

**STATEMENT OF MODIFICATION - APPLICATION TO MODIFY CONSENT UNDER
S4.56 OF THE ENVIRONMENTAL PLANNING & ASSESMENT ACT 1979**

**IN RELATION TO N0267/16 WHICH GRANTED CONSENT FOR DEMOLITION OF EXISTING
STRUCTURES AND CONSTRUCTION OF A SHOP TOP HOUSING DEVELOPMENT, COMPRISING
3 COMMERCIAL UNITS, 20 RESIDENTIAL UNITS AND PARKING, OVER 4 LEVELS**

LOCATED AT

2-8 RICKARD ROAD, NORTH NARRABEEN

FOR

ANTHONY GLEESON



**Prepared
August 2023**

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1.0 Introduction

This Statement of Modification accompanies architectural plans prepared on behalf of Anthony Gleeson by Design Vines, Drawing No. 10090_DACS, 10090_DA00 – 10090_DA08 & 10090_SD01 – 10090_DA03, all issue S1, dated 26 June 2023, detailing modifications to the demolition of existing structures and construction of a shop top housing, comprising 3 commercial units, 20 residential units and parking, over 4 levels approved by Development Application No N0267/16 at **2-8 Rickard Road, North Narrabeen**.

This Statement describes the subject site and the surrounding area, together with the relevant planning controls and policies relating to the site and the type of development proposed. As a result of this assessment it is concluded that the development of the site in the manner proposed is considered to be acceptable and is worthy of the support of the Council.

In preparation of this document, consideration has been given to the following:

- *The Environmental Planning and Assessment Act, 1979 as amended (EP&A Act)*
- *The Environmental Planning and Assessment Regulation 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development (SEPP 65)*
- *Apartment Design Guide (ADG)*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *Pittwater Local Environmental Plan 2014 (PLEP 2014)*
- *Pittwater Development Control Plan (PDCP 2014)*

2.0 Background

On 14 November 2016, Development Application N0267/16 for “demolition of existing structures and construction of a shop top housing development, comprising 3 commercial units, 20 residential units and parking, over 4 levels” was refused by Council.

The application was approved at a Section 34 Conciliation Conference (File No. 2016/302237) under the provisions of the Land and Environment Court Act 1979. The subject application seeks to modify this approval in order to reconfigure the approved basement garage and residential units, in conjunction with other minor modifications as detailed in the subject statement.

The approved development has not commenced.

As noted, the original consent was operative until 21 April 2022, however in accordance with the COVID incentives under this Section 4.53 (1)(a) EPA Act, the consent which had not lapsed as at 25 March 2020 has an automatic extension of two years and will now lapse on 21 April 2024.

