-top housing and serviced apartments development. The plans submitted in that meeting (by the same architect as for the present DA) are near identical to those currently under assessment (albeit one unit has been removed).

In the PLM minutes, Council noted the following concerns:

- **Front Setbacks:** *The scale of the development is most apparent at the corner of Barrenjoey Road and Iluka Road, where the proposed upper levels meet the boundary splay with minimal setback. The application will need to demonstrate that the proposal does not enclose the corner, and that the scale of the development is consistent with other development in the locality.*
- **Definition of Shop top Housing:** *This issue was discussed at length at the meeting, where it was agreed that the applicant would obtain their own legal advice on this issue as to whether serviced apartments would be defined as "business premises".*

The legal advice is to be lodged with the DA, and Council will, during the assessment, seek its own legal advice on this issue to ensure permissibility.

(Note: Upon receipt of the current DA, Council's Assessment Officer emailed the applicant on 15 December 2021 requesting the above-mentioned legal advice be provided to Council to ensure a complete assessment of this issue. At the time of writing this report, no such legal advice has been forthcoming)

- **Proportion of Retail to FSR:** *Clause B2.6 of P21 DCP prescribed that the retail/commercial component of the development must be a minimum of 25% of the GFA of the building. The proposal appears to fall short of this requirement, as the serviced apartments do not fall into the retail commercial definition.*

Compliance with the 25% commercial/retail component is required.

- **Building Height:** *The proposal exceeds the 8.5m maximum height development standard prescribed by clause 4.3 of PLEP 2014. The variation is considered to be significant and Council will not support any significant variation to the Height of Buildings Development Standard.*

...deletion of the entire top storey is recommended to maintain the subversion of built form to natural landscape under D12.1 Character as viewed from a public place.

- **NSW Land and Environment Court**

On 29 March 2022, Council was notified that a Class 1 Appeal had been submitted in the Land and Environment Court of NSW against Council's deemed refusal of the DA.

On 23 June 2022, a s34 Conciliation Conference was held and no agreement was reached between the parties.

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. On the date the application was received by the Assessment Officer, legal advice was requested with regards to the permissibility of the development, as was requested in the pre-lodgement meeting. As the applicant lodged an appeal in the Court, whom are now the consent authority, Council did not request any additional information from the applicant.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter could be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter could be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter could be addressed via a condition of consent.</p>

Section 4.15 Matters for Consideration	Comments
	<p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter could be addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter could be addressed via a condition of consent.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact The outcomes of this Assessment Report find that the proposed development in conjunction with its consequential impacts will result in an unacceptable impact on the natural environment.</p> <p>The development has an inadequate provision of deep soil landscaping to enhance the biodiversity of the locale, and has provided inadequate environmental findings from the Preliminary Site Investigations Report to confirm whether or not dewatering in conjunction with stormwater run-off may impact on the endangered seagrass meadows along Snapperman Beach (Posidonia Australia mapped by DPI 2021).</p> <p>The environmental impacts of the development are expanded upon throughout this report.</p> <p>(ii) Social Impact The development seeks consent for serviced apartments, residential apartments and retail premises, each of which are considered to be acceptable for the context of the site and can exist without detrimental social impacts on the locality.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>For the reasons detailed throughout this report, including the considered position that the development is in fact prohibited, the site is considered unsuitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>This assessment has found the proposal to be contrary to various provisions within the Pittwater LEP 2014 and P21DCP and will result in a development which will create an undesirable precedent, such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.</p>

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land and the proposed development is for a subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes / a special fire protection purpose under Section 100B of the Rural Fires Act 1997. As such, the proposal is integrated development and requires a bush fire safety authority from the NSW Rural Fire Service.

The application was referred to the NSW RFS as integrated development. The NSW RFS issued a bush fire safety authority, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS as part of the bush fire safety authority, have been included as part of the recommended conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 24/12/2021 to 08/02/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 62 submission/s from:

Name:	Address:
Mr Andrew Robert Shurety	10 Bellevarde Parade MONA VALE NSW 2103
William Clinton	118 Iluka Road PALM BEACH NSW 2108
Mr Roy Scott Laidlaw	1111 Barrenjoey Road PALM BEACH NSW 2108
Ms Hilary Anne Laidlaw	54 Roseville Avenue ROSEVILLE NSW 2069
Ms Prudence Abby Rydstrand	1100 Barrenjoey Road PALM BEACH NSW 2108
Mrs Jane Victoria Grover	6 Darius Avenue NORTH NARRABEEN NSW 2101
Leslie Green	116 Iluka Road PALM BEACH NSW 2108
Mr Robert Scott King	9 Ralston Road PALM BEACH NSW 2108
Mrs Julie Anne Westcott	31 Rayner Road WHALE BEACH NSW 2107
Annabelle Sue Chapman	21 Marine Parade AVALON BEACH NSW 2107
Ms Polly Delaune Rylie	114 Pacific Road PALM BEACH NSW 2108
Ms Margaret Joan Mansergh	27 Iluka Road PALM BEACH NSW 2108
Mr Marcello Giacomazzi	1 Iluka Road PALM BEACH NSW 2108
Mr Robert Donald Mackinnon	16 Norma Road PALM BEACH NSW 2108
Ms Anna Maria Monticelli	11 Ebor Road PALM BEACH NSW 2108
Mrs Marion Luise Richmond	98 Iluka Road PALM BEACH NSW 2108
Ms Lesley Garrett	25 Palm Beach Road PALM BEACH NSW 2108
Amanda Lee	1110 Barrenjoey Road PALM BEACH NSW 2108
Peter Alan Blundell Robyn Barbara Blundell	1 / 1070 - 1076 Barrenjoey Road PALM BEACH NSW 2108
Mr Kenneth Brown	9 / 1070 - 1076 Barrenjoey Road PALM BEACH NSW 2108

Name:	Address:
Mrs Robyn Brown	
Christine Dawn Tipping	8 / 1070 - 1076 Barrenjoey Road PALM BEACH NSW 2108
Mr Timothy Cobbin	10 / 1070 - 1076 Barrenjoey Road PALM BEACH NSW 2108
Mrs Vivienne Francesca Dunn Mr John Frederick Dunn	11 / 1070 - 1076 Barrenjoey Road PALM BEACH NSW 2108
Mr Edward Guy Yates	7 Fitzpatrick Avenue West FRENCHS FOREST NSW 2086
Mr Nicholas Burton-Taylor	Hillgrove Young Road BOOROWA NSW 2586
Mrs Karen Elizabeth Chapman	14 A Pacific Road PALM BEACH NSW 2108
Mrs Katrina Anne Adamski	10 Bellevarde Parade MONA VALE NSW 2103
Mrs Joanna Ruth Love	71 Florida Road PALM BEACH NSW 2108
Ms Jane Mary Buckley	43 Sunrise Road PALM BEACH NSW 2108
Mr Geoffrey Loris Hassall	88 Iluka Road PALM BEACH NSW 2108
Mr Jeremy Colin Hassall	283 Whale Beach Road WHALE BEACH NSW 2107
Mr Geoffrey Richard Hodgkinson	45 A Sunrise Road PALM BEACH NSW 2108
Mr John David Thornborough	1004 Barrenjoey Road PALM BEACH NSW 2108
Mr Philip Francis Quirk	3 Woorak Road PALM BEACH NSW 2108
Mrs Valda Jean Ewen	2 Iluka Road PALM BEACH NSW 2108
Ms Diana Dennison	1 Nabilla Road PALM BEACH NSW 2108
Mrs Sarah Carrington Yates	1078 Barrenjoey Road PALM BEACH NSW 2108
Nell Hanbury	Address Unknown
Mrs Vera Boyarsky	Po Box 727 EDGECLIFF NSW 2027
Mr Nicholas Gerrard Hubble	6 Wyralla Avenue EPPING NSW 2121
Mrs Sheena Margaret Coupe	5g/22 Ross Street WAVERTON NSW 2060
Robyn Lloyd	PO Box 276 BELROSE WEST NSW 2085
Ms Jane Elizabeth Forsyth	33 Argyle Street BILGOLA PLATEAU NSW 2107
Mr Geoffrey Fisher	163 Pacific Road PALM BEACH NSW 2108
Mr Garner Robert Clancey	37 Watkins Street NEWTOWN NSW 2042
Conomos & Spinak Lawyers	Suite 504 Level 5 147 King Street SYDNEY NSW 2000
Mrs Jenny Osieck	7 Harley Road AVALON BEACH NSW 2107
Edwina Menzies	Address Unknown
Mr George Moskos	149A Young Street CREMORNE NSW 2090
Ms Anne Cahill	103 Pacific Road PALM BEACH NSW 2108
Jane Hanbury	Address Unknown
Mr Aleksander Rzadkowski	503/437 Bourke Street SURRY HILLS NSW 2010
Mr William Thomas Jenkins	503/437 Bourke Street SURRY HILLS NSW 2010
Sophie Moore	Address Unknown
Doyle Consulting Group	3A Kendall Road CASTLE COVE NSW 2069
The Palm Beach & Whale	Palm Beach/Whale Beach Areas AB Dummy For Daba Notification

Name:	Address:
Beach Association Inc	WARRIEWOOD NSW 2102
Mr Franklin Vasquez Fletcher	PO Box 691 AVALON BEACH NSW 2107
Philippa Warner	1137 Barrenjoey Road PALM BEACH NSW 2108
Mrs Susan Margaret Young	28 Hillcrest Avenue MONA VALE NSW 2103
Mrs Melanie Helen Mary Axford	1 Alexander Road AVALON BEACH NSW 2107
Mrs Leonor Isabel Gouldthorpe	2 Surf Road PALM BEACH NSW 2108
Mr David Hugh Mackay	12 / 39 Iluka Road PALM BEACH NSW 2108

The following issues were raised in the submissions:

- **Overdevelopment of the site and inconsistency with desired future character**
- **Built form non-compliance - height, setbacks, envelope and landscaping**
- **Amenity impacts - solar access, view loss, visual and acoustic privacy**
- **Construction impacts**
- **Proposed landuses and permissibility**
- **Traffic and parking**
- **Contaminated land**
- **Impacts on rental yield of adjoining property**

The above issues are addressed as follows:

- **Overdevelopment of the site and inconsistency with desired future character**

The submissions raised concerns that the proposal is an overdevelopment of the site which is inconsistent with the desired future character of the Palm Beach locality.

Comment:

This report finds that the building has an excessive footprint and height as evidenced by the multiple variations to the built form controls sought, and that the proportions of the building result in both amenity impacts that are unacceptable, and a building that is of a scale that is incongruent with the streetscape and Palm Beach locality.

This report concludes that the overall premise of the proposal fails when measured against the relevant planning controls and as such, the inconsistency of the proposal against the desired future character forms a reason for refusal of the application.

- **Built form non-compliance - height, setbacks, envelope and landscaping**

The submissions raised concerns that the development seeks to breach several development standards and built form controls which should equate to a refusal.

Comment:

Where a variation to a development standard or built form control exists, it is addressed under

its respective section in this report. In summary, the proposal is found to breach all built form controls, with the exception of the nil setback to the southern boundary.

Individually, these variations are unacceptable and cumulatively they represent a building that is too big for the site. The non-compliances form reasons for refusal of the application.

- **Amenity impacts - solar access, view loss, visual and acoustic privacy**

The submissions raised concerns that the development will harm the amenity of adjacent and nearby properties.

Comment:

This assessment report has considered amenity impacts under the respective clauses. This report concludes that the application should be refused on the basis of a lack of information pertaining to solar access and view loss.

Visual and acoustic privacy are deemed to be acceptable in the circumstances of the application. The proposal does not directly overlook the primary private open spaces of any dwelling houses or apartments. Concerns regarding acoustic privacy generally pertain to mechanical ventilation which can be appropriately managed by way of conditions, were the recommendation of this report to be for approval.

- **Construction impacts**

The submissions raised concerns that inadequate consideration has been included in the geotechnical report regarding construction impacts on neighbouring properties, and raises concerns about traffic, noise and dust that would be generated during the construction process.

Comment:

The construction impacts on neighbouring properties and the local road network are not considered to be severe nor tantamount to warrant the refusal of the application. Were this application to be considered acceptable, then these concerns could be appropriately dealt with via conditions, including one requiring dilapidation reports to be commissioned for the adjoining building to the south (39 Iluka Road) and to manage/mitigate noise and dust and construction traffic.

- **Proposed landuses and permissibility**

The submissions raised concerns that the land uses proposed are not permissible on the site.

Comment:

The uses proposed on the site are each permissible, however when carried out in conjunction and in the arrangement sought, create a development type which would be prohibited on the land. This matter is addressed elsewhere in this report and forms a reason for refusal of the application.

It is noted in several submissions that the authors claim that Palm Beach doesn't need any more shops and that this element should be deleted from the proposal. Council does not concur with this assertion which is not a relevant planning consideration, noting that retail land uses are permissible on the site under PLEP 2014.

- **Traffic and parking**

The submissions raised concerns that the proposal would have an unreasonable impact on parking in the local area, and that the calculation of parking should include the media rooms within the serviced apartments as bedrooms.

Comment:

Council's Traffic Engineers are generally satisfied with the potential traffic generation and proposed parking arrangement on the site. Council cannot operate on the premise that a developer will use rooms for a purpose different than what they are approved for on the approved plans. Therefore, these concerns could be remedied by way of condition. Notwithstanding that, there are other concerns raised by Council's Traffic Engineers which warrant the refusal of the application.

- **Contaminated land**

The submissions raised concerns that inadequate assessment of potential contamination of the site has been undertaken, and therefore the status of the land poses an unknown risk to the environment.

Comment:

Council concurs with this concern and it forms a reason for refusal of the application.

- **Impacts on rental yield from adjoining property**

The submissions raised concerns that the development may impact on the desirability and rental yields of the adjoining serviced apartments at 39 Iluka Road.

Comment:

This is not a matter for consideration under Section 41.5 of the Environmental Planning and Assessment Act 1979 and therefore no further assessment or discussion on this matter is made.

REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	<p><i>Not supported</i></p> <p>The proposal was reviewed by Council's Design and Sustainability Advisory Panel on 03 February 2022. The Report of that meeting is publicly available on Council's website.</p> <p>The Report from that meeting concludes:</p> <p><i>The Panel does not support the proposal in its current form. A complete redesign and substantial reduction in the floor area is required. Many of the issues stem from the excessive site coverage. Breaching of height limits has not been adequately justified and setbacks to Iluka Road are insufficient. As noted any breaching of the height controls would need to be supported by an analysis of the benefits compared to a complying scheme.</i></p>

Internal Referral Body	Comments
	Concerns raised by Council's DSAP have been incorporated as reasons for refusal and addressed elsewhere in this report.
Building Assessment - Fire and Disability upgrades	<p>Supported, with conditions</p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Acid Sulphate)	<p>Not supported</p> <p>Development in a Class 3 Acid Sulfate Soils (ASS) area requires subsurface investigation for the proposed excavations to 4.0m bgl. Investigations via two boreholes were conducted and reported-on in the Preliminary Site Investigation geotech report. It was concluded that the likelihood of PASS beneath the existing development is low, and that an ASS management plan is not required for the works.</p> <p>While Council considers that the likelihood of exposing PASS in this location as low (according to the information / analysis provided), the quantity of samples is not enough to establish full understanding of underlying soils. We are concerned that there may be pockets of ASS that have not been found via the sparse borehole investigation sampling regime.</p> <p>At this point in time there is insufficient information given to conduct a meaningful assessment of ASS. Council requires the applicant to conduct sampling at a rate that is commensurate with Section 4.1 of the <i>Acid Sulfate Soils Assessment Guidelines</i> (1998).</p>
Environmental Health (Contaminated Lands)	<p>Not supported</p> <p>Environmental Health have reviewed the relevant documents associated with the application and believe there is insufficient information to accurately assess the proposal, therefore recommend refusal.</p> <p>The 'Preliminary Site Investigation' identified previous uses of concern including a service station and possible industrial marine services. As such, the analysis of two borehole samples (1 sample per 700m²) is insufficient to determine the suitability of the land for the proposed development. Environmental Health are of the opinion that concrete coring of hardstands can and should be conducted to access underlying soils and groundwater for analysis.</p> <p>Given that this potentially contaminated site will require dewatering both during construction and for the life of the development, a 'Detailed Site Investigation', 'Remedial Action Plan' and comprehensive 'Construction Management Plan' are required at the application stage in order to make a meaningful assessment.</p>

Internal Referral Body	Comments
	<p>Existing stormwater infrastructure in the area discharges to Snapperman Beach Reserve. There are known seagrass meadows along this beach, which include the endangered species - <i>Posidonia australis</i> (mapped by NSW DPI 2021). There are concerns that dewatering in conjunction with stormwater runoff may cause scouring and/or pollutant-related damage to the beach and seagrass meadows.</p> <p><u>Planner comment:</u> the concerns raised with regards to impacts on seagrass meadows are addresses below by the Coast and Catchments team.</p>
Environmental Health (Industrial)	<p>Supported, with conditions</p> <p>Proposal to demolish and re-instate shop top housing is likely to not change the noise amenity impact on the area. The new building should be constructed according with the recommendations in the acoustic report, beyond this, Council has no objections regarding health amenity.</p>
Landscape Officer	<p>Not supported</p> <p>The development application is for the demolition of existing structures and the construction of a shop top housing development.</p> <p>Council's Landscape Referral have assessed the application against the following relevant landscape controls and policies:</p> <ul style="list-style-type: none"> • State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP65); and the Apartment Design Guide under SEPP 65 clause 28(2) (a) (b) and (c); and clause 30(2) (a) and (b), • the associated Apartment Design Guide, including Principle 5: Landscape, and the objectives of control 3E Deep Soil Zones, 4O Landscape Design, 4P Planting on Structures, and • Pittwater Local Environmental Plan and the following Pittwater 21 Development Control Plan controls (but not limited to): B4.22 Preservation of Trees and Bushland Vegetation; C1.1 Landscaping; and D12 Palm Beach Locality, • Northern Beaches Public Space Vision & Design Guidelines. <p>Landscape Plans and a Arboricultural Impact Assessment are submitted with the application and it is noted that all existing trees within the site are required to be removed.</p> <p>A key component of SEPP65 and the Apartment Design Guide is the provision of at least 7% deep soil area with a minimum width of 3 metres, whilst the Pittwater DCP requires 20% deep soil area. The deep soil area is to include the provision of tree canopy and other planting to assist with the softening of the built form.</p> <p>The proposal includes deep soil along the Barrenjoey Road frontage however no dimensions are provided to determine if the minimum 3 metre width is satisfied. Regardless of this the development proposal includes built elements within this area by way of extensive pavement</p>

Internal Referral Body	Comments
	<p>that prohibits the majority of the deep soil area from being planted with tree canopy and other planting, and thus the landscape intent is not achieved as required by SEPP65, the Apartment Design Guide, and the Pittwater DCP landscape controls, and the proposal can't be supported on this basis.</p> <p>It is suggested that the deep soil area requirement may be better applied along the Iluka Road boundaries facing residential properties to allow for the incorporation of deep soil areas that are able to support planting including tree canopy and screen planting, and that the Barrenjoey Road frontage is redesigned to provide public domain outcomes that are designed to activate and benefit retail and community interactions, and in consideration of Council's Northern Beaches Public Space Vision & Design Guidelines.</p>
NECC (Coast and Catchments)	<p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021 (clauses 2.10, 2.11 & 2.12); and • Relevant LEP and DCP clauses. <p>In light of the comments provided by the Environmental Health Officer, additional information is required to demonstrate compliance with the Coastal Management Act objectives relating to the marine estate as well as the State Environmental Planning Policy (Resilience & Hazards) requirements of section 2.10 (Coastal Environment Area). Land contamination and potential drainage to the marine environment is the primary concern given the former uses of the site for industrial marine services and vehicle service station. The proposed development includes a reasonable excavation of soil (4443.9 m³) to facilitate an underground parking and storage area. Dewatering plans indicate the operation of a pump system both during construction and long-term to minimise basement infiltration. It is currently unclear to what extent the site is contaminated and whether the dewatering strategy proposed (during construction and long-term) is capable of preventing water quality contamination and possible impacts to the adjacent estuary.</p> <p>The site is mapped with the coastal zone, being both within the Coastal Environment Area (2.10) and Coastal Use Area (2.11) under the SEPP (Resilience & Hazards). In accordance with section 2.10(1) the applicant must demonstrate that the development is not likely to cause adverse impact on the the integrity and resilience of the ecological environment (1a); the water quality of the marine estate (1c); and marine vegetation (1d). In addition, 2.10 (2) requires that the consent authority must be satisfied that the development is designed, sited and managed to avoid an adverse impact. Where this cannot be reasonably avoided, the applicant must demonstrate how the development will be designed and sited to minimise and/or manage any impact.</p>

Internal Referral Body	Comments
NECC (Development Engineering)	<p>Not supported</p> <p>The proposal is for demolition and the construction of a shop top housing. The proposed stormwater plan with the proposal to discharge to the council pit in Iluka Road is satisfactory subject to conditions. The upgrading of the footpath and road works can be conditioned. The driveway access can also be conditioned.</p> <p>The geotechnical report addresses the DCP controls. However the proposal involves excavation exceeding 1.5m and as such in accordance with Clause 8.1 of Pittwater DCP certified forms 1 & 1A are required. The forms 1 & 1A shall be submitted prior to final assessment.</p> <p>Development engineers cannot support the application due to insufficient information to address Clause 8.1 of Pittwater DCP.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>Supported, without conditions</p> <p>The south-east corner of the property has a very small area of Low Flood Risk Precinct, but it is not affected by the 1% AEP flood extent (including with consideration for climate change). There are no applicable flood related development controls.</p>
NECC (Water Management)	<p>Not supported</p> <p>The proposal was assessed under the current creek and water management legislation framework, the relevant parts of the LEP, DCP and Council Water Management for Development Policy.</p> <p>The relevant water management Policy principles are:</p> <ul style="list-style-type: none"> • <i>Improve the quality of water discharged to our natural areas to protect the ecological and recreational condition of our, beaches, waterways, riparian areas and bushland.</i> • <i>Water sensitive urban design measures will be integrated into the built form to maximise liveability and reduce the impacts of climate change e.g. urban heat island effect and intensified rainfall events.</i> • <i>Reduce the consumption of potable water by encouraging water efficiency, the reuse of water and use of alternative water sources.</i> <p><i>The application is triggering controls to protect the environment as per Council Water Management for Development Policy.</i></p> <p>The drainage plan is showing the proposed stormwater network. The stormwater runoff generated by the hard surfaces is collected and connected to the stormwater network. The roofs are connected to a 9m³ rainwater tank for reuse. Rain water tanks are noted, no water quality system are proposed.</p> <p>Pittwater 21 DCP B5.15 Stormwater is requiring that the stormwater drainage systems for all developments are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.</p> <p>The proposal is not demonstrating compliance with Council Water</p>

Internal Referral Body	Comments
	<p>Management for Development Policy for water quality.</p> <p>The proposal need to be amended to include a stormwater quality system.</p> <p>The stormwater quality objectives are defined in the Water Management for Development Policy, likely the General Stormwater Quality Requirements (table 5). Note the section 4.1.2 Standards of Design of the Water Management for Development Policy for the relevant Standards of Design.</p>
Traffic Engineer	<p>Not supported</p> <p>The proposal is not acceptable in its current form due to concerns regarding access to parking and issues associated with the operation of the traffic signal system. However, the issues outlined may be addressed with changes and improvements to the car parking layout. It is therefore requested that the Applicant consider the comments below and provide an updated plan so that it can be reviewed for further consideration.</p> <p>Access and Parking</p> <p>The basement car park provides the required 19 residential (16 dwelling with 3 visitor spaces), 3 service apartment, and 9 retail spaces in accordance with the Pittwater21 DCP. The total includes 3 accessible parking spaces (1 dwelling, 1 visitor, and 1 retail), which exceeds the requirements. Adequate bicycle racks have also been provided for bicycle parking.</p> <p>There are a total of 8 residential dwellings and 5 of these dwellings have been provided with tandem spaces. Although the tandem spaces are allocated to the same dwelling, the proportion of tandem parking is 31% and exceeds the DCP maximum of 10% of the total residential parking for two or more bedroom units. However, due to the location and constrained site, the provision of adequate on-site parking is considered preferable to impacting the existing on-street parking and the parking arrangement would be accepted in this case.</p> <p>There are concerns with access to the retail parking space (R1) which is located in the south-eastern corner of the building. R1 is situated directly off the driveway at the bottom of the ramp and enclosed between the walls of the building and the stairwell access. Access to R1 would be improved by relocating the stairwell to the southern wall of the building, similar to the stairwell access off Iluka Road. This would also allow all Retail parking spaces to be aligned in a continuous row along the eastern wall.</p> <p>The basement car park caters for all of the parking needs of the various development uses which include dwellings, serviced apartments and retail. The swept path analysis indicates that movements within the car park are quite constrained with a number of waiting bays required to allow vehicles to pass and safely enter and exit the car park. Unless there are clear reasons for the current</p>

Internal Referral Body	Comments
	<p>parking layout, it would be beneficial to arrange the parking to defined areas serving the particular use (residential, retail etc) where possible. This would assist all users, especially visitors, and avoid any unnecessary movements or circulation to find an available parking space.</p> <ul style="list-style-type: none"> - Resident accessible parking space (01) should be swapped with the Visitor accessible parking space (V3) so that all three visitor parking spaces are located together. The Visitor accessible parking space (V3) could also be located closer to the lift for convenient and safe access. - Retail parking R7, R8 and R9, should be switched over with the new section of Accessible Parking (R6, Shared Zone and 01) so that all the Retail parking is consolidated and located side by side. All Retail spaces can then be renumbered in ascending order. <p>Traffic Signal System</p> <p>The Traffic Impact Assessment specifies that a traffic signal system will be provided with on-site waiting bays, to ensure the safe operation of the 3.4m wide ramp. The traffic signals and timing will be designed by a traffic signal consultant prior to issue of Construction Certificate. The traffic signal system will operate with a passive green light for all vehicles entering with vehicles required to stop within the allocated waiting bay at the top of the ramp in the event of an exiting vehicle within the basement. Waiting bays are also provided within the basement level with all exiting vehicles be required to position themselves at a waiting bay until the system provides a green light.</p> <p>The waiting bay located at the top of the ramp is not as clearly marked as those located in the basement car park, and additional pavement markings and/or separation lines are required to ensure that the waiting vehicle does not encroach on the travel path of exiting vehicles.</p> <p>It is noted that traffic signal is located on the opposite side of the Retail parking area, and vehicles are required to wait within the parking spaces for a green light before exiting. It is therefore recommended that wheel stops be provided at the rear of the spaces and vehicles parked with the rear to the wall, so that they can easily see the green light and exit the space in a forward direction.</p> <p>Traffic Generation</p> <p>The future traffic generation has been assessed in accordance with Roads and Maritime Services (RMS) 'Guide to Traffic Generating Developments 2002'. The site currently accommodates ground floor retail use and there is expected to be no net change in traffic generation in relation to retail uses.</p> <p>The combined traffic generation of the residential and serviced apartments is projected at 4 vehicles per hour during the peak periods, which is an increase of approximately 3 vehicles compared to the existing situation. The driveway is located at the south-western corner of the site off Iluka Road and does not direct traffic directly onto Barrenjoey Road (Main Road). The traffic generation and impact on the road network capacity is therefore considered to be minor.</p>

Internal Referral Body	Comments
	<p>Not supported</p> <p>1) Residential and commercial waste are stored in the one room. <i>Unacceptable.</i> Residential and commercial waste must be stored in separate rooms. Each room must have its own separate doors for both resident and service staff access. Proprietors of commercial units must not be able to access the residential bin storage room.</p> <p>2) Service access to the bin storage area is via the vehicular driveway. <i>Unacceptable.</i> A pathway must be provided that is separate from the vehicular driveway for each bin storage room.</p> <p>3) Presentation of bins at the kerbside for collection. <i>Unacceptable.</i> Under no circumstances are bins to be presented at the kerbside. Council will provide a "wheel out /wheel in" service for the residential garbage and recycling bins. Commercial unit proprietors are to arrange "wheel out/wheel in" services for their commercial bins.</p> <p>Additional information regarding bin room access: The external (service access) door to the residential bin room must remain unlocked from 6.00am to 6.00pm on the scheduled day of collection. It is suggested that a timer lock be installed on this door.</p> <p>Comment regarding serviced apartments: For the purpose of waste management the serviced apartments are considered 'commercial' in that they will not generate the same volume of waste as a residential dwelling.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>Supported, with conditions</p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>
NSW Rural Fire Service – local branch (s4.14 EPAA)	<p>Supported, with conditions</p> <p>The proposal was referred to and assessed by the NSW Rural Fire Services who raise no objections to the development, subject to conditions.</p>
Nominated Integrated Development – WaterNSW - Water Management Act 2000 (s91 Permit for Temporary Construction Dewatering)	<p>Supported, with conditions</p> <p>Water NSW has granted their General Terms of Approval pursuant to the Water Management Act 2000. Those terms are endorsed by way of condition of consent.</p>

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 55 - Remediation of Land

Clause 7(1)(a) of SEPP 55 requires the consent authority to consider whether land is contaminated.

In response to the above requirements of the SEPP, the applicant has submitted a Preliminary (Stage 1) Environmental Site Investigation dated 17 December 2020 and prepared by JK Environments. In its conclusion, the investigation states:

The investigation included a review of historical information and soil sampling from two boreholes. The site has historically been used as a boat builder, service station and more recently for mixed commercial and residential purposes.

Although no contamination has been encountered in the soil samples analysed, sampling for the PSI was limited and there remains a potential for contamination associated with historical use of the site as a service station. Information relating to the decommissioning of the service station was not made available to us during preparation of this PSI report.

JKE note that use of the site as a service station is a trigger to undertake a DSI (Detailed Soil Investigation) under the SEPP55 planning guidelines. Based on the findings of the investigation, JKE are of the opinion that the site can be made suitable for the proposed development described in Section 1.1, provided the following recommendations are implemented:

- *A DSI is to be undertaken to better assess the soil and groundwater contamination conditions at the site; and*
- *A hazardous materials assessment should be undertaken prior to demolition of the existing building.*

Due to the substantial site access constraints associated with the existing development, it is acknowledged that completing a full DSI would not be practicable prior to demolition. On this basis, JKE recommend that the soil and groundwater contamination conditions be characterised to the extent practicable in accessible areas, then a suitable plan (i.e. a Remediation Action Plan – RAP) be developed to manage/remediate actual or potential contamination. This plan would then be implemented following demolition. In our opinion, this approach should be adequate for the consent authority to make their determination with regards to Clause 7 of SEPP55.

Therefore, as the Investigation indicates that there is a potential for contaminants to exist on the site, Clauses 7(1)(b) and 7(1)(c) of the SEPP must be considered.

Clause 7(1)(b) stipulates that *"if the land is contaminated, it [Council] is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out"*.

Given the claimed potential of contamination on the site as noted in the Phase 1 Investigation, a Phase 2 Environmental Site Assessment should be provided to confirm whether contamination is actually present, at what levels and at what locations. However, no Phase 2 Environmental Site Assessment has been provided. In this regard, given the claimed presence of contamination, Council cannot be satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

Clause 7(1)(c) stipulates that *"if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose"*.

The extent of any potential remediation of the site is uncertain due to the lack of a Phase 2 Environmental Site Assessment. Therefore, before any remediation of the site could be recommended and undertaken, a Phase 2 Environmental Site Assessment would be required in accordance with the SEPP and the Contaminated Lands Management Act 1997 to confirm the presence of contamination, what any such contamination may actually consist of and the precise locations and depths of any contamination.

Such reports have not been provided and therefore Council remains of the position that the provisions of SEPP 55 have not been adequately addressed, and so this matter forms a reason for refusal.

SEPP 65 - Design Quality of Residential Apartment Development

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

(a) the development consists of any of the following:

- (i) the erection of a new building,
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
- (iii) the conversion of an existing building, and

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and

(c) the building concerned contains at least 4 or more dwellings.

As previously outlined, the proposed development is for the erection of a three (3) storey residential flat 'housing' development plus basement car parking for the provision of eight (8) self-contained dwellings.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

As previously outlined within this report, Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a Design Verification Certificate from the building designer at lodgement of the DA. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

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

DESIGN REVIEW PANEL

Northern Beaches Council does not have an appointed Design Review Panel, rather it operates a Design and Sustainability Advisory Panel (DSAP) which is addressed elsewhere in this report.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment:

The context and neighbourhood character of the site and the wider Palm Beach locality is established by the locality statements embedded within the P21DCP and by the physical surroundings of the land. Of note is the bushland to the west and row of two-storey waterfront houses to the east.

The proposal has an inadequate provision of deep soil zones at ground level and does not provide any compensatory offset for this loss in other parts of the development (i.e. green roofs, walls or planter boxes). By virtue of the absence of deep soil zones, and any landscaping in general, the proposal cannot be said to positively respond to the bushland context to the west.

The proposal has an immediately discernible three-storey form along the Iluka Road frontage which, for the most part, sits one full storey higher than the detached dwelling houses. Whilst development within the B2 zone will always inherently be larger than development within the C4 zone, the interface between the two caused by the proportions and architecture of this proposal is detrimental to the overall visual character of Iluka Road, and indeed to the wider streetscape and pedestrian experience.

It is the lack of landscaping, extent of site coverage, and overall building height proposed which detracts from the established and desired neighbourhood character and, in that instance, is the reason why the proposal fails Principle 1.

Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment:

Where the development does not comply with prescribed built form standards, those non-compliances are addressed elsewhere in this report.

In conjunction with the above commentary under Principle 1, this particular assessment focuses on the specific element: *"Good design also achieves an appropriate built form for a site and the building's purpose in terms of the manipulation of building elements."*

The building is three storeys and is over the height limit in an area that is generally characterised by two storey buildings. The height of buildings control (8.5m) generally is assumed to allow for a two storey building with a roof form of some type. There are circumstances where this building height has been manipulated, whereby rooms have been constructed within the roof spaces of buildings, with small dormers being added to provide natural light and ventilation.

That circumstance is not replicated in this design, rather the third floor is a full floor of the building that has roofing elements appended to the outer edges. For clarity, the proposed third floor has an area of 596m² and accommodates three very generously proportioned residential units (184m², 199m² and 213m²).

It is considered that the design is inconsistent with the established circumstances of three storey buildings in the locale (noting that there are some limited exceptions) and that the manipulation of building elements is not compatible with the prevailing character. The third floor is not resultant of the creative use of otherwise void roof space, but is rather an entire floor of the building itself rather than a *'rooms within a roof'* scenario comprising attic or loft spaces.

It is for this reason, in conjunction with those described elsewhere in this report, that the development fails Principle 2.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment:

The internal amenity of each apartment is considered to be high, by virtue of having larger than standard apartments and so the overall density (occupation) of the building is decreased. Given the location of the site, being at the very edge of the Northern Beaches, it is considered sensible to have a lower density than in a town centre area, and thus the density as proposed is considered appropriate.

The development succeeds when measured against Principle 3.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Comment:

The layout of the building incorporates an acceptable degree of sustainability measures including passive shading and cross-ventilation, both of which are extremely important given the unobscured westerly aspect.

The building does however fail when considered against technically sustainable solutions. The building has no photovoltaic cells, despite having a flat roof with an uninterrupted face to the sun. The carpark has no active or passive electric vehicle charging spaces. The submitted BASIX Certificate details that the proposal achieves the bare-minimum standards in terms of water and energy saving measures /use.

The building has an inadequate provision of deep soil zones and of planting in general.

Overall, the proposal shows no discernible attempts to mitigate its carbon footprint, and for that reason, it cannot be said that the proposal succeeds against Principle 4.

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment:

The development provides no opportunities for any at-grade planting along the Iluka Road frontage as the basement is built to the edge of the site and, as per the submitted sections, has no soil depth above it. It is unclear how the applicant intends to plant on the landscaped areas as shown on the ground floor plan.

The plan also indicates three small landscaped areas on the Barrenjoey Road frontage which do have proper soil beneath them. The success of planting in these locations is questioned given the significant roof overhangs of the building.

Contextually, the landscaped outcome proposed is unacceptable both against the numerical controls, the established character of the street, and against community expectations.

The development fails Principle 5.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

Comment:

Internals of the development site amenity is deemed to be high by the size of apartments and their solar access. Amenity for adjacent sites is compromised by the footprint, height and projection of the building (particularly adjacent to the southern boundary).

There are aspects of the proposal that would require amendment if consent were to be granted, including privacy measures between the internal courtyards and access into the building, which is shared with the back-of-house and toilets for the five retail premises, and with the access to serviced apartments.

Given the impacts to amenity for adjacent buildings, the proposal is considered to fail Principle 6.

Principle 7: Safety

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment:

The proposal is not considered to detract from public safety and satisfies Principle 7.

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment:

The proposal provides 8 x three bedroom apartments. Given that the prevalent form of residential accommodation in the locale is large detached dwelling houses, the provision of larger three bedroom

apartments is considered to be acceptable and may cater for a 'downsizing' demographic.

The proposal succeeds against Principle 8.

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment:

As is detailed elsewhere in this report, the general architectural typology of the building is split into two sides. The architecture of the Barrenjoey Road side is acceptable, but the architecture on Iluka Road is not acceptable (this does not take into account the building footprint, lack of landscaping or height, rather focusing on the design of the building). If any consent were to be considered, a redesign of the Iluka Road frontage would be needed.

Therefore, the proposal fails Principle 9.

APARTMENT DESIGN GUIDE

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	<p>INCONSISTENT</p> <p>The proposal is found to be incongruent with the proportions and context commensurate to neighbouring developments.</p> <p>The building has a footprint greater than envisaged as evidenced by the non-compliant setbacks and shortfall in landscaping.</p> <p>The building has a height greater than envisaged as evidenced by the variations sought to the building height control and side boundary envelope.</p>

		<p>The building is inappropriately sited as evidenced by the amenity impacts caused to neighbouring properties to the south.</p> <p>On balance, the proposal is considered inappropriate and unsuitable for the site and would require significant amendment to get it to an acceptable standard.</p>
Orientation	<p>Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?</p>	<p>INCONSISTENT</p> <p>The solar access diagrams provided with the application are incorrect and therefore Council is unable to determine the extent of impact on neighbouring properties.</p> <p>The architecture of the proposal is disjointed on the two longer facades to such an extent that the building is incongruent with both the Iluka Road and Barrenjoey Road streetscape and the wider Palm Beach locale.</p>
Public Domain Interface	<p>Does the development transition well between the private and public domain without compromising safety and security?</p> <p>Is the amenity of the public domain retained and enhanced?</p>	<p>CONSISTENT</p> <p>The proposal is not considered to jeopardise safety and security.</p> <p>Whilst the proposal would benefit from a wider public curtilage at ground level for more outdoor dining and pedestrian movement, the building as proposed does not unreasonably detract from the existing pedestrian public domain beyond the curtilage of the land.</p>
Communal and Public Open Space	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> 1. Communal open space has a minimum 	<p>INCONSISTENT, but satisfactory on merit</p> <p>The development provides no communal open space,</p>

	<p>area equal to 25% of the site</p> <p>2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)</p>	<p>however given the size of units proposed and the proximity to outdoor recreational activities this shortfall is deemed to be acceptable.</p>															
<p>Deep Soil Zones</p>	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1" data-bbox="440 591 1062 1137"> <thead> <tr> <th>Site area</th> <th>Minimum dimensions</th> <th>Deep soil zone (% of site area)</th> </tr> </thead> <tbody> <tr> <td>Less than 650m²</td> <td>-</td> <td>7%</td> </tr> <tr> <td>650m² – 1,500m²</td> <td>3m</td> <td></td> </tr> <tr> <td>Greater than 1,500m²</td> <td>6m</td> <td></td> </tr> <tr> <td>Greater than 1,500m² with significant existing tree cover</td> <td>6m</td> <td></td> </tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m		Greater than 1,500m ²	6m		Greater than 1,500m ² with significant existing tree cover	6m		<p>INCONSISTENT</p> <p>The site is measured to have no deep soil zones. Along the Iluka Road frontages the basement sits directly below the lawn (i.e., Section B in DA300 Issue A).</p> <p>The three landscaped areas along Barrenjoey Road have an appropriate soil depth, however the northernmost area sits below an overhanging roof, and the two southern areas are less than 6.0m in dimension.</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)															
Less than 650m ²	-	7%															
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Greater than 1,500m ²	6m																
Greater than 1,500m ² with significant existing tree cover	6m																
<p>Visual Privacy</p>	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1" data-bbox="440 1323 1062 1680"> <thead> <tr> <th>Building height</th> <th>Habitable rooms and balconies</th> <th>Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>Up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> <tr> <td>Over 25m (9+ storeys)</td> <td>12m</td> <td>6m</td> </tr> </tbody> </table> <p><i>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</i></p> <p><i>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</i></p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>CONSISTENT</p>			
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Up to 25m (5-8 storeys)	9m	4.5m															
Over 25m (9+ storeys)	12m	6m															
<p>Pedestrian Access and entries</p>	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p>	<p>CONSISTENT</p>															

	Large sites are to provide pedestrian links for access to streets and connection to destinations.	
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	CONSISTENT
Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p>INCONSISTENT</p> <p>The proposal does not detail where bicycle parking will be accommodated on the site.</p> <p>Whilst it may be possible to fit in the storage units, that would then detract from their intended purpose as long-term storage.</p> <p>If any consent were to be granted, Council would request a revised plan detailed bicycle parking locations.</p>
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:	CONSISTENT NB: this requirement only pertains for the subject development itself. The shadow diagrams submitted are inaccurate.
	<ul style="list-style-type: none"> Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter. 	CONSISTENT
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"> At least 60% of apartments are naturally cross ventilated in the first nine storeys of 	CONSISTENT

	<p>the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</p> <ul style="list-style-type: none"> Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line. 													
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table border="1" data-bbox="440 674 1062 1261"> <thead> <tr> <th colspan="2">Minimum ceiling height</th> </tr> </thead> <tbody> <tr> <td>Habitable rooms</td> <td>2.7m</td> </tr> <tr> <td>Non-habitable</td> <td>2.4m</td> </tr> <tr> <td>For 2 storey apartments</td> <td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td> </tr> <tr> <td>Attic spaces</td> <td>1.8m at edge of room with a 30 degree minimum ceiling slope</td> </tr> <tr> <td>If located in mixed used areas</td> <td>3.3m for ground and first floor to promote future flexibility of use</td> </tr> </tbody> </table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	CONSISTENT
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Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p> <table border="1" data-bbox="440 1413 1062 1641"> <thead> <tr> <th>Apartment type</th> <th>Minimum internal area</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>35m²</td> </tr> <tr> <td>1 bedroom</td> <td>50m²</td> </tr> <tr> <td>2 bedroom</td> <td>70m²</td> </tr> <tr> <td>3 bedroom</td> <td>90m²</td> </tr> </tbody> </table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>CONSISTENT</p>		
Apartment type	Minimum internal area													
Studio	35m ²													
1 bedroom	50m ²													
2 bedroom	70m ²													
3 bedroom	90m ²													

	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	CONSISTENT															
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	CONSISTENT															
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	CONSISTENT															
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	CONSISTENT															
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments 	CONSISTENT															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	CONSISTENT															
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <table border="1" data-bbox="438 1137 1062 1400"> <thead> <tr> <th>Dwelling Type</th> <th>Minimum Area</th> <th>Minimum Depth</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m²</td> <td>-</td> </tr> <tr> <td>1 bedroom apartments</td> <td>8m²</td> <td>2m</td> </tr> <tr> <td>2 bedroom apartments</td> <td>10m²</td> <td>2m</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>12m²</td> <td>2.4m</td> </tr> </tbody> </table>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	CONSISTENT
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1 bedroom apartments	8m ²	2m															
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
	The minimum balcony depth to be counted as contributing to the balcony area is 1m																
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	CONSISTENT															
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	CONSISTENT															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	CONSISTENT															
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table border="1" data-bbox="438 1966 1062 2139"> <thead> <tr> <th>Dwelling Type</th> <th>Storage size volume</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m²</td> </tr> <tr> <td>1 bedroom apartments</td> <td>6m²</td> </tr> </tbody> </table>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	CONSISTENT									
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2 bedroom apartments	8m ²					
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	At least 50% of the required storage is to be located within the apartment.					
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	CONSISTENT				
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	CONSISTENT				
Configuration						
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	CONSISTENT The provision of three bedroom apartments is considered acceptable in this location.				
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	CONSISTENT The proposal has no ground floor residential apartments (noting that Serviced Apartments are not residential in nature and are not subject to the ADG).				
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	INCONSISTENT The overall architectural scheme is not considered to be appropriate for the context of the site. Putting aside the numerical planning controls, the building facade along the Iluka Road frontage is inconsistent with the proportions and character of the street. It is considered that a more appropriate solution would be to continue the architectural typology of the Barrenjoey Road facade around the Iluka frontage, in conjunction with a general reduction in the size and scale of third				

		floor level of the building as discussed elsewhere in this report.																				
Roof Design	<p>Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features.</p> <p>Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.</p>	<p>INCONSISTENT</p> <p>The plans do not show any photovoltaic cells on the roof of the building to enhance the sustainability credentials of the building, despite there being no impediment to uninterrupted solar access.</p> <p>The roof is not used as communal open space which, in this instance, is considered appropriate.</p>																				
Landscape Design	<p>Was a landscape plan submitted and does it respond well to the existing site conditions and context.</p>	<p>INCONSISTENT</p> <p>The landscape design submitted does not address the minimal soil depths proposed along the Iluka Road frontage, the shortfall in deep soil zones across the site, and the roof overhanging the planter bays on the Barrenjoey Road frontage.</p>																				
Planting on Structures	<p>When planting on structures the following are recommended as minimum standards for a range of plant sizes:</p> <table border="1"> <thead> <tr> <th>Plant type</th> <th>Definition</th> <th>Soil Volume</th> <th>Soil Depth</th> <th>Soil Area</th> </tr> </thead> <tbody> <tr> <td>Large Trees</td> <td>12-18m high, up to 16m crown spread at maturity</td> <td>150m³</td> <td>1,200mm</td> <td>10m x 10m or equivalent</td> </tr> <tr> <td>Medium Trees</td> <td>8-12m high, up to 8m crown spread at maturity</td> <td>35m³</td> <td>1,000mm</td> <td>6m x 6m or equivalent</td> </tr> <tr> <td>Small trees</td> <td>6-8m high, up to 4m crown</td> <td>9m³</td> <td>800mm</td> <td>3.5m x 3.5m or equivalent</td> </tr> </tbody> </table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown	9m ³	800mm	3.5m x 3.5m or equivalent	<p>INCONSISTENT</p> <p>The planter boxes to the outer edges of the balcony achieve an adequate soil depth (approx. 800mm) but are not of the required area dimensions nor soil volumes.</p>
Plant type	Definition	Soil Volume	Soil Depth	Soil Area																		
Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent																		
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Small trees	6-8m high, up to 4m crown	9m ³	800mm	3.5m x 3.5m or equivalent																		

	spread at maturity			
	Shrubs		500-600mm	
	Ground Cover		300-450mm	
	Turf		200mm	
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features			CONSISTENT
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.			NOT APPLICABLE The proposal does not utilise any existing improvements on site.
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.			CONSISTENT Refer to discussions elsewhere in this report regarding the permissibility of the development.
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.			CONSISTENT
Performance				
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?			CONSISTENT
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?			CONSISTENT
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?			INCONSISTENT
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?			CONSISTENT

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

- (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
- (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
- (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

Note. The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

Comment: The development is not recommended for refusal on these grounds.

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

- (a) the design quality principles, and
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

(3) To remove doubt:

- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
- (b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment: The development is not found to be consistent with the design quality principles and therefore this matter is included as a reason for refusal.

SEPP (Infrastructure) 2007

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity

power line.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Coastal Management) 2018

The site is classified as land within the Coastal Environment and Coastal Use Areas under the State Environmental Planning Policy (Coastal Management) 2018. Accordingly, an assessment under the SEPP has been carried out as follows:

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment:

Council's Environmental Health Officer has noted that the site was formally used as a service station, and that inadequate information has been submitted to date to determine whether or not the land is contaminated and whether or not it is suitable for residential purposes.

It is further noted that existing stormwater infrastructure discharges to Snapperman Beach to the west. There are known meadows of seagrass along the beach including the endangered species *Posidonia Australis*.

NSW Department of Primary Industries advises that *Posidonia Australis* exists in 17 estuaries along the eastern coast of NSW, and that the identified estuary in Pittwater is considered endangered due to a significant population decline. The seagrass is also "extremely slow" to regenerate, taking up to 50 years to regrow a 1m² area.

Therefore, given the fact that there is a known endangered species within the area of stormwater

discharge, and an unknown extent of contamination on the site which may (or may not) enter the water way as a part of excavation or dewatering the site, Council cannot be satisfied that the proposal is unlikely to have an adverse impact on the criterion stipulated in Clause 13(1)(a) through to (g).

This forms a reason for refusal.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

As above, Council is not satisfied that all potential impacts caused by the development have been appropriately identified, nor that sufficient mechanisms are in place to mitigate any potential impact.

14 Development on land within the coastal use area

- (1) (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - (iv) *Aboriginal cultural heritage, practices and places,*
 - (v) *cultural and built environment heritage, and*
- (b) *is satisfied that:*
- (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
 - (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
- (c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

Comment:

The proposed development is not considered to impact on the ability for persons to access or enjoy the beach.

15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

'Coastal hazards' is not a defined term under this SEPP or the new SEPP (Resilience and Hazards 2021). In the absence of details addressing the proposed coastal issues and impact on Posidonia Australis, the consent authority cannot be satisfied that the development would not cause an increased risk of coastal hazards.

As such, it is considered that the application does not comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018 and this is included as a reason for refusal.

Pittwater Local Environmental Plan 2014

Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	10.96m	28.9%	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	No
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	No
7.2 Earthworks	No
7.6 Biodiversity protection	No
7.10 Essential services	Yes

Detailed Assessment

Zone B2 Local Centre

Council contends that the combination and arrangement of the proposed land uses on the site results in a prohibited form of development within the B2 Local Centre zone.

For clarity, the proposal seeks consent for a *Mixed-Use Development* comprising of *Shop Top Housing*

and *Serviced Apartments*. The Pittwater Local Environmental Plan 2014 (PLEP 2014) provides definitions for these land uses as follows:

- **Mixed-Use Development** means a building or place comprising 2 or more different land uses.

- **Shop Top Housing** means one or more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities.

(Note - Shop top housing is a type of residential accommodation—see the definition of that term in this Dictionary.)

- **Serviced Apartments** means a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner's or manager's agents.

(Note - Serviced apartments are a type of tourist and visitor accommodation—see the definition of that term in this Dictionary.)

A Serviced Apartment does not constitute as Residential Accommodation or a Commercial Premises (as defined) pursuant to the PLEP 2014.

Relevantly, *Commercial Premises* is defined as:

- **Commercial Premises** means any of the following:
 - (a) business premises,
 - (b) office premises,
 - (c) retail premises.

Serviced Apartments do not constitute a business premises, office premises or retail premises. Serviced apartments are a type of *tourist and visitor accommodation*.

As such, the proposed development cannot be property characterised as *shop top housing*.

However, the proposed development is properly characterised as a *mixed-use development*, in that the it proposes a building comprising two of more different land uses. The mixed use development seeks to comprise *commercial premises* and *tourist and visitor accommodation* at ground floor and a *residential flat building* above.

Development for *commercial premises* and *tourist and visitor accommodation* are permitted with consent in the B2 zone. However, **residential flat buildings are prohibited in the B2 zone**.

Therefore, the proposed development is **prohibited**.

4.6 Exceptions to development standards

Description of Non-compliance

Development Standard	Height of Buildings
Requirement	8.5m

Proposed	10.96m
Percentage variation to requirement	28.9%

A diagram prepared by the project architect demonstrating the height non-compliance is extracted below:



Assessment of request to vary a Development Standard

The following assessment of the variation to Clause 4.3 - Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to Development Standards

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

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

(2) *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. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

Clause 4.3 - Height of Buildings development standard is not expressly excluded from the operation of this clause.

(3) 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.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

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

(b) the concurrence of the Secretary has been obtained.

Clause 4.6 (4)(a)(i) (Justification) Assessment

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

The Applicant's written request has not demonstrated that the objectives of the development standard are achieved.

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is *unreasonable or unnecessary* in the circumstances of this case as required by cl 4.6(3)(a).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

*'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'*

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are 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.*

Applicants Written Request

The applicants written request argues, in part that:

- *The proposal promotes the orderly and economic use and development of land.*
- *The development represents good design.*
- *The building as designed facilitates is proper construction and will ensure the protection of health and safety of its future occupants.*

Council has considered the applicants request for a variation, and it is considered that no sufficient grounds are established as to why the building cannot comply with the the Height of Buildings development standard, or why a variation should be granted in this instance.

The site is generally flat and is free of constraints that would otherwise necessitate raised floor levels (such as a flooding constraint).

There is no impediment to providing a compliant design and the building is a half a storey over the maximum permitted height which causes an unacceptable visual bulk and streetscape appearance.

In this regard, the applicant's written request has not satisfactorily demonstrated that the proposed development is an orderly and economic use and development of the land, thereby failing to satisfy clauses 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is not satisfied that the applicant's written request is well founded and has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) Assessment

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the B2 Local Centre zone. An assessment against these objectives is provided below.

Objectives of the Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the PLEP 2014 are:

(1) The objectives of this clause 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,

Comment:

It is acknowledged that the existing building on site, and the immediately adjoining building to the south are, in part, three storeys and would exceed the current 8.5m building height standard.

The Palm Beach Locality envisages buildings that are generally two-storeys and of an architectural typology reflective of a 'seaside village'. Whilst the architecture of the Barrenjoey Road elevation somewhat responds to this character, the three storey saw-tooth-edged building along Iluka Road does not.

Cumulatively the footprint of the building and the three storey height across the whole of the site results in a built form that is inconsistent with the height and scale of development envisaged by the locality statements

b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Comment:

The mere fact that the existing building on site exceeds the current height control does not mean that future developments borrow from that historical non-compliance. It is broadly accepted that some parts of the building may exceed the prescribed 8.5m height limits, however Council does not support an entire floor accommodating three apartments of the size and extent proposed should exceed the height limit. It is the extent of variation proposed, combined with the cubic volume of non-compliance that is not supported, and which will result in an incongruent streetscape. In that respect, the building cannot be said to be compatible with the height and scale of surrounding and nearby development.

c) to minimise any overshadowing of neighbouring properties,

Comment:

As detailed elsewhere in this report, the submitted shadow diagrams are incorrect and do not enable a detailed assessment of solar access to be undertaken.

In the absence of accurate and certified shadow diagrams it is concluded that the extent of overshadowing is unacceptable.

d) to allow for the reasonable sharing of views,

Comment:

View loss/sharing is discussed later in this report. In summary, it is found that the overall height of the building, combined with its footprint and projections to the outer edges of the site, will result in view loss from neighbouring properties which is not immediately discernible given the absence of height poles. In this instance, the view sharing cannot be ascertained due to insufficient information.

e) to encourage buildings that are designed to respond sensitively to the natural topography,

Comment:

The site is almost entirely flat and has no noteworthy natural features. The proposal seeks to excavate the entire site for one level of basement parking, and construct a three storey building atop that basement. It cannot be said that on a flat site, that the excavation of the entire land and the construction of a building that has an entire floor above the height limit is a sensitive response to the topography of the land.

f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items,

Comment:

There are no adjacent heritage items or conservation areas. The proposal is not considered to be an unreasonable visual impact on the surrounding natural environment.

Zone Objectives

The underlying objectives of the B2 Local Centre zone are:

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

Comment:

A discussion regarding the proposed land use of the building can be found earlier in this report. The various uses proposed within this mixed use development would generally achieve this objective, however it is the arrangement of those uses within the site which Council contends is a prohibited form of development.

- *To encourage employment opportunities in accessible locations.*

Comment:

The development would provide for five (5) new retail outlets in Palm Beach which would encourage employment opportunities. The site is reasonably accessible by way of car or public transport.

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

Comment:

Nothing proposed in this application would detract from public transport patronage nor discourage walking and cycling.

- *To provide an environment for pedestrians that is safe, comfortable and interesting.*

Comment:

The height and proximity of the proposed building in conjunction with the lack of meaningful deep soil plantings results in a development that detracts from the existing and anticipated pedestrian experience, and instead creates one dominated by bulk, fencing and minimal biophilic elements.

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

Comment:

The height and overall footprint of the building are inconsistent with surrounding architecture. The proposed land uses are similar to other surrounding land uses.

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

Comment:

The land uses proposed as a part of this application are generally not considered to be offensive to the adjacent dwelling houses in the C4 Environmental Living zone. It is noted that if consent were to be contemplated, that a condition would be imposed that requires further DA's be to be submitted in due course to secure the land uses of the 'retail' premises.

Conclusion

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of the B2 Local Centre zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning and Infrastructure, advises that the concurrence of the Director-General may be assumed for exceptions to

development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of buildings Development Standard cannot be assumed.

7.2 Earthworks

The objective of Clause 6.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

(b) the effect of the proposed development on the likely future use or redevelopment of the land

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

(c) the quality of the fill or the soil to be excavated, or both

Comment: Inadequate information about the quality and potential contamination of the soil has been provided. The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

(e) the source of any fill material and the destination of any excavated material

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area

Comment: The site is located in proximity to a water body (Pittwater/Snapperman Beach) and, in the absence of sufficient information to enable Council's Contaminated Lands Officer to undertake a proper

assessment, Council cannot be satisfied that the development does not have the potential for adverse impacts on Pittwater.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment: Given the inadequate contamination information provided, Council is not satisfied that appropriate measures to avoid, minimise or mitigate the potential impacts of the development on the environment have been employed in the design.

(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.

Comment: The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

Note: The above conclusions may be subject to change upon receipt of a Phase 2 Detailed Site Investigation Contamination Report.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

7.6 Biodiversity protection

In the absence of information pertaining to existing site contamination the consent authority cannot be satisfied that the proposal can be carried out without causing harm to the biodiversity of local flora.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line - East	3.5m	< 3.5m	Detailed later in report	No
Front building line - North	3.5m	< 3.5m		No
Front building line - West	3.5m	< 3.5m		No
Side building line - South	Nil	Nil	-	Yes
Building envelope - South	4.2m	Outside envelope - extent undeterminable	Approx. 160%	No
Landscaped area	35m ² per dwelling = 280m ²	Approx. 4.6% (64m ²)	77.15%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	No	No
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B2.3 Subdivision - Business Zoned Land	Yes	Yes
B2.6 Dwelling Density and Subdivision - Shop Top Housing	No	No
B3.6 Contaminated Land and Potentially Contaminated Land	No	No
B3.11 Flood Prone Land	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.5 Rainwater Tanks - Business, Light Industrial and Other Development	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	No
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	No	No
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	No	No
C1.4 Solar Access	No	No
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	N/A	N/A
C1.12 Waste and Recycling Facilities	No	No
C1.13 Pollution Control	Yes	Yes
C1.15 Storage Facilities	Yes	Yes
C1.18 Car/Vehicle/Boat Wash Bays	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.25 Plant, Equipment Boxes and Lift Over-Run	No	No
C2.3 Awnings	Yes	Yes
C2.8 Energy and Water Conservation	Yes	Yes
C2.11 Signage	N/A	N/A
C2.12 Protection of Residential Amenity	N/A	N/A
C2.16 Undergrounding of Utility Services	Yes	Yes
C2.20 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C2.21 Food Premises Design Standards	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	No
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	No	No
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

B2.6 Dwelling Density and Subdivision - Shop Top Housing

Clause B2.6 *Dwelling Density and Subdivision - Shop Top Housing* requires that a minimum of 25% of the gross floor area (GFA) of the building must be used for commercial or retail purposes.

The proposal has an overall GFA of 2,253m² across three levels which necessitates a commercial area of 563.25m².

The applicant contends that they achieve compliance with this control with commercial GFA of 575.1m² or 26% of the total GFA of the building.

Council does not concur with the applicant's calculation. Council consider only the five proposed retail tenancies to constitute as commercial or retail GFA which equate to an overall area of 262m² or **11.62%** of the total building GFA. It is assumed that the applicant has either included the serviced apartments (270m²) or the circulation spaces on the ground floor (227.2m²) in their calculation of GFA.

Clause B2.6 only applies to *Business Development, Shop top housing and subdivision* and Council therefore finds that the floor area of the serviced apartments should not be considered in the calculation of commercial GFA.

Further, the PLEP 2014 defines commercial premises as:

commercial premises means any of the following—

- (a) *business premises,*
- (b) *office premises,*
- (c) *retail premises.*

In light of the exclusion of serviced apartments from being classified as commercial premises, and in light of Clause B2.6 not applying to serviced apartments, it is found that the development falls significantly and unacceptably short of the required commercial/retail GFA commensurate to the total GFA of the development.

The shortfall in commercial/retail GFA is inconsistent with the following outcomes of the control:

- *Achieve the desired future character of the Locality.*
- *The density and scale of development reflects the infrastructure capability of the area.*
- *Design opportunities and site layout efficiencies are improved through amalgamation of allotments.*
- *The development does not adversely impact upon adjoining residential development.*
- *An appropriate mix of residential and commercial development is provided, ensuring the functionality of commercial centres.*
- *Meet the economic and employment needs of Pittwater Community*

For the reasons above, this matter forms a reason for the refusal of the application.

B3.6 Contaminated Land and Potentially Contaminated Land

Refer to comments from Council's Contaminated Lands Officer earlier in this report.

B6.3 Off-Street Vehicle Parking Requirements

Refer to comments from Council's Traffic Engineer with regards to the required provision off-street car parking.

A discrepancy lies in the calculation of spaces required for the 3 proposed serviced apartments.

Clause 6.3 requires that one space be required for each one bedroom apartment, and two spaces be provided for each two bed + apartments. The proposal is for 3 x one bedroom serviced apartments, however each apartment also includes a separate media room which is capable of being used as a bedroom (by virtue of its proportions, natural light and ventilation and provision of a wardrobe).

Inadequate details have been submitted to address how the serviced apartments are to be managed and how the occupancy will be limited to ensure the media rooms are not used as bedrooms. Whilst the above concerns could be addressed by way of an Operational Management Plan and conditions, such a plan has not been provided to date (nor requested given the concerns with regards to land use) and therefore this matter warrants the refusal of the DA.

C1.3 View Sharing

Several properties in the building to the immediate south of the site currently enjoy water and district views to the west towards the western foreshores. These properties from 39 Iluka Road are serviced apartments. Whilst the intent of the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140 are generally reserved for residential (dwelling) developments, nothing in that caselaw precludes the principles from being applied to commercial properties. Similarly, in the absence of controls to assess view loss from commercial properties, the principles are relevant.

-

1. Nature of the views affected

“The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured”.

Comment to Principle 1:

The views presently obtained are over the roofs of the dwellings to the western side of Iluka Road and consist of water views with boats, land-water interface and district bushland in the western foreshores. The views are obscured only by the building itself, and by the roofs of adjacent houses.

2. What part of the affected property are the views obtained

“The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic”.

Comment to Principle 2:

From the property visited, views were obtainable from both a seated and standing position, noting that the standing views were significantly broader than sitting views.

3. Extent of impact

“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.

Comment to Principle 3:

An accurate assessment of the extent of impact cannot be made given the absence of detail submitted by the applicant and as no height poles have been erected in the more sensitive locations on the site. It is assumed that the views enjoyed would not be lost entirely, however the height of walls and the westward projection of the proposed development adjacent to the southern boundary will certainly lessen the existing arc of views enjoyed.

4. Reasonableness of the proposal that is causing the impact

“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the

views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”

Comment to Principle 4:

In the absence of detail as described in Principle 3 a full assessment against Principle 4 cannot be made. Notwithstanding that, it is evident that an alternative design on the subject site could result in an improved view impact/sharing outcome.

- *Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.*

Comment:

There are no concerns that the proposal may unreasonably obstruct views from the public domain.

- *Canopy trees take priority over views.*

Comment:

The development does not seek to remove canopy trees to improve their own views.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

C1.4 Solar Access

The DA is accompanied by aerial and three-dimensional shadow diagrams and a certification certificate from the project architect, which states that the extent of shadowing shown is correct. However, it is immediately evident from review of the submitted diagrams (drawing DA600, DA 601 and DA610 Issue A) that the diagrams are incorrect for 9.00am, 12.00pm and 3.00pm.

In the absence of accurate shadow diagrams, Council is unable to confirm the extent of overshadowing onto neighbouring properties, particularly given the extent of flank walls to the southern elevation that are anticipated to severely cast shadow onto decks and terraces.

In the absence of more and accurate information, this matter is considered unacceptable by virtue of insufficient information and likely impact and is included as a reason for refusal.

C1.10 Building Facades

The matters relevant to this clause are addressed under the ADG section of this report.

C1.12 Waste and Recycling Facilities

Refer to comments from Council's Waste Officer for details on how the proposed provision of waste and recycling facilities is inadequate and cannot be supported.

C1.24 Public Road Reserve - Landscaping and Infrastructure

The proposed development would not preclude the public road reserve from being appropriately paved and landscaped in a manner consistent with Council's Public Space Vision and Design Guidelines.

C1.25 Plant, Equipment Boxes and Lift Over-Run

The proposal seeks consent for mechanical services including air conditioning units to be placed on the roof of the development.

It is considered that this infrastructure could be appropriately acoustically screened to minimise amenity impacts on neighbouring properties.

However, the infrastructure contributes to an already excessive building height that is not supported. Given its contribution to the variation to the Height of Building development standard, the presence of structures on the roof is not supported.

C2.11 Signage

No signage is proposed under this application.

C2.12 Protection of Residential Amenity

These matters are considered in the ADG assessment section of this report.

D12.5 Front building line

The site is subject to a front boundary setback requirement of 3.5m. In this instance, the northern, eastern and western edges of the site are considered to be 'front boundaries' as they front a public road.

It is found that the proposal breaches the front setback on all three frontages, however the exact extent is unclear as the surveyed boundary is not shown on all architectural plans. The development has building, balconies and overhanging roofs within the frontages, with the worst offending elements being to the Iluka Road boundary.

The variations sought are assessed against the following underlying objectives of the control:

- *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 preserve and enhance the rural and bushland character of the locality.*
- *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.*

Comment:

As detailed throughout this report there is an in-principle concern regarding the overall footprint of the building which largely derives from the lack of landscaping, extent of floor area and the building

setbacks. The variations sought to the front boundary setbacks are reflective of this excessive footprint.

The projection of the building closer to the eastern and western boundaries creates impacts to the amenity, solar access and views currently enjoyed by 39 Iluka Road to the south. A building with compliant, or greater than compliant setbacks, would have a lesser impact on neighbours.

The projection of the building closer to the site's outer edges results in extensive roof overhangs, which in turn minimises the amount of landscaped areas that are open to the sky. The proposal does not comply with the landscaping requirements under the P21DCP and the ADG. A building that has compliant or greater than compliant setbacks would similarly equate to an increase in landscaped area.

The projection of the building closer to the eastern and western edges is incongruent with the prevailing pattern of buildings in the street, in that the building is closer to the street than it's neighbours (albeit noting that there are some limited exceptions to this).

Overall, the site is large and it is possible to develop it to the current yield sought whilst providing 100% compliant setbacks. Some relatively minor changes to the ground floor plan, in conjunction with a general reduction in the generous proportions of the residential apartments, would largely address this non-compliance. However, such is not the case under this application and therefore the variations sought to the front boundary setbacks are not supported.

D12.8 Building envelope

The site is subject to a side boundary envelope of 4.2m to the southern boundary. The envelope is measured on the boundary to a height of 4.2m, and then inwards at an angle of 45 degrees, whereby any elements of the building that project beyond that are outside of the prescribed envelope.

No southern elevation of the building has been provided and therefore the full extent of variation is indeterminable, however it is evident that the entire southern elevation of the first floor is outside of the envelope, as is a portion of the first floor.

This matter was raised in the 2018 PLM notes but has not been addressed by the applicant in the Statement of Environmental Effects.

The variation sought is assessed against the following underlying objectives of the control:

- *To achieve the desired future character of the Locality.*
- *To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*
- *To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.*
- *The bulk and scale of the built form is minimised.*
- *Equitable preservation of views and vistas to and/or from public/private places.*
- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to neighbouring properties.*
- *Vegetation is retained and enhanced to visually reduce the built form.*

Comment:

The envelope control should be read in conjunction with the rear/side setback control, which permits structures to be built right up to the boundary. Therefore, in order to comply with the envelope, the floors of a building would need to progressively step-in from the outer edges of the site (traditionally

called a 'wedding cake' design).

Such has not happened in this instance and the building is built hard-up to the boundary for three storeys.

Where the southern facade of the building adjoins the northern facade of 39 Iluka Road, and where there are no windows on that facade, Council raises no concern. Concern is however raised with the eastern and western projection of the building adjacent to the southern facade whereby those projecting elements create visual bulk, a loss of sunlight and view loss from neighbouring properties.

A proposal that complied with the envelope would have a lesser visual impact and lesser amenity impacts on neighbouring properties. It would also result in a building of proportions that sits more comfortably within the Iluka Road streetscape.

Given the indeterminable extent of non-compliance caused from a lack of information, and from the amenity impacts associated with such a non-compliance, the variation sought to the envelope control is not supported and forms a reason for refusal.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$61,470 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$6,147,000.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

Council is not satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

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

PLANNING CONCLUSIONS

This Assessment Report has found that the proposed development does not address the concerns raised by Council in the pre-lodgement meeting held in relation to this proposal in 2018 and that the proposal still represents an inappropriate and unsuitable development of the site.

The combination and arrangement of land uses on the site is considered to be problematic for this development, specifically that the residential component above the serviced apartments represents a prohibited land use and the applicant has failed to provide any legal evidence to the contrary despite a number of requests to do so.

The Clause 4.6 Variation Statement to the Height of Buildings development standard is not considered to be well-founded, and there is found to be no basis to permit the entire building to exceed the prescribed height limit on a flat site that has no environmental constraints.

The applicant has provided an inadequate analysis of the ground conditions to the extent that Council is not satisfied that the land is suitable for the proposed development, nor that the excavation of the site would be free of impacts on the surrounding environment. Specifically, it is unclear whether there is contaminated material in the ground that would impact on the nearby threatened *posidonia australis* in the Pittwater waterway.

The impacts of the development on surrounding properties are in some cases indeterminable in relation to views and impacts on solar access. Despite the lack of information, it is evident that a scheme which complied with the development standards and built form controls, would have a lesser and more acceptable impact.

The proposal has zero deep soil landscaping and it therefore cannot be said that the building would blend in with, nor contribute to the landscaped character of the Palm Beach Locality.

The building is simply too big for the site in a number of critical areas and for that reason, it should be scaled down to better comply with the planning controls and reduce the impacts on streetscape, the character of the locality and the amenity of its neighbours. Therefore, in its current form, it cannot be supported.

This report concludes with the recommendation that the NBLPP should **REFUSE** the application.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2021/2362 for the Demolition works and construction of a shop top housing development on land at LOT 1 S/P 87024,1 / 1105 Barrenjoey Road, PALM BEACH, LOT 1 S/P 87024,1 / 1105 Barrenjoey Road, PALM BEACH, LOT 2 S/P 87024,2 / 1105 Barrenjoey Road, PALM BEACH, LOT 2 S/P 87024,2 / 1105 Barrenjoey Road, PALM BEACH, LOT 3 S/P 87024,3 / 1105 Barrenjoey Road, PALM BEACH, LOT 3 S/P 87024,3 / 1105 Barrenjoey Road, PALM BEACH, LOT 4 S/P 87024,4 / 1105 Barrenjoey Road, PALM BEACH, LOT 4 S/P 87024,4 / 1105 Barrenjoey Road, PALM BEACH, LOT 5 S/P 87024,5 / 1105 Barrenjoey Road, PALM BEACH, LOT 5 S/P 87024,5 / 1105 Barrenjoey Road, PALM BEACH, Lot CP SP 87022,43 Iluka Road, PALM BEACH, LOT 1 S/P 87022,1 / 43 Iluka Road, PALM BEACH, LOT 1 S/P 87022,1 / 43 Iluka Road, PALM BEACH, LOT 2 S/P 87022,2 / 43 Iluka Road, PALM BEACH, LOT 2 S/P 87022,2 / 43 Iluka Road, PALM BEACH, LOT 3 S/P 87022,3 / 43 Iluka Road, PALM BEACH, LOT 3 S/P 87022,3 / 43 Iluka Road, PALM BEACH, Lot CP SP 87024,1105 Barrenjoey Road, PALM BEACH, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is a prohibited land use under the Pittwater Local Environmental Plan 2014.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Clause 4.6 Exceptions to development standards under the Pittwater Local Environmental Plan 2014 as the applicant's written request for variation has not demonstrated sufficient environmental planning grounds to justify a variation to the Height of Buildings development standard.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of State Environmental Planning Policy 55 – Remediation of Land in that insufficient information has been provided with regards to potential contamination, and to satisfy Council that the land is suitable for residential development.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the absence of detail regarding land contamination results in there being insufficient information to demonstrate compliance with State Environmental planning Policy (Coastal Management Act) 2018. Council is not satisfied that the potential contamination of the site will not impact on an endangered species in the adjacent waterway (*Posidonia australis*).
5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of State Environmental Planning Policy (Design Quality of Residential Flat Development).
6. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the following provisions of the Pittwater Local Environmental Plan 2014:
 - a. Clause 1.2 Aims of the Plan.
 - b. Clause 7.1 Acid Sulphate Soils.
 - c. Clause 7.2 Earthworks.

d. Clause 7.6 Biodiversity Protection.

7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the following provision of the Pittwater 21 Development Control Plan 2014:

- a. Clause B5.15 Stormwater and Northern Beaches Council Water Management for Development Policy.
- b. Clause B6.3 Off-Street Vehicle Parking Requirements.
- c. Clause C1.1 Landscaping.
- d. Clause C1.3 View Sharing.
- e. Clause C1.4 Solar Access as the submitted solar diagrams are incorrect.
- f. Clause C1.12 Waste and Recycling Facilities.
- g. Clause C1.25 Plant, Equipment Boxes and Lift Over-Run.
- h. Clause D12.5 Front Building Line.
- i. Clause C12.8 Building Envelope.