



SECTION 8.2 REVIEW

REVISED DEVELOPMENT APPLICATION FOR REVIEW.
DA2020/0442 - 231 WHALE BEACH ROAD, WHALE BEACH NSW 2107

Revision	Date	Approved by
ISSUED FOR SECTION 8.2 REVIEW	13.08.2021	Richard Cole

RICHARD COLE ARCHITECTURE

139 PALMGROVE ROAD, AVALON BEACH NSW 2107

t 02 9918 3843

m 0418 627 024

e <mailto:richard@richardcolearchitecture.com.au>

w www.richardcolearchitecture.com.au

acn:093 598 415 abn:58 093 598 415

nominated architect : Richard Cole B.Sc.(Arch) (Hons 1) B.Arch.(Hons1) Reg. No: 6538

This report accompanies a revised Development Application for DA2020/0442 submitted for a Section 8.2 review to Northern Beaches Council.

PART A addresses the reasons for refusal raised in the Notice of Determination made on 3/12/2020 and the accompanying Assessment Report.

PART B addresses the Council department referral responses

PART C addresses the issues raised in submissions from the public.

PART D is the Schedule of Amendments

This report should be read together with the enclosed amended plans and supporting documents, including updated consultant reports. A schedule of amendments is provided at the end of this report.

Additional information includes:

- Revised Architectural Drawings – Richard Cole Architecture
- 3d Digital Model – Richard Cole Architecture
- Design Verification Statement (SEPP 65) – Richard Cole Architecture
- Statement of Compliance Access for People with a Disability – Issue A 07.10.20 - Accessible Building Solutions
- Arboricultural Impact Statement July 2021 - Urban Forestry Australia
- Waste Management Plan (updated) – Richard Cole Architecture
- Landscape - Trish Dobson Landscape Architecture
- Town Planning - Tomasy Planning
- Traffic - TEF Consulting
- BASIX & Energy - Insight Energy
- Section J Report – Craig Crowther
- BCA - Modern Building Certifiers (MBC)
- Acoustic – Letter of Support JHA

BACKGROUND

The original Development Application was submitted on 6th May 2020. The applicant received a letter from Council outlining reasons why the application could not be supported on 23rd September 2020. A revised application was submitted on 9th October 2020. This application was not advertised or assessed by Council. The original application was assessed by the Local Planning Panel and refused on 3rd December 2020. The applicant met with the Director of Planning and Place at Northern Beaches Council on 11th December 2020 to work with Council to resolve the best outcome for the site. The applicant has been working extensively with senior planners from Northern Beaches Council to identify and address the primary issues of concern with the application. This amended application is the result of this process.

CONTENTS

Contents	3
PART A - REASONS FOR REFUSAL	4
PART B - INTERDEPARTMENTAL REFERRAL RESPONSES	8
PART C - RESPONSE TO PUBLIC SUBMISSIONS	19
PART D - SCHEDULE OF AMENDMENTS	27

PART A - REASONS FOR REFUSAL

Below are the reasons for refusal identified in the notice of Determination:

- 1. The proposed development is inconsistent with the provisions of State Environmental Planning Policy 65 - Design Quality of Residential Flat Development and its associated Apartment Design Guide.*
- 2. The proposed development is inconsistent with the provisions of Clause 7.7 Geotechnical hazards of the Pittwater Local Environmental Plan 2014.*
- 3. The proposed development is not consistent with the Desired Future Character of the location and is an over-development of the site.*
- 4. The proposed development is inconsistent with the provisions of Clause C1.3 View Sharing of the Pittwater 21 Development Control Plan.*
- 5. The proposed development is inconsistent with the provisions of Clause D12.1 Character as viewed from a public place of the Pittwater 21 Development Control Plan.*
- 6. The proposed development is inconsistent with the provisions of Clause D12.6 Side and rear building line of the Pittwater 21 Development Control Plan.*
- 7. The proposed development is inconsistent with the provisions of Clause D12.14 Scenic Protection Category One Areas of the Pittwater 21 Development Control Plan.*

The items below address the reasons for refusal and the issues raised in the accompanying Assessment Report.

1. SEPP 65 – Design Quality of Residential Apartment Development (SEPP 65)

Council's assessment claimed that the original application did not address the following Design Quality Principles of the Apartment Design Guide:

- a. Principle 1: Context and Neighbourhood Character
- b. Principle 2: Built Form and Scale
- c. Principle 5: Landscape

Issues identified include:

- the scale of the development does not sufficiently step down with the slope of the land,
- the extent of separation between the proposed development and the neighbouring E4 zoned residential sites
- the development is not regarded as being a sufficiently considered and sensitive response to the scale of existing development, particularly when viewed from the public domains or the adjoining developments.
- the development does not integrate with the landscape character of the locality, and that the proposal is unable to support landscape planting of a size that is capable of softening the built form.

The revised design addresses all the above issues.

The proposed development has a clear base, in the form of a landscaped podium, a middle, in the form of the level two and three apartments and retail spaces, which are significantly stepped back from the podium by 4 to 10 metres, and a top, in the form of the level four apartment, which is stepped back a further 6.5 to 7.2m. Awning roofs to levels three and four provide additional stepping back.

As can be clearly seen in the architectural sections and elevations which indicate the existing ground line and the line of the 8.5m height limit, with which the building complies, the proposal does step in line with the topography. It will exist in harmony with the surrounding character, given the context of its unique zoning and controls.

The side setbacks have been increased to 4m on both sides, privacy and sunshades decreased in width, the extent of balconies reduced, the services areas removed from the roof, the extent of excavation reduced and the areas of landscaping to both sides significantly increased and raised to provide dense screening to both sides which will soften the built form.

The building has been carefully considered with numerous changes, as outlined in the schedule of amendments, made to increase privacy and provide a more sensitive response to adjoining developments.

2. Clause 7.7 Geotechnical hazards of the Pittwater Local Environmental Plan 2014.

Council's assessment report did not provide any explanation or assessment of why this issue was included as a reason for refusal. A geotechnical report by Douglas Partners was provided with the application which supports the proposed works. Hydraulic and stormwater reports were also provided. The amended application has significantly reduced the extent of excavation and increased the side setbacks between the line of proposed excavation and the neighbouring properties.

Council made it clear in the pre-lodgement meeting with Council, and in the clarification of the shop top housing zoning, that the applicant was required to provide retail facilities on both Surf Road and Whale Beach Road. The development is also required by the P21DCP to provide appropriate parking for the development. This can only be provided on this site by a basement carparking level. Council cannot reasonably expect the applicant to provide a shop top housing development on this site without "*a substantial extent and depth of excavation to accommodate the proposed development.*" To suggest that accessible retail facilities and associated parking can be provided on this site with B1 Neighbourhood Centre zoning without a substantial extent and depth of excavation is not only unrealistic, but also unreasonable.

3. Desired Future Character and over-development of the site.

The Assessment Report made the following comments in relation to the original proposal:

The proposal development is found to be inconsistent with the requirements of the desired character statement for the following reasons:

- *The proposal exceeds the two storeys requirements in any one place, the proposal presenting as a 3- 5 storey building when viewed from different vantage points.*
- *The design of the proposed development is found to be inconsistent with the requirement of the controls relating to sloping sites, in that the development does not incorporate sufficient "stepping down" of the built form to reduce the overall bulk and scale of the development, such that it integrates with the landform and landscape and minimises site disturbance.*
- *The development does not maintain the landforms and natural environment of the site, in that the proposal includes a substantial extent and depth of excavation to accommodate the proposed development.*
- *The proposal lacks sufficient landscaping to soften the built form and to mitigate the visual impacts when viewed from adjoining properties and adjoining public spaces as referenced in the Landscape Officer comments in the referral section of this report.*

The desired future character is dictated by the controls that apply to the site. This site is the only B1 zoned site in the locality and therefore will be different to adjoining E4/residential dwellings in character. It is a permissible use, complies with all envelope/massing controls, and is therefore consistent with the desired future character of the locality. Similarly, the level of activity and nature of activities (mixed residential and retail) are dictated by the controls, which permit, and indeed encourage, shop top housing of the nature proposed. Council requires the applicant to provide retail facilities on both Surf Road and Whale Beach Road and the associated basement parking. This necessitates both a significant excavation to accommodate the proposed development and a building that will present as a 3-5 storey building when viewed from certain vantage points. Nevertheless, numerous amendments have been made to the original design to be more consistent with the desired future character of the locality, including increasing the side setbacks, significantly reducing the extent of excavation, significantly increasing the extent of landscaping around the building, particularly to the side setbacks, maintaining more of the existing ground levels to the side setbacks, increasing the apparent stepping of the building, reducing bulk and scale and softening the material palette. The full extent of changes is outlined in the Schedule of Amendments at the rear of this report.

4. Clause C1.3 View Sharing of the Pittwater 21 Development Control Plan

The Assessment Report made the following comments in relation to the original proposal:

It is agreed that in terms of overall building height, the view impact on the adjoining properties is minor as more than 50% of the roof of the proposed development is at least 1.0 metre below the maximum allowable building height, and the eastern edge of Level 4 is 2.3 metres below the height of the existing building.

However, concern is raised with overall bulk of the building as it relates to the side setbacks of the development, which should be increased to improve view corridors.

In this regard, the issue raised in (sic) concurred with and included as reason for refusal.

The side setbacks have been increased to 4 metres, 1 metre more than required by the Pittwater DCP. 13. The width of the sunshade bays have been reduced to the northern and southern elevation on all levels and the side setbacks to the majority of the northern and southern walls of Apartment 5 have been increased to 4.6m from the boundary. These amendments will increase the view corridors down the side setbacks.

In addition to the above, the upper level perforated brickwork and associated rooftop plant has been deleted and accommodated within a single rooftop element combining the lift overrun and plant and the flyover copper roof over the fire stair has been deleted, all of which will improve the impact on views from neighbouring dwellings.

5. Clause D12.1 Character as viewed from a public place of the Pittwater 21 Development Control Plan

The Assessment Report made the following comments in relation to the original proposal:

The proposed development in terms of visual bulk and scale is not a considered response to the predominant scale of the existing development within the Palm Beach Locality. the proposed development is not consistent with the locality in that the scale of the development does not sufficiently step down the slope of the land and is not integrated with the natural landform.

The scale of the development is uncharacteristic. The extent of site coverage and side setbacks are not compatible with the context of the character of the locality.

These issues have been addressed in Item 3 Desired Future Character and later in this report. Numerous amendments have been made to the original application to reduce the bulk and scale,

increase the predominance of landscaping, and achieve the balance between maintaining the landforms, landscapes and other features of the natural environment, and the development of land.

6. Clause D12.6 Side and rear building line of the Pittwater 21 Development Control Plan.

The required side setbacks for Land zoned B1 Neighbourhood Centre adjoining land zoned E4 Environmental Living is 3.0 metres along that adjoining side or rear boundary. The proposed side setbacks for the development to the northern and southern boundaries is 4.0 metres. The amended application increases the side setbacks to the top level for the majority of the façade to 4.6 metres. The application therefore complies with or provides a greater setback than this control. The amended design has additionally removed all hard surface area from the side setbacks, raised large sections to reflect natural ground levels, provided increased soil depths and provided screen planting at the boundary level along the boundaries.

The subterranean side setbacks to the Basement and Ground floors are 2.5 metres to the south and 0.13 to 9.4 metres to the north. These are the maximum setbacks possible to provide compliant parking to the basement and have been increased significantly from the original application.

The current proposal exceeds the numerical controls for all above ground building elements and complies with all the objectives of the control.

7. Clause D12.14 Scenic Protection Category One Areas of the Pittwater 21 Development Control Plan.

Council's assessment report did not provide any explanation or assessment of why this issue was included as a reason for refusal. The development has been amended significantly to soften the building, reduce the bulk and scale and increase the predominance of landscaping. The specific controls for this section of the DCP are addressed below.

Screen planting shall be located between structures and boundaries facing waterways.

Extensive planting is located down the side setbacks, to the landscaped podium and to balconies on each level.

Canopy trees are required between dwellings and boundaries facing waterways and waterfront reserves.

Canopy trees have been provided to the side setbacks and to the landscaped podium.

Development is to minimise the impact on existing significant vegetation.

There are no significant existing trees on the site. Neighbouring and street trees have been preserved.

The applicant shall demonstrate the retention and regeneration of existing native vegetation outside of the immediate area required to carry out the development.

Extensive native planting has been incorporated into the landscaping.

The development is to incorporate measures for planting and maintenance of native vegetation within those areas which are already cleared, and which are not required to be cleared to allow for the development.

Measures for planting and maintenance of native vegetation has been incorporated across all landscaped areas.

The siting, building form, orientation and scale of the development shall not compromise the visual integrity of the site by removal of canopy trees along ridges and upper slopes.

No canopy trees along ridges or upper slopes will be removed.

The development must incorporate the use of unobtrusive and non-reflective materials and the colours of exterior surfaces shall help blend structures into the natural environment.

The proposed palette uses natural and non-reflective materials and colours.

Applicants are to demonstrate that proposed colours and materials will be dark and earthy.

Proposed colours are natural, dark and earthy.

PART B - INTERDEPARTMENTAL REFERRAL RESPONSES

ENVIRONMENTAL HEALTH

Recommendation:

APPROVAL – subject to conditions.

BUILDING ASSESSMENT

The proposal is supported.

NATURAL ENVIRONMENT - Flood

The proposal is supported.

ROADS AND ASSETS

The proposal is supported.

URBAN DESIGN

Concept design and articulation generally supported but further refinements requested.

1. Issue

The concept design and articulation of the built form generally is supportable however further refinements to the design, including bulk and scale and softening of the material palette, particularly is it reads from both Whale Beach Road and Surf Road

Response

See below for itemized amendments to design.

2. Issue

4.3 Height: It is acknowledged that the building does not breach the height of buildings plane.

Noted.

More than 50% of the upper floor is more than 1 metre lower than the maximum permissible height. Further, the proposed building is approximately 2.3 metres lower than the existing building on the eastern side facing Surf Road. These are significant concessions in terms of character and view sharing.

3. Issue

4.12 Palm Beach Locality: The upper level 'breeze block treatment surrounding the PV array and rooftop plant is not supportable.

Response

- The upper level perforated brickwork and associated rooftop plant has been deleted and accommodated within a single rooftop element combining the lift overrun and plant.
- The flyover copper roof over the fire stair has been deleted.
- A lift overrun is required so a higher element than the primary roof is necessary, as is exhaust plant for the commercial kitchen and carpark exhaust. The lift overrun and plant have been incorporated in a single roof element that significantly reduces the bulk and scale. These elements remain below the 8.5 metre height limit.

4. Issue

4.12 Palm Beach Locality: The addition of the rooftop solar PV panel array and the mechanical plant required with the screening provided in the form of a breeze block screen and the flyover copper roof that provides protection to the stair access way has the perceived effect of increased height to the whole structure at this street elevation. Recommendations that look to delete or reduce in size the upper level apartment 5, and retaining the form and elevational treatment to provide screening to the mechanical plant and PV array is recommended

Response

- The upper level perforated brickwork and associated rooftop plant has been deleted and accommodated within a single rooftop element combining the lift overrun and plant.
- The flyover copper roof over the fire stair has been deleted.
- These changes reduce the total width of rooftop elements when viewed from Whale Beach Road from 14.325 metres to 4.700 metres.
- The side setbacks to the majority of the northern and southern walls of Apartment 5 have been increased to 4.6m from the boundary and a fixed timber sunshade and privacy screen provided adjacent to the windows. This will decrease the bulk and scale of the building, provide greater privacy to neighbouring buildings and give a lighter appearance to the upper floor.
- The north eastern corner of Apartment 5 has been rounded and the awning to the east reduced in width and rounded to reduce the visual impact and integrate better with the design.

5. Issue

Materials: The general palette can be supported. However the extents of off-form concrete to the Surf Road elevation that forms the verandah parapet arc of the commercial zone could be softened or broken down further so as to reduce the overall impacts of the bulk and scale of the development as it reads from Surf Road

Response

Amendments to reduce the bulk and scale, reduce the extent of off-form concrete and soften the building as read from Surf Road include:

- The extent of the eastern projection of the balconies to Levels 2 and 3 has been reduced by 2 metres
- The balconies to Levels 2 and 3 have been redesigned to project less to the east and have a softer, more rounded and consistent character incorporating brickwork.
- Timber soffits to balconies and awning roofs have been provided. As the primary views from Surf Road are from below, this has a significant impact on the materiality of the building from this aspect.
- The first floor podium base has been clad in sandstone rather than off-form concrete. Sandstone has also been provided to visible ground floor walls adjacent to the street frontage.
- The depth of the first floor podium has been reduced from 1.9 metres to 1.4 metres. This will reduce the bulk at the base of the building.
- The garden area to the pedestal base (first floor) has been increased and hard landscaped area reduced.
- The width of the sunshade bays has been reduced to the northern and southern elevation on all levels.
- Steel or aluminium gates and screens have been replaced with timber.
- The side setbacks have been increased to 4 metres, 1 metre more than required by the Pittwater DCP.
- The north eastern corner of Apartment 5 has been rounded and the awning to the east reduced in width and rounded to reduce the visual impact and integrate better with the design.

- The side setbacks to the majority of the northern and southern walls of Apartment 5 have been increased to 4.6m from the boundary and a fixed timber sunshade and privacy screen provided adjacent to the windows. This will decrease the bulk and scale of the building, provide greater privacy to neighbouring buildings and give a lighter appearance to the upper floor.
- The selection of face brickwork has been amended to a softer, more natural appearance brick that is more distinguishable from the off-form concrete finish. This will soften the appearance of the building and help to break down the bulk and scale.

6. Issue

Side Setbacks: It is noted the dimensioned setback of 3 metres on the documentation shows a minimal 800 mm of green space with the remaining 2200mm hard surface and other material. This space does not allow for sufficient green planting to provide a buffer to the neighbouring properties

Response

- The side setbacks have been increased to 4 metres, 1 metre more than required by the Pittwater DCP.
- Planter bed widths and landscape levels have been amended down the side setbacks to provide denser and higher planting to better screen the building.
- The side setbacks to the Basement and Ground floor levels have been increased significantly by 1.2m to the south and by removing the 35 sqm triangular area to the north. This will significantly reduce the extent of excavation and provide greater areas of deep soil planting.
- The width of the sunshade bays has been reduced to the northern and southern elevation on all levels.
- The hard surface area to south of bedrooms of Apartment 1 has been replaced with garden bed.
- The hard surface area to the north of Level 1 Apartment 2 has been replaced with garden bed.
- The retaining wall along the northern boundary has been moved to the south by 1.5m and screen planting provided within the site at the existing ground level along the boundary. This will provide screen planting to offset the bulk and scale of the development, soften the form and mitigate visual impacts when viewed from adjoining properties and public spaces.

7. Issue

Summary: Overall the development has merit, however there are elements that, with further refinement including a reduction in bulk and scale, particularly from the Surf Road aspect, could be supported. Further design development to address the key criteria of Desired Future Character, Locality Statement and generally bulk and scale of the proposal is recommended

Response

Proposed amendments to reduce bulk and scale and soften the building include:

- The side setbacks have been increased to 4 metres, 1 metre more than required by the Pittwater DCP.
- Planter bed widths and landscape levels have been amended down the side setbacks to provide denser and higher planting to better screen the building.
- The side setbacks to the Basement and Ground floor levels have been increased significantly by 1.2m to the south and by removing the 35 sqm triangular area to the north. This will significantly reduce the extent of excavation and provide greater areas of deep soil planting.
- The extent of the eastern projection of the balconies to Levels 2 and 3 has been reduced by 2 metres
- The balconies to Levels 2 and 3 have been redesigned to project less to the east and have a softer, more rounded and consistent character incorporating brickwork.

- Timber soffits to balconies and awning roofs has been provided. As the primary views from Surf Road are from below, this has a significant impact on the materiality of the building from this aspect.
- The first floor podium base has been clad in sandstone rather than off-form concrete. Sandstone has also been provided to visible ground floor walls adjacent to the street frontage.
- The depth of the first floor podium has been reduced from 1.9 metres to 1.4 metres. This will reduce the bulk at the base of the building.
- The garden area to the pedestal base (first floor) has been increased and hard landscaped area reduced.
- The central breezeway has been deleted and a vertical recess provided to break up the bulk of the building vertically.
- The width of the sunshade bays has been reduced to the northern and southern elevation on all levels.
- Steel or aluminium gates and screens have been replaced with timber.
- The upper level perforated brickwork and associated rooftop plant has been deleted and accommodated within a single rooftop element combining the lift overrun and plant. These changes reduce the total width of rooftop elements when viewed from Whale Beach Road from 14.325 metres to 4.700 metres.
- The flyover copper roof over the fire stair has been deleted.
- The hard surface area to south of bedrooms of Apartment 1 has been replaced with garden bed.
- The hard surface area to the north of Level 1 Apartment 2 has been replaced with garden bed.
- The extent of the awning to Whale Beach Road has been reduced and softened with a curve in plan.
- The landscaped areas have been significantly increased to the Whale Beach Road setback.
- Two street trees have been provided to the Surf Road frontage.
- The garbage store has been deleted from Whale Beach Road.
- The side setbacks to the majority of the northern and southern walls of Apartment 5 have been increased to 4.6m from the boundary and a fixed timber sunshade and privacy screen provided adjacent to the windows. This will decrease the bulk and scale of the building, provide greater privacy to neighbouring buildings and give a lighter appearance to the upper floor.
- The north eastern corner of Apartment 5 has been rounded and the awning to the east reduced in width and rounded to reduce the visual impact and integrate better with the design.
- The north eastern planter bed and upstand concrete walls to Level 4 have been reduced in height to reduce bulk and scale.
- The retaining wall along the northern boundary has been moved to the south by 1.5m and screen planting provided within the site at the existing ground level along the boundary. This will provide screen planting to offset the bulk and scale of the development, soften the form and mitigate visual impacts when viewed from adjoining properties and public spaces.
- The selection of face brickwork has been amended to a softer, more natural appearance brick that is more distinguishable from the off form concrete finish. This will soften the appearance of the building and help to break down the bulk and scale.

Proposed amendments to reduce impact on views include:

- The upper level perforated brickwork and associated rooftop plant has been deleted and accommodated within a single rooftop element combining the lift overrun and plant. These changes reduce the total width of rooftop elements when viewed from Whale Beach Road from 14.325 metres to 4.700 metres.
- The flyover copper roof over the fire stair has been deleted.

- The extent of the eastern projection of the balconies to Levels 2 and 3 has been reduced by 2 metres.
- Existing street trees have been retained including the Fig Tree (T1) on Whale Beach Road.
- The width of the sunshade bays has been reduced to northern elevation on all levels.
- The side setbacks to the majority of the northern and southern walls of Apartment 5 have been increased to 4.6m from the boundary and a fixed timber sunshade and privacy screen provided adjacent to the windows. This will decrease the bulk and scale of the building, provide greater privacy to neighbouring buildings and give a lighter appearance to the upper floor.

Proposed amendments to increase privacy include:

- The side setbacks have been increased to 4 metres, 1 metre more than required by the Pittwater DCP.
- Planter bed widths and landscape levels have been amended down the side setbacks to provide denser and higher planting to better screen the building.
- The garden area to the pedestal base (first floor) has been increased and hard landscaped area reduced.
- A garden bed and privacy screen has been provided to the southern edge of Apartment 3 terrace. This will provide greater privacy to 229 Whale Beach Road.
- A garden bed has been provided to the southern edge of Apartment 4 terrace. This will provide greater privacy to 229 Whale Beach Road.
- Planning has been revised to Level 3 with the Retail 2 area reduced. An angled louvre privacy screen has been provided to the northern edge of the north eastern terrace. This will provide greater privacy to 233 Whale Beach Road.
- A garden bed has been provided to the northern edge of Apartment 5 terrace. This will provide greater privacy to 233 Whale Beach Road. Note that 1m high garden beds prevent occupants of elevated terraces from standing at the edge and looking down into neighbouring dwellings. As long as level differences are sufficient, occupants are restricted to looking out over the adjacent building.
- The side setbacks to the majority of the northern and southern walls of Apartment 5 have been increased to 4.2m from the boundary and a fixed timber sunshade and privacy screen provided adjacent to the windows. This will decrease the bulk and scale of the building, provide greater privacy to neighbouring buildings and give a lighter appearance to the upper floor.

Desired Future Character/Locality Statement: The Palm Beach locality desired future character is established by the relevant controls. The proposed development complies with all relevant controls, particularly relating to bulk and scale and exceeds a number of setback controls. The Desired Future Character Locality Statement in the Pittwater DCP largely relates to residential development/zones, but relevant statements are responded to below:

- ***Retail, community and recreational facilities will serve the community:***
The retail tenancies are proposed in convenient locations and of sufficient scale to serve the community. They will provide new opportunities to refresh retail offerings in the locality.
- ***Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form:***
The proposed development complies with all envelope controls (height, setbacks) and has been amended to reduce bulk and scale as discussed above.
- ***The design, scale and treatment of future development within the commercial centres will reflect a 'seaside-village' character through building design, signage and landscaping, and will reflect principles of good urban design. Landscaping will be incorporated into building design:***
The site is the only B1 zoned property in the locality. Its desired form and scale is therefore

dictated by the controls which apply to the site more than surrounding development. Nonetheless the bulk and scale has been further reduced in accordance with Council's Urban Design recommendations, and landscaping increased as noted above.

- ***Outdoor cafe seating will be encouraged:***

The ground floor retail tenancy has been designed to provide a covered outdoor seating area.

- The café originally proposed to Level 3 has been revised to a neighbourhood shop. This provides less pedestrian and vehicular traffic movements, acoustic impacts, privacy impacts and potential plant noise to the quieter Whale Beach Road frontage, which is surrounded by dwellings. The café is retained adjacent to Surf Road, closer, with safer access and generally more accessible to the beach and beach carpark where it will have greater exposure to passing pedestrian traffic and incidental walk-ins. The retail space has been pushed further back into the building which provides a more flexible space and mitigates any noise or privacy impacts.

LANDSCAPE

At this stage, the landscape proposal is not supported in terms of achieving design integration by landscape provisions, as well as non-support for the proposed removal of trees within the road reserve of Whale Beach Road, and the impact upon tree 4 within the neighbouring property.

The proposal is unsupported.

8. Issue

No garden bed planting is permitted within the road reserve and only street tree planting will be supported. ... The proposal to remove existing trees within the Whale Beach Road Road verge is not supported, and shall be retained as these are not impacted by development works and are an established streetscape amenity element.

Response:

- Garden bed planting has been removed from the road reserves.
- Existing street trees have been retained including the Fig Tree (T1) on Whale Beach Road.
- Two street trees have been provided to the Surf Road frontage.

9. Issue

Concern is raised that Tree 4 within No. 229 Whale Beach Road is encroached upon by the development and the report indicates possible decline in health, and concludes that a compensatory tree protection zone equal to a 4.5 metre setback along the southern boundary is required, contrary to the proposed 1.0 metres basement setback as proposed. Council does not permit any impact to existing trees within adjoining properties, regardless of species or horticultural value, unless adjoining owner's consent is obtained for consideration by Council.

Response:

- As noted in the Arboricultural Impact Assessment: "*The proposed excavation at 900mm from the site boundary (e.g. about 2.5m from the centre of the tree) will not result in any further root cutting or damage to woody roots.*" Therefore, there will be no additional impacts, as a result of the development, to the roots within the notional SRZ/TPZ than are already present. Please see enclosed letter from Arborist, Catriona Mackenzie which clarifies the position.
- The AIA notes the theoretical structural root zone would extend for 4.5 metres, as it is required under the Australian Standard – but in this instance, there are no such roots within the area in which development is proposed.

- The AIA does not conclude that a compensatory tree protection zone equal to a 4.5 metre setback is required. In fact, it states (section 4) that “*Due to the tree’s Low RV it would not normally be considered important for retention, nor require special works or design modification to be implemented for its retention.*” The AIA therefore specifically recommends *against* providing any special SRZ/TPZ or modifying the design of the development to protect Tree 4.
- Given the woody roots are already not present within the proposed development footprint, providing a tree protection zone equal to a 4.5 metre setback along the southern boundary will not provide any effective protection of the subject tree and is therefore not required.
- Furthermore, a tree protection zone equal to a 4.5 metre setback along the southern boundary would result in the loss of 4 parking spaces and storage areas to the basement, a significant part of the retail area to the ground floor, and a substantial area of Apartments 1 and 3. This would be particularly unreasonable as Tree 4 is on a neighbouring property, and being an exempt species, which is trespassing and causing damage, those portions encroaching into the subject property (roots and crown) may be legally lopped at any time without Council approval.
- Rather, the Arboricultural Impact Assessment makes specific recommendations for the retention of Tree 4 which are as follows:

5.3.2 Tree 4 – Norfolk Island Hibiscus. Pruning of the crown is to be undertaken prior to any works commencing on the site. A tree guard is to be provided to the trunk of the tree, either by directly placing a guard around the trunk (Fig 2, Appendix C) if permitted to do so, or erecting an approved barrier along the boundary to prevent any contact between site activities and the tree’s stem (Fig 1, Appendix C). Mulch to a depth of 100mm depth and a 6m radius is to be placed between the tree and the excavation line. The PA is to directly supervise excavation for a minimum 6m radius of the tree and ensure initial excavation to a depth of 700mm is undertaken using hand tools. The remainder of the excavation may be carried out by machinery after approval of the PA.

In addition, the AIA makes general recommendations for tree protection in sections 5.2, 5.3.1 and 5.4, including that a project arborist supervise excavation works, and placement of an appropriate tree protection device/fencing, and placement of appropriate signage. The applicant will implement these recommendations and follow the recommendations of the project arborist during excavation and construction in relation to the preservation of Tree 4 (and other trees to be retained).
- Despite the above, the side setbacks have been increased by 1m from the initial design to 4m, and the basement setbacks increased from 1.3m to 2.5m which will significantly reduce any potential impacts on the subject tree.

10. Issue

Concern is raised that the development does not integrate with the landscape character of the locality, and that the proposal is unable to support landscape planting of a size that is capable of softening the built form. The deep soil areas referred to in Principle 1: Context and neighbourhood character, and 3E Deep Soil Zones, located along the western boundary and part northern boundary, are occupied by pavements, stairs, a kiosk, with small garden beds areas of planting along the western boundary, and courtyards and planters along part of the northern boundary, that is unable to soften the built form. The 3 metre side setbacks are interrupted by basement, courtyards and planters that effectively reduce the capability of planting to achieve softening of the built form. Along the southern boundary, the deep soil area is contained to an uninterrupted 1.0 metre wide zone for the length of the boundary, and 1.2 meters uninterrupted along the northern boundary, reducing the potential growth height of proposed planting.

Response:

- The side setbacks have been increased to 4 metres, 1 metre more than required by the Pittwater DCP.
- Planter bed widths and landscape levels have been amended down the side setbacks to provide denser and higher planting to better screen the building.
- The side setbacks to the Basement and Ground floor levels have been increased significantly by 1.2m to the south and by removing the 35 sqm triangular area to the north. This will significantly reduce the extent of excavation and provide greater areas of deep soil planting.
- The garden area to the pedestal base (first floor) has been increased and hard landscaped area reduced.
- The hard surface area to south of bedrooms of Apartment 1 has been replaced with garden bed.
- The hard surface area to the north of Level 1 Apartment 2 has been replaced with garden bed.
- A garden bed has been provided to the southern edge of Apartment 3 terrace. This will provide greater privacy to 229 Whale Beach Road.
- A garden bed has been provided to the southern edge of Apartment 4 terrace. This will provide greater privacy to 229 Whale Beach Road.
- A garden bed has been provided to the northern edge of Apartment 5 terrace. This will provide greater privacy to 233 Whale Beach Road. Note that 1m high garden beds prevent occupants of elevated terraces from standing at the edge and looking down into neighbouring dwellings. As long as level differences are sufficient, occupants are restricted to looking out over the adjacent building.
- The water tank has been moved to an alternative location (to the ground floor) to provide additional deep soil planting to southern boundary setback.
- Existing street trees have been retained including the Fig Tree (T1) on Whale Beach Road.
- The deep soil planting area has been increased to the Whale Beach Road setback. This area combined with the area within the northern and southern setback will give technical compliance with the 7% deep soil area requirement, providing 10% deep soil landscaping.
- The garbage store has been deleted from Whale Beach Road.
- The landscaped areas have been significantly increased to the Whale Beach Road setback.
- Evidence is provided with sections to indicate that sufficient soil depth is possible above basement excavated areas within side setbacks to provide planting of sufficient size to soften the built form.
- A study of western façade (Whale Beach Road) is provided on the landscape architect's drawings to indicate that the combination of street trees and planting within the setback area is sufficient to soften the built form.

Note: Decreasing the excavation to the basement to align with the 4m side setbacks would result in the loss of 10 parking spaces, a substantial area of Retail 1, the ground floor garbage area and require the access driveway to be relocated. At least 950mm of soil depth is provided to all landscaped areas within the side setback areas.

TRAFFIC ENGINEERING

The proposal cannot be supported in its current form due to overall number of issues and non-compliances considered together with the site constraints and location. However, the impacts of the non-compliances can be minimised and an acceptable proposal could be supported on merit if these issues are addressed by providing the following modifications and provision of infrastructure in Public Road Reserve:

11. Issue

Access Driveway:

The site frontage is approximately 15m and only one access driveway is permitted under the DCP where the frontage to a local public road is less than 30m.

Response:

- The second driveway has been removed.

12. Issue

Off-Street Parking:

Swept paths are provided to demonstrate access to parking spaces...

There is a shortfall of 2 spaces for retain and no designated provisions for garbage collection, removalists/deliveries. The Traffic and Parking Report concludes that ample parking opportunities exist in the surrounding streets to cater for the additional parking demand.

Response:

- The amended application now provides 18 parking spaces which is a shortfall of four parking spaces. After extensive exploration of options with Council, this is determined as the maximum number of parking spaces which can be provided without a second driveway.
- This is to be contrasted with the existing building, which only provides only 2 parking spaces. The proposed development, despite being the same usage, adds an additional 16 parking spaces for the locality. In addition to this, the driveway on the northwest corner of the site will be removed, providing an additional on street parking space. Residents of the existing building and patrons of the existing café and retail outlets, who have been forced to park on the street, will now be able to park on site, freeing up a substantial number of parking spots for local residents and beach users. The development is therefore a substantial net positive in terms of parking.
- Parking for the retail areas is more likely to be utilised by the tenants and their employees than the general public.
- A 2.5 x 9.7m indented service / garbage collection vehicle access bay has been provided to Surf Road.
- Five car stackers have been provided to accommodate parking without a second driveway. This provides parking for 18 cars including 10 residential, 2 visitor including one disabled parking space and 6 retail parking spaces.
- We agree that there are ample parking opportunities in the surrounding streets and within the beach carpark, which combined with the number of parking spaces provided will address any concerns regarding parking. It is also not desirable or likely that retail customers visiting the site will use the basement carpark.
- A recent application for a shop top housing development at 1102 Barrenjoey Road in June 2021 was supported in the NBC Traffic Engineer Referral Response with a shortfall of 5 parking spaces.

13. Issue

Widening of access driveway to car parks

The proposed access driveway for the basement level is only 3.6m wide, and the curved alignment provides insufficient visibility between entering and exiting vehicles. This cannot be improved by a convex mirror and traffic signals are not practical. A minimum combined entry/exit width of 5.5m should be provided from the public road to parking area to allow two-way vehicle access. Movements in the ground level are park are restricted, and similarly the access driveway widening to 5.5m should also be considered. The garbage storage area could be relocated if approved by Waste Services. As a

minimum requirement the Applicant needs to demonstrate that the car park layout enables vehicles to pass and any required waiting areas are clearly marked so that vehicles entering the ground level car park are not forced to reverse back onto Surf Road. Speed humps should also be installed on the private property approaching the entry/exit to ensure that vehicles slow down prior to crossing Council's Public Road Reserve.

Response:

- The basement driveway has been amended to provide a minimum combined entry/exit width of 5.5m from the public road to the basement carpark to allow two-way vehicle access. The 5.5m width will reduce to 3.6m at the entry door to prevent the loss of parking spaces. A give-way point will enable two cars to queue in both directions.
- The ground floor has been redesigned to provide a higher quality and more viable retail space. The space has been opened to the street and landscaped areas. A covered outdoor seating area has also been provided.
- The second driveway has been removed and the service areas relocated.
- The garbage storage area has been redesigned to comply with Council requirements.
- Two street trees have been provided to the Surf Road frontage.

14. Issue

Provision of Indented service/delivery bay in Surf Road

A 2.5m wide indented bay is required for waste and service vehicle access and designed to enable forward in and forward out access for a waste collection vehicle 9.7m in length, as a minimum requirement. The indented bay can be provided in the Council Public Road Reserve between the two access driveways to the basement and ground level car parks. The facility would remove the need for loading/unloading to occur on Whale Beach Road and impacting the existing timed parking spaces.

Response:

- A 2.5 x 9.7m indented service / garbage collection vehicle access bay has been provided to Surf Road.

15. Issue

Realignment of kerb between the access driveway to the basement car park and The Strand

The section of Surf Road between Whale Beach Road and The Strand is narrow and the road width varies from 5.5 from the northern end to 7m. Parking is restricted on both sides of the road except for the section located immediately east of the existing driveway where parallel parking is permitted for approximately 3 vehicles. The access driveway to the basement car park is located on the bend in Surf Road and existing parking narrows the road and obstructs sightlines for vehicles exiting the site. The kerb realignment should retain parking for 3 parallel vehicles and provide a 6m road width for two-way traffic.

Response:

- A kerb to Surf Road between the subject site and The Strand has been realigned to provide a 6m road width and the retention of three parallel parking spaces.

16. Issue

Provision of footpath

A minimum 1.5m wide footpath is required along the entire Surf Road frontage and extended to the intersection with The Strand. The existing footpath on the opposite side of the road should also be extended to The Strand with the addition of a handrail where required. This is to provide pedestrian facilities and safety where there is high pedestrian activity between Whale Beach Road, access to the proposed café and Whale Beach.

Response:

- A minimum 1.5m footpath will be provided along the entire Surf Road frontage and extended to The Strand. The footpath on the other side of the street will be extended to The Strand with a handrail where required.

WASTE

The proposal is unsupported.

17. Issue

Access to the bin storage facilities does not meet Council requirements.

Specifically: Access to both the residential and commercial bin storage bays is via a vehicular driveway. The doors of both bin storage bays swing out over the vehicular driveway. Unacceptable - a path that is separate from the vehicle driveway must be provided for servicing waste bins. - open doors obstruct vehicle movement and obscure waste collection staff from the view of vehicle drivers. Reason - WHS for waste collection staff.

Response:

- The garbage bin storage areas have been redesigned to provide a path that is separate from vehicular driveways. Opening doors of the revised bin areas will not obstruct vehicle movement or obscure waste collection staff from the view of vehicle drivers.
- The garbage area has been removed from Whale Beach Road.

18. Issue

Waste Management Plan (WMP)

The WMP must be completed correctly. It is not acceptable to refer to another document - in this case the Construction Management Plan (CMP). The CMP does not provide sufficient information regarding waste generation and disposal from the proposed works. When referring to estimated types and volumes of waste from demolition and construction it merely states "TBA". Incorrect number of residential dwellings is described in the WMP. Please complete the WMP correctly and submit to Council for assessment.

Response:

- The Waste Management Plan has been revised and resubmitted to Council.

PART C - RESPONSE TO PUBLIC SUBMISSIONS

A large number of public submissions were lodged. However, a significant proportion appear to be 'cut and paste' responses, and from a large proportion of people who reside outside of the locality. Further, a number of the submissions support the proposal.

There was a total of 153 submissions made (not including multiple submissions from the same people or Council referral responses).

24 submissions supported the proposal. 127 were against the proposal and 2 made comments with no position taken.

Submissions were received from the following areas:

Avalon Beach	59
Palm Beach	23
Whale Beach	39
Newport	6
Bilgola	3
Other	23

The proposal received significant attention on social media including the "Avalon What's On" Facebook Page which urged people to object. This page included a significant amount of misinformation and appears to have resulted in approximately 71 or around half of the submissions received.

The Palm Beach Whale Beach Association (PBWBA) made the following statement:

The PBWBA is aware of this application. We have been briefed on the project. Our Honorary Architect has reviewed the plans. The PBWBA believes that the site should be redeveloped in order for the Community to maintain access to retail facilities.

The committee passed a motion last year, that:-

"The PBWBA has no objection to this application provided that it complies with all the required Council development controls and that it includes the provision for disabled access."

The primary issues of concern with the proposal expressed in submissions were as follows:

- The character of the development is not in keeping with the locality
- The bulk and scale are not appropriate for the site
- The height is excessive
- The development has insufficient parking and will cause excessive traffic
- The development causes unacceptable impacts on existing views.
- The development will set a precedent for other similar development
- The extent of excavation is excessive
- The development will generate unacceptable noise.
- The development has insufficient landscaping and relies on screen planting to 233 Whale Beach Road.

These issues are addressed below.

Character (not in keeping with locality)

The desired future character is dictated by the controls that apply to the site. This site is the only B1 zoned site in the locality and therefore will be different to adjoining E4/residential dwellings in character. It is a permissible use, complies with all envelope/massing controls, and is therefore consistent with the desired future character of the locality. Similarly, the level of activity and nature of activities (mixed residential and retail) are dictated by the controls, which permit, and indeed encourage, shop top housing of the nature proposed. As per *Project Venture*, compatibility does not equal sameness, and seen in the context of this site's unique controls, the project is appropriate, and compatible with the desired future character as dictated by those controls.

In any event, as noted above, the existing character includes many large 2, 3 and 4 storey dwellings which are monolithic, and do not step down in accordance with sloping topography.

The desired outcomes in terms of character are defined by the following section of the Pittwater DCP 2014:

PDCP A4.12 Palm Beach Locality

Residents and visitors are attracted to the Palm Beach Locality by its natural beauty, by the relatively unspoilt nature of the region and by the relaxed seaside atmosphere of the locality.

There is no question that the proposed development is a significant improvement on the current buildings located on the site, both in terms of aesthetics and amenity. The existing building is a dilapidated eyesore subject to monthly slope stability monitoring which urgently needs to be replaced. Whilst Council may state that it does not take into account the existing building, equally, it cannot assess the site as if it is a pristine, untouched natural landscape – it is a heavily modified site, particularly in terms of topography and landscape setting. The proposal has no impact on the natural beauty of the area and provides a high quality, appropriate development that provides amenity in the form of retail shops and a café and communal open spaces that will enhance the relaxed seaside atmosphere of the locality.

Desired Character

Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form.

The proposal is below the height limit of 8.5m, despite the steep slope. The proposal will be below the established tree canopy and respects the horizontal massing of the existing built form by the provision of a ground floor landscaped podium, articulation of the building mass and horizontal emphasis of the balconies, awnings and roof line. Given compliance with the height control, the consent authority cannot impose a more onerous requirement (s. 4.15(3) of the EP&A Act).

Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like.

There are no significant existing trees on the site. Existing trees around the site will be retained. Landscaping to front, rear and side setbacks, including canopy trees, will significantly enhance the landscaping of the site and locality. In addition to this, large planters are provided to all levels of the building which will provide soft landscaping over significant areas of the building. The building is contemporary and is highly modulated with shade elements such as vertical blades, timber screens, awnings and verandahs.

Building colours and materials will harmonise with the natural environment.

Building colours and materials such as face brickwork, sandstone, terrazzo, off form concrete, copper and timber provide a palette that complements the natural environment and that will weather beautifully over time.

Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance.

The proposed development has a clear base, in the form of a landscaped podium, a middle, in the form of the level two and three apartments and retail spaces, which are significantly stepped back from the podium by 4 to 10 metres, and a top, in the form of the level four apartment, which is stepped back a further 6.5 to 7.2m. Awning roofs to levels three and four provide additional stepping back. Given the DCP is not prescriptive as to stepping required, and given the highly disturbed nature of the site, the stepping and setbacks proposed are appropriate.

In addition, there are many substantial and recently approved two and three storey dwellings in the immediate locality that do not step down or along the slope. The neighbouring dwelling to the north of the site (No 233) is a two-storey residence that does not step with the topography. The neighbouring dwelling to the south (No 229) is a three-storey residence of similar height to the proposed development that does not step with the topography. The Whale Beach SLSC, two lots to the south, is a monolithic five storey structure that does not step with the topography. In contrast, the proposed development has a clearly stepped form which is entirely below the prescribed height limit.

As can be clearly seen in the architectural sections and elevations which indicate the existing ground line and the line of the 8.5m height limit, with which the building complies, the proposal does step in line with the topography. It will exist in harmony with the surrounding character, given the context of its unique zoning and controls.

We note that the relevant controls are not prescriptive with regard to requiring stepping (for example wedding-cake tiers or each level being stepped). In our view, the stepping responds appropriately to the context, and the natural landforms and environment of the site (particularly noting that the site already includes substantial development, thus its landforms and natural environment is already heavily modified).

There is a conflict between the zoning of the site, DCP requirements for parking and streetscape activation, and the requirement to minimise site disturbance. The requirement of the zoning to provide retail spaces on Surf Road, and the DCP requirement to provide parking for residential and retail spaces, which necessarily must be located in a basement, requires a significant excavation of the site. The site has a unique zoning within the Whale Beach precinct. The development impact and the associated necessary excavation must have been anticipated when Council applied the zoning to the site.

Development will be designed to be safe from hazards.

The development has been designed to be safe from hazards.

The design, scale and treatment of future development within the commercial centres will reflect a 'seaside-village' character through building design, signage and landscaping, and will reflect principles of good urban design. Landscaping will be incorporated into building design. Outdoor cafe seating will be encouraged.

The design of the proposed development creates a retail area to both Whale Beach Road and Surf Road. The two storey high scale to Whale Beach Road and landscaped sandstone podium with the bulk of the building stepped back to the Surf Road frontage supports the "seaside-village" character.

Due to its typology, the building is necessarily different in character from a single dwelling house, which is not permissible on the subject site, however the proposal establishes an appropriate scale and form for a neighbourhood centre. The highly articulated form, natural materials, access to natural light and cross ventilation, integrated signage and landscaping incorporated into the building design do reflect principles of good urban design. The proposal provides the opportunity for areas of outdoor café seating to the Surf Road street frontage.

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land.

The site and zoning have inherent conflicting constraints. The proposal achieves a balance between these constraints, particularly following the many amendments to the initial design, that is an appropriate and reasonable response to the maintenance of landforms, enhancement of the landscape and the provision of the amenities of a shop-top housing development.

Bulk and Scale

The proposal complies with all relevant controls in terms of envelope and design. It is noted that Council's Urban Design referral states that overall the development has merit, but that further refinement, including a reduction in bulk and scale, particularly from the Surf Road aspect, could be supported. Those requested design amendments are provided in the amended plans.

The building complies with the required height limit, the side setbacks to walls and to the front and rear setbacks. The side setbacks to all above and below ground elements have been increased with the above ground elements providing significantly greater setbacks than required by the controls. Given that it complies with these controls, it can be said to be in keeping with the anticipated bulk and scale desired by the zoning for the site. The site is clearly compromised by being a B1 Neighbourhood Centre zoning in between two E4 Environmental Living zoned sites occupied by single dwelling houses. This is exacerbated by the steep slope of the site, dual street frontages and wedge shape of the lot. Any shop top housing development, in which 5 residences and a significant area of retail space is permissible, is going to look bulkier and larger in scale than a single residence, particularly when viewed from below on Surf Road. This larger bulk and scale is anticipated by the B1 zoning. In terms of context, the only comparable development in the area is the existing building and the Whale Beach SLSC, which is two lots to the south. The surf club is a monolithic five storey building with little articulation or stepping apart from the eastern balcony and awning.

As Council would be aware, where numerical controls (non-discretionary under an LEP, or those under a DCP) are imposed, if a development complies with those controls, then the consent authority cannot impose more onerous requirements. Given compliance with all envelope, height, massing and setback controls, Council cannot impose more onerous requirements.

The existing building on the site exceeds the height limit, extends over the northern boundary and has a minimal southern boundary setback. The proposed building relocates the bulk to the west of the site and complies with the height and setback controls. The proposed building steps down the site, with the bulk of the building set back significantly from the ground floor landscaped podium and the upper floor set back again. Furthermore, the proposed building is broken down in bulk vertically with a central recess eroding the form. The proposal is a significant improvement in terms of bulk and scale compared to the existing building or the Whale Beach SLSC and can therefore be said to be considerably enhancing the character of the area. Compliance with desired bulk and scale is established by the relevant controls. The proposed development complies with all relevant controls,

including height and provides greater setbacks than the required controls to the above ground elements.

The applicant has responded to concerns in relation to the character and bulk and scale of the building by implementing changes to the design which are outlined in the Schedule of Amendments.

Height

The proposal complies with the 8.5m height limit, despite the steeply sloping topography and wedged shape site. The same 8.5m height limit applies to the surrounding lots zoned E4. The proposal steps back in line with the topography, unlike the Whale Beach SLSC, a monolithic five storey building two lots to the south. As can be seen on the western elevation, the Whale Beach Road frontage is generally between 2 and 3 metres below the height limit. Given compliance with this control, height cannot form a reason to refuse the DA.

Parking and Traffic

A number of public submissions expressed concern that the development would generate additional traffic in the area, which is already busy in holiday periods when it can be difficult to find a parking spot. There were also concerns about public safety caused by additional traffic and pedestrian movements. The existing building contains five apartments and three retail spaces including a café on Whale Beach Road. The existing site has only two on-site parking spaces and no public parking spaces. The amended design provides a total of 18 parking spaces, an additional 16 spaces to those provided by the existing building. In addition to this, the driveway on the northwest corner of the site will be removed, providing an additional on street parking space.

A traffic report has been provided which concludes that the development is acceptable in terms of traffic impacts and road safety. The traffic report concludes, following a traffic study, that ample parking opportunities exist in the surrounding streets to cater for additional parking demand. This is supported by Council's traffic referral.

It should be noted that past commercial enterprises in the locality such as "Ripples Restaurant" at 24 The Strand, Whale Beach, which provided no on-site parking, did not create a parking problem in the area. The proposed development, which is likely to have fewer traffic movements than a substantial restaurant such as this, provides 18 on-site parking spaces, It will thus be a net gain in terms of parking. It is of further note that the old "Ripples Restaurant" building has been demolished to be replaced by a recently approved residential dwelling as per its residential zoning, leaving the proposed development as the only retail premises in the Whale Beach vicinity.

Council's traffic engineer expressed concern that as the existing site does not provide on-site parking for the existing café, the difference in traffic generation at the new access driveways could be significant. The interaction between driveways and pedestrian footpaths is the primary area of safety concern. The applicant has addressed these issues by the following amendments:

1. The basement driveway has been amended to provide a minimum combined entry/exit width of 5.5m from the public road to the basement carpark to allow two-way vehicle access. The 5.5m width will reduce to 3.6m at the entry door to prevent the loss of parking spaces. A give-way point will enable two cars to queue in both directions.
2. The second driveway has been removed and the service areas relocated.
3. The garbage storage area has been redesigned to comply with Council requirements.
4. Two street trees have been provided to the Surf Road frontage.

5. A 2.5 x 9.7m indented service vehicle access bay has been provided to Surf Road.
6. A kerb to Surf Road between the subject site and The Strand has been realigned to provide a 6m road width and the retention of three parallel parking spaces.
7. A minimum 1.5m footpath will be provided along the entire Surf Road frontage and extended to The Strand. The footpath on the other side of the street will be extended to The Strand with a handrail where required.
8. Five car stackers have been provided to accommodate parking without a second driveway. This provides parking for 18 cars including 10 residential, 2 visitor including one disabled parking space and 6 retail.

View Sharing

Concerns about view sharing issues were received from the following:

Gorman	11 Morella Rd, Whale Beach
Rogley	196 Whale Beach Rd, Whale Beach
Hofbauer	198 Whale Beach Rd, Whale Beach
Luong – Le	200 Whale Beach Rd, Whale Beach
Naito	229 Whale Beach Rd, Whale Beach

View impact studies have been provided showing the modelled existing and proposed buildings. Additionally, height poles have been erected to assist in assessment of view impacts.

The impacts on the above properties have been assessed in accordance with the principles of Tenacity Consulting v Warringah Council 2004 in the Statement of Environmental Effects. The report concludes: *The proposed development has been skillfully designed, through consultation with affected neighbouring properties to ensure there is minimal adverse impacts to existing views from neighbouring properties. The visual amenity of the affected dwellings is not detrimentally impacted, and views toward the north eastern headland are retained. The views affected are obscured by existing vegetation and the proposed development results in view loss of a minor significance. The minor view loss impacts are considered acceptable under the planning principles of Tenacity Consulting v. Warringah City Council [140] NSWLEC140.*

Impacts on views have been further reduced in the amended proposal by:

1. The side setbacks have been increased to 4 metres, 1 metre more than required by the Pittwater DCP.
2. The extent of the eastern projection of the balconies to Levels 2 and 3 has been reduced by 2 metres.
3. The width of the sunshade bays has been reduced to the northern and southern elevation on all levels.
4. The upper level perforated brickwork and associated rooftop plant has been deleted and accommodated within a single rooftop element combining the lift overrun and plant.
5. The flyover copper roof over the fire stair has been deleted.
6. The side setbacks to the majority of the northern and southern walls of Apartment 5 have been increased to 4.6m from the boundary and a fixed timber sunshade and privacy screen provided adjacent to the windows. This will decrease the bulk and scale of the building, provide greater privacy to neighbouring buildings and give a lighter appearance to the upper floor.
7. The north eastern corner of Apartment 5 has been rounded and the awning to the east reduced in width and rounded to reduce the visual impact and integrate better with the design.

It should also be noted that more than 50% of the roof of the proposed development is at least 1 metre below the maximum permissible building height, and the eastern edge of Level 4 is 2.3 metres below the height of the existing building.

Setting a precedent

The site is zoned B1 Neighbourhood Centre and is the only lot in Whale Beach to have this zoning. There is therefore no possibility of the proposed development setting a precedent for other similar developments in the area. A substantial number of public submissions did not appear to understand that the zoning for the site is unique in the locality, and thus cannot set a precedent, or that the different zoning and different controls necessitate a different planning outcome.

Extent of excavation

A geotechnical report has been provided and concludes that the development is acceptable.

The requirement of the zoning to provide retail spaces on Surf Road, and the DCP requirement to provide parking for residential and retail spaces, which necessarily must be located in a basement, requires a significant excavation due to the slope of the site. The site has a unique B1 zoning within the Whale Beach precinct. The development impact and the associated necessary excavation must have been anticipated when Council applied the zoning to the site. Significant excavations for basement garages on steeply sloping sites zoned E4 Environmental Living, a higher environmental protection than the subject site, are relatively common in the area and have been approved by Northern Beaches Council.

Noise

A small number of public submissions were concerned about the acoustic impacts of the development, in particular the owners of No 233 Whale Beach Road, which is the neighbouring property to the north. The acoustic report concludes:

- Noise level criteria at the most affected residential receiver will be met if noise control measures are applied to the kitchen exhaust fans.
- Traffic noise impact due to the likely generated vehicle movements of the proposed development is anticipated to be insignificant.
- Noise impact from anticipated external patron noise generated by proposed outdoor seating spaces will be met at the nearest noise sensitive receivers.
- Noise break-out impacts from the Retail Spaces based on worst-case scenarios can meet the noise level criteria at the noise sensitive receivers, as long as the façade is designed to meet the minimum composite sound insulation.

The amended development improves these outcomes.

The owner of No. 233 commissioned an acoustic report into the acoustic impacts of the garbage collection for the proposed development upon her property. The report concluded with the following recommendations:

- Allowing the garbage collection between 0800 and 2200 hours only.
- Glass bottles are to be bagged and wrapped with newspapers to prevent cluttering noise to occur.
- Truck reversing beeping alarms to be replaced with a smart alarm system.
- A solid building enclosure should be erected over the garbage collection area.

These concerns have been addressed by amendments to the proposed development including:

- The garbage storage area has been redesigned to comply with Council requirements. It has been moved further from the street and enclosed within the building to provide better acoustic separation. Glass bottle noise will be limited by the enclosure of the garbage area.
- A 2.5 x 9.7m indented service vehicle access bay has been provided to Surf Road. This will not require garbage collection vehicles to reverse to collect garbage.

Garbage collection restrictions should be consistent with surrounding properties including the Whale Beach SLSC and Moby Dicks.

Landscaping

The side setbacks have been increased to 4m which will provide a significantly larger landscaped buffer between the building and neighbouring dwellings. The retaining wall along the northern and southern boundaries has been moved to provide a minimum width of 1500mm of planter bed at existing ground levels. This will provide extensive screen planting within the site at the existing ground level along the boundary which will offset the bulk and scale of the development, soften the form and mitigate visual impacts when viewed from adjoining properties and public spaces. Hard surface areas have been removed from side setbacks, deep soil areas increased to comply with controls, planter bed levels raised and planter beds provided to balconies to both soften the building and provide privacy to neighbours. The garbage area has been removed from Whale Beach Road and the extent of landscaping increased to this frontage.

PART D - SCHEDULE OF AMENDMENTS

1. The side setbacks have been increased to 4 metres, 1 metre more than required by the Pittwater DCP. This will decrease bulk and scale, decrease excavation, increase landscaping, privacy and public view corridors.
2. Planter bed widths and landscape levels have been amended down the side setbacks to provide denser and higher planting to better screen the building.
3. The side setbacks to the Basement and Ground floor levels have been increased significantly by 1.2m to the south and by removing the 35 sqm triangular area to the north. This will significantly reduce the extent of excavation and provide greater areas of deep soil planting.
4. The subterranean rooms have been removed from level 1, reducing the extent of excavation.
5. Service areas have been rationalised across the Basement and Ground floor levels, reducing the extent of excavation.
6. The extent of the eastern projection of the balconies to Levels 2 and 3 has been reduced by 2 metres. This will decrease bulk and scale and improve neighbouring views to No. 229 Whale Beach Rd.
7. The balconies to Levels 2 and 3 have been redesigned to project less to the east and have a softer, more rounded and consistent character incorporating brickwork. This will decrease bulk and scale and improve neighbouring views to No. 229 Whale Beach Rd.
8. Timber soffits to balconies and awning roofs have been provided. As the primary views from Surf Road are from below, this has a significant impact on softening the materiality of the building from this aspect.
9. The first-floor podium base has been clad in sandstone rather than off-form concrete. Sandstone has also been provided to visible ground floor walls adjacent to the street frontage. This will soften the building and provide better alignment with the desired future character of the locality.
10. The depth of the first-floor podium has been reduced from 1.9 metres to 1.4 metres. This will reduce the bulk at the base of the building.
11. The garden area to the pedestal base (first floor) has been increased and hard landscaped area reduced.
12. The central breezeway has been deleted and a vertical recess provided to break up the bulk of the building vertically. This allows the overall width of the building to be reduced whilst maintaining an articulated form.
13. The width of the sunshade bays has been reduced to the northern and southern elevation on all levels. This will reduce the bulk and scale of the building and allow denser and higher landscaping to the side setbacks.
14. Steel or aluminium gates and screens have been replaced with timber. This will soften the appearance of the building and provide better alignment with the desired future character of the locality.
15. The upper level perforated brickwork and associated rooftop plant has been deleted and accommodated within a single rooftop element combining the lift overrun and plant. This will reduce the bulk and scale of the building and improve neighbouring views.
16. The flyover copper roof over the fire stair has been deleted. This will reduce the bulk and scale of the building and improve neighbouring views.
17. The hard surface area to south of bedrooms of Apartment 1 has been replaced with garden bed. This will allow more landscaping to the side setback.
18. The hard surface area to the north of Level 1 Apartment 2 has been replaced with garden bed. This will allow more landscaping to the side setback.

19. The extent of the awning to Whale Beach Road has been reduced and softened with a curve in plan. This will reduce the bulk and scale, soften the building and provide better alignment with the desired future character of the locality.
20. A garden bed has been provided to the southern edge of Apartment 3 terrace. This will provide greater privacy to 229 Whale Beach Road.
21. A garden bed has been provided to the southern edge of Apartment 4 terrace. This will provide greater privacy to 229 Whale Beach Road.
22. Planning has been revised to Level 3 with the Retail 2 area reduced. An angled louvre privacy screen has been provided to the northern edge of the north-eastern terrace. This will provide greater privacy to 233 Whale Beach Road.
23. A garden bed has been provided to the northern edge of Apartment 5 terrace. This will provide greater privacy to 233 Whale Beach Road. Note that 1m high garden beds prevent occupants of elevated terraces from standing at the edge and looking down into neighbouring dwellings. As long as level differences are sufficient, occupants are restricted to looking out over the adjacent building.
24. Garden bed planting has been removed from the road reserves as requested by Council.
25. Existing street trees have been retained including the Fig Tree (T1) on Whale Beach Road as requested by Council.
26. The water tank has been moved to an alternative location (to the Ground Floor) to provide additional deep soil planting to southern boundary setback.
27. The deep soil planting area has been increased to the Whale Beach Road setback. This area combined with the area within the northern and southern setback will give technical compliance with the 7% deep soil area requirement, providing 10% deep soil landscaping.
28. The basement driveway has been amended to provide a minimum combined entry/exit width of 5.5m from the public road to the basement carpark to allow two-way vehicle access as requested by Council. The 5.5m width will reduce to 3.6m at the entry door to prevent the loss of parking spaces. A give-way point will enable two cars to queue in both directions.
29. The ground floor has been redesigned to provide a higher quality and more viable retail space. The space has been opened to the street and landscaped areas. An outdoor seating and communal open space area have also been provided.
30. The second driveway has been removed and the service areas relocated as requested by Council.
31. The garbage storage area has been redesigned to comply with Council requirements.
32. The garbage store has been deleted from Whale Beach Road as requested by Council. This will provide more landscaping to the street frontage.
33. The landscaped areas have been significantly increased to the Whale Beach Road setback.
34. Two street trees have been provided to the Surf Road frontage.
35. A 2.5 x 9.7m indented service / garbage collection vehicle access bay has been provided to Surf Road as requested by Council.
36. A kerb to Surf Road between the subject site and The Strand has been realigned to provide a 6m road width and the retention of three parallel parking spaces as requested by Council.
37. A minimum 1.5m footpath will be provided along the entire Surf Road frontage and extended to The Strand. The footpath on the other side of the street will be extended to The Strand with a handrail where required as requested by Council.
38. The side setbacks to the majority of the northern and southern walls of Apartment 5 have been increased to 4.6m from the boundary and a fixed timber sunshade and privacy screen provided adjacent to the windows. This will decrease the bulk and scale of the building, provide greater privacy to neighbouring buildings and give a lighter appearance to the upper floor.
39. The north-eastern corner of Apartment 5 has been rounded and the awning to the east reduced in width and rounded to reduce the visual impact and integrate better with the design.

40. The north-eastern planter bed and upstand concrete walls to Level 4 have been reduced in height to reduce bulk and scale.
41. The selection of face brickwork has been amended to a softer, more natural appearance brick that is more distinguishable from the off-form concrete finish. This will soften the appearance of the building, help to break down the bulk and scale and provide better alignment with the desired future character of the locality.
42. The retaining wall along the northern boundary has been moved to the south by 1.5m and screen planting provided within the site at the existing ground level along the boundary. This will provide screen planting to offset the bulk and scale of the development, soften the form and mitigate visual impacts when viewed from adjoining properties and public spaces.
43. The usage of Retail 2 on Whale Beach Road has been changed from a café to a neighbourhood shop. This will provide better acoustic and privacy amenity to neighbouring properties.
44. An internal stair has been provided to Apartment 5 to comply with the BCA provision for escape requirements.
45. Five car stackers have been provided to accommodate parking without a second driveway. This provides parking for 18 cars including 10 residential, 6 retail and 2 visitor spaces including one disabled parking space. This is the maximum number of compliant parking spaces on a single level.

CONCLUSION

The above submission and accompanying revised plans address all the issues identified as the reasons for refusal, the issues raised by Council officers in their referrals, the issues in the Assessment Report and the issues raised in submissions. We see no outstanding reasons why the application cannot now be approved in its current form.

Yours faithfully,



Richard Cole
RICHARD COLE ARCHITECTURE