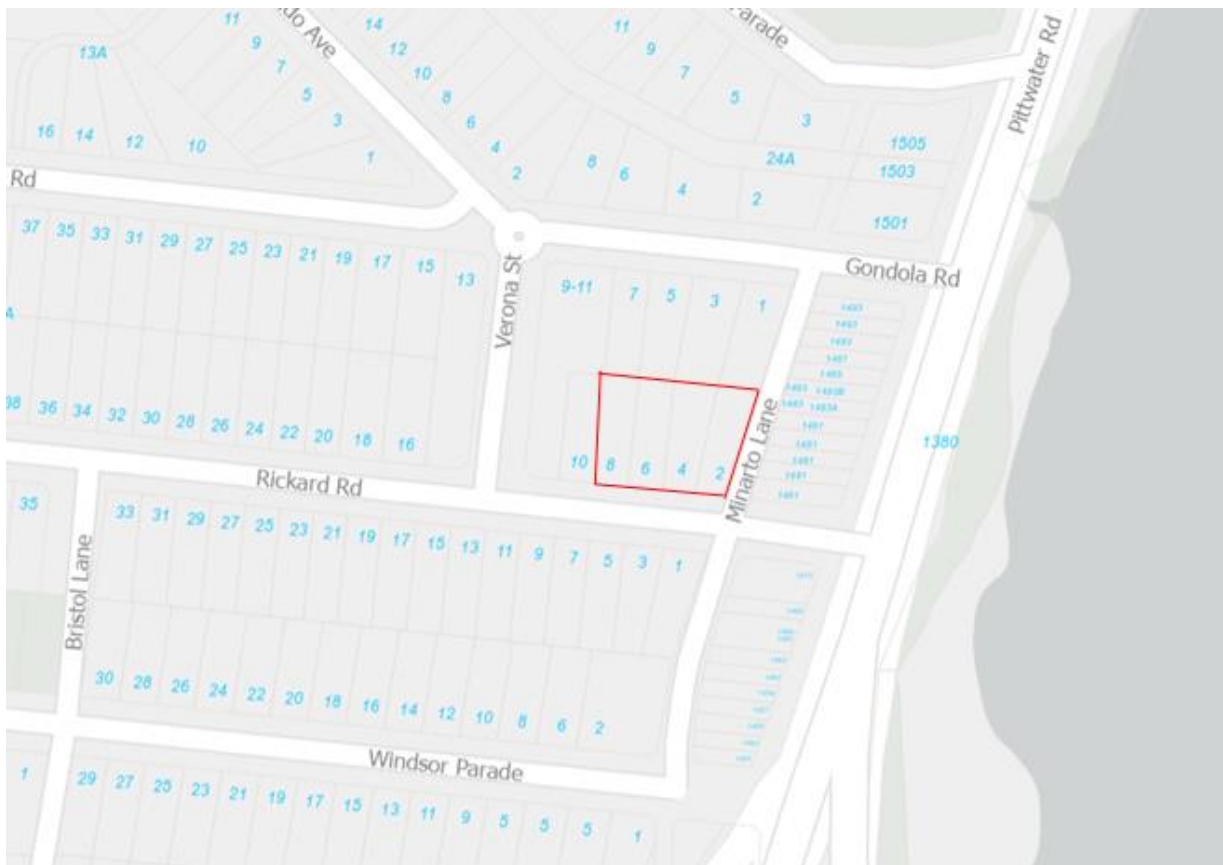
Council can be satisfied that the consent is able to be modified by way of this application.

Additionally, recent determinations have been issued by the Land and Environment Court for the adjoining developments to the north, facing Gondola Road, which have permitted the proposed developments to extend to a nil setback to the common boundary with the subject site.

The approved developments which present the nil setback to the subject site include :

- 1 Gondola Road – DA 2018/1210
- 3 Gondola Road – DA2022/0919

As the proposed development to be constructed immediately north of the site will have a blank wall facing the development, the necessity for a setback for the subject development to the northern boundary of its site in order to preserve privacy and amenity for neighbouring properties is reduced. As will be demonstrated in this Modification application, a minor reduction in the northern setback of the upper floor level residential units does not adversely affect the solar access for the proposed development.



3.0 Proposed Modifications

The proposed modifications to the approved 4 storey shop top housing development comprise:

Basement

- Reconfiguration of approved basement parking to accommodate 40 cars, lift, stairs, services, and storage

Ground Floor

- Reconfiguration of existing entry to provide new fire exit

First Floor

- Reconfiguration of approved Unit 3, 4 & 5, including conversion of Unit 4 to accessible unit

Second Floor

- Reconfiguration of approved Unit 13, 14 & 15, including conversion of Unit 14 to accessible unit

The specific modifications are highlighted on the architectural plans by Design Vines, which are further accompanied by a Design Verification Statement under State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development prepared by Design Vines.

The modified development is accompanied by:

- BASIX Certificate

The proposed development will continue to rely on other Consultant's reports previously provided with the approved Application to Modify Consent considered by Council.

4.0 Zoning and Development Controls

4.1 State Environmental Planning Policy (Resilience and Hazards) 2021

Coastal Management

In the time since the previous modification application was determined *State Environmental Planning Policy (Coastal Management) 2018* has been repealed and subsequently replaced by *State Environmental Planning Policy (Resilience and Hazards) 2021*.

The site remains within the Coastal Environment Area as shown on the Coastal Environment Area Map and within the Coastal Use Area as shown on the Coastal Use Area Map.

Despite the change to the title of the policy, the aims and requirements of the policy remain the same.

The proposed modifications will continue to be suitable within the coastal zone, and the proposed development is consistent with the provisions of Chapter 2 of this policy.

Remediation of Land

In the time since the original application was determined *State Environmental Planning Policy No. 55 – Remediation of Land* has been repealed and subsequently replaced by *State Environmental Planning Policy (Resilience and Hazards) 2021*.

Clause 4.6(1)(a) of SEPP (Resilience and Hazards) prescribes that the consent authority must not grant consent to the carrying out of any development on land unless it has considered whether the land is contaminated.

The site has a history of residential use and therefore no further investigation is deemed necessary in this instance.

4.2 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The modified proposal has been designed to respect the water, thermal and energy standards required by BASIX. An amended BASIX Certificate accompanies the application.

4.3 State Environmental Planning Policy 65 – Design Quality of Residential Development

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development applies to the proposal by virtue of Clause 4(1). The SEPP provides that in determining an application for a mixed use development of three or more floors and containing four or more apartments, the consent authority shall take into consideration a number of matters relating to design quality, including 9 design quality principles to be addressed by the building designer.

The application includes a SEPP 65 Design Verification Statement prepared by Design Workshop Australia and considers the 9 design principles.

4.4 Apartment Design Guide

The following table addresses the provisions within the Apartment Design Guide (ADG), where numerical requirements are specified.

Part 3 Siting the development		
3A Site Analysis		
Objective 3A1 Each element in the site analysis checklist should be addressed	Noted. Refer to survey and architectural plans by Design Vines.	Complies
3B Orientation		
Objective 3B-1 Building types and layouts should respond to the streetscape and site while optimising solar access within the development.	The building continues to complement the streetscape and site by providing a consistent massing that is responsive to the form of adjoining buildings and existing view corridors.	Complies
Objective 3B-2 Overshadowing of neighbouring properties is minimised during mid-winter	The modified proposal has been designed to maximise northern orientation and views available to the east. The form/massing of the proposed remains generally unchanged compared to that which was originally approved, such that additional solar access impacts are avoided.	Complies
3C Public domain interface		
Objective 3C-1 Transition between private and public domain is achieved without compromising safety and security	The café and restaurant, in addition to the upper level units, provide casual surveillance of the public domain.	Complies

Objective 3C-2 Amenity of the public domain is retained and enhanced	The amenity of the public domain is respected by the development and the development interacts with public domain interfaces.	Complies
3D Communal and public open space		
Objective 3D-1 An adequate area of communal open space is provided to enhance residential amenity and provide opportunities for landscaping. 1. Communal open space has a minimum area equal to 25% of the site. 2. Achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (mid-winter).	A barbeque terrace is provided for the occupants of the residential tenancies at the first floor level which satisfies the requirements of the DCP. The communal open space is north facing and receives good solar access.	Complies
Objective 3D-2 Communal open space is designed to allow for a range of activities, respond to site conditions and to be attractive and inviting	The communal space will provide for good recreation opportunities, with good levels of solar access and amenity.	Complies
Objective 3D-3 Communal open space is designed to maximise safety	Communal space is level and accessible for all residents and visitors.	Complies
Objective 3D-4 Public open space where provided is responsive to the existing pattern and use of the neighbourhood		N/A
3E Deep Soil Zones		
Objective 3E-1 Deep soil zones are to meet the following minimum requirements: <ul style="list-style-type: none">• 3m minimum dimension• 7% deep soil zone	The modified proposal maintains the approved suitable deep soil zones within the southern and eastern frontages.	Complies

3F Visual Privacy														
<p>Objective 3F-1 Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <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>	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>The proposed development largely retains the massing and form of the approved development with only minor changes to the northern side boundary.</p>	Complies – on merit
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>Objective 3F-2 Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space.</p>	<p>The proposed modified development maintains the open atrium maximises privacy whilst maintaining solar access and ventilation to the units.</p>	Complies												
3G Pedestrian access and entries														
<p>Objective 3G-1 Building entries and pedestrian access connects to and address the public domain</p>	<p>Pedestrian access to the entry points of all units is clearly visible and well defined when viewed from the public domain.</p>	Complies												
<p>Objective 3G-2 Access, entries and pathways are accessible and easy to identify</p>	<p>Access and entries easily identifiable as shown on architectural plans.</p>	Complies												
<p>Objective 3G-3 Large sites provide pedestrian links for access to streets and connection to destinations</p>	<p>Pedestrian links available between Rickard Road and Minarto Lane.</p>	Complies												
3H Vehicle access														
<p>Objective 3H-1 Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes</p>	<p>Vehicle access off Rickard Road is retained. The proposed internal driveway access point is to be widened to provide safer egress to the basement.</p>	Complies												

3J Bicycle and car parking		
<p>Objective 3J-1 Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas</p> <ul style="list-style-type: none"> - On sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or - On land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre 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>N/A – Site not within 800m of railway station or light rail stop and not within close proximity of appropriate zone. The development will provide 55 car spaces on site.</p>	<p>Complies – on merit</p>
<p>Objective 3J-2 Parking and facilities are provided for other modes of transport</p>	<p>Bicycle storage is provided in the basement level.</p>	<p>Complies</p>
<p>Objective 3J-3 Car park design and access is safe and secure</p>	<p>The design of the car park is considered to be safe. Private areas will be accessed with security keys to the central lift which will provide access between the parking and ground level at all times.</p>	<p>Complies</p>
<p>Objective 3J-4 Visual and environmental impacts of underground car parking are minimised</p>	<p>The use of under building parking minimises the visual impacts of the parking area.</p>	<p>Complies</p>
<p>Objective 3J-5 Visual and environmental impacts on on-grade car parking are minimised</p>		<p>N/A</p>
<p>Objective 3J-6 Visual and environmental impacts of above ground enclosed car parking are minimised.</p>		<p>N/A</p>

Part 4 Designing the building		
Amenity		
4A Solar and daylight access		
<p>Objective 4A-1 To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.</p> <p>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.</p> <p>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.</p>	<p>The majority of units will have good solar access throughout the day.</p> <p>The Design Verification Statement prepared by Haviland Architects includes a detailed Solar & Daylight Analysis for each unit which confirms which confirms at least 75% of the units will receive at least 2 hours of direct sunlight between 9am and 3pm in mid-winter to living rooms and private open spaces.</p> <p>The design of the development allows for the majority of the dwelling to receive 2 hours direct sunlight.</p>	<p>Complies</p> <p>Complies</p> <p>Complies</p>
<p>Objective 4A-2 -Daylight access is maximised where sunlight is limited -Courtyard, skylights and high level windows (with sills of 1,500mm or greater) are used only as a secondary light source in habitable rooms</p> <p>Objective 4A-3 Design incorporates shading and glare control, particularly for warmer months.</p>	<p>Units are positioned to maximise access to sunlight throughout the day time. All habitable rooms have access to light and ventilation. No habitable rooms rely on secondary light sources such as being lit and ventilated through other rooms.</p> <p>Noted</p>	<p>Complies</p> <p>Noted</p>
4B Natural ventilation		
<p>Objective 4B-1 -The building's orientation maximises capture and use of prevailing breezes for natural ventilation in habitable rooms. -Depths of habitable rooms support natural ventilation -Light wells are not the primary air source for habitable rooms -Doors and openable windows maximise natural ventilation</p>	<p>Noted and as detailed in the attached site analysis plan.</p>	<p>Complies</p>

<p>opportunities</p> <p>Objective 4B-2</p> <p>-Apartment depths are limited to maximise ventilation and airflow.</p> <p>-Natural ventilation to single aspect apartments is achieved with the following design solutions:</p> <ul style="list-style-type: none"> • primary windows are augmented with plenums and light wells (generally not suitable for cross ventilation) • stack effect ventilation/solar chimneys or similar to naturally ventilate internal building areas or rooms such as bathrooms and laundries • courtyards or building indentations have a width to depth ratio of 2:1 or 3:1 to ensure effective air circulation and avoid trapped smells <p>Objective 4B-3</p> <p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents</p> <p>-At least 60% of apartments are naturally cross-ventilated in the first nine storeys of 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> <p>-Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.</p>	<p>Apartment depths are appropriate.</p> <p>Depth of single aspect apartments minimised.</p> <p>Noted. All apartments are designed to maximise airflow.</p> <p>No units exceed 18m in depth.</p>	<p>Complies</p> <p>Complies</p> <p>Complies</p> <p>Complies</p> <p>Complies</p> <p>Complies</p>
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4C Ceiling heights**Objective 4C-1**

Measured from finished floor level to finished ceiling level, minimum ceiling heights are:

Minimum ceiling height for apartment and mixed use buildings	
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

These minimums do not preclude higher ceilings if desired.

Objective 4C-2

Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms.

Objective 4C-2

Ceiling heights of lower level apartments in centres should be greater than the minimum required by the design criteria allowing flexibility and conversion the non-residential uses

Ground: 2.8m
Residential: 3m minimum

Remains unchanged

Proposed ceiling heights are greater than the minimum requirement.

Complies

4D Apartment size and layout**Objective 4D-1**

-Apartments are required to have the following minimum internal areas:

Apartment type	Minimum internal area
Studio	35m ²
1 bedroom	50m ²
2 bedroom	70m ²
3 bedroom	90m ²

-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

1 bed min size – 51m²
2 bed min size – 73m²
3 bed min size – 130m²

Complies

Habitable rooms have appropriate window openings allowing for direct daylight and ventilation.

Complies

<p>be borrowed from other rooms</p> <p>Objective 4D-2</p> <p>-Habitable room depths are limited to a maximum of 2.5 x the ceiling height</p> <p>-In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</p> <p>Objective 4D-3</p> <p>-Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space)</p> <p>-Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</p> <p>-Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> ➤ 3.6m for studio and 1 apartments ➤ 4m for 2 and 3 bedroom apartments <p>-The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	<p>Room depths are appropriate with regard to ceiling height.</p> <p>All units provide an open plan layout. The proposed living room depth of units 2, 4, 7, 12, 14 & 17 each presents a minor noncompliance with this control. The majority of units will receive good solar access and natural ventilation. Accordingly, the proposed noncompliance is deemed acceptable on merit.</p> <p>A number of units present a minor noncompliance to this provision. As suitable areas are provided, this is considered acceptable on merit.</p> <p>All bedrooms meet or exceed the minimum dimension prescribed.</p> <p>Unit No. 2 & 12 present a minor noncompliance to this control. The indicative furniture layout demonstrates that the proposed area is suitable.</p> <p>The proposed width of all crossover and cross-through apartments complies with this control.</p>	<p>Complies</p> <p>Complies</p> <p>Complies</p> <p>Complies</p> <p>Complies</p> <p>Complies</p>															
4E Private open space and balconies																	
<p>Objective 4E-1</p> <p>All apartments are required to have primary balconies as follows:</p> <table border="1" data-bbox="261 1619 678 1829"> <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> <p>- For apartments at ground level or</p>	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	<p>All units have primary balconies which meet the requirements.</p>	<p>Complies</p> <p>N/A</p>
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															

<p>on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m</p> <p>Objective 4E-2 -Primary open space and balconies should be located adjacent to the living room, dining room or kitchen to extend the living space</p> <p>- Private open spaces and balconies predominantly face north, east or west - Primary open space and balconies should be orientated with the longer side facing outwards or be open to the sky to optimise daylight access into adjacent rooms</p> <p>Objective 4E-3 Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building</p> <p>Objective 4E-4 Private open space and balcony design maximises safety</p>	<p>Primary balconies are located directly off the principal living spaces.</p> <p>The majority of balconies are oriented to the north or east.</p> <p>Private open space and balcony design is integrated into building design and contributes to the articulation of the building.</p>	<p>Complies</p> <p>Complies</p> <p>Complies</p> <p>Complies</p>
4F Common circulation and spaces		
<p>Objective 4F-1 Common circulation spaces achieve good amenity and properly service the number of apartments.</p> <p>1. The maximum number of apartments off a circulation core on a single level is eight.</p> <p>Objective 4F-2 Common circulation spaces promote safety and provide for social interaction between residents</p>	<p>The lifts and stairs from the parking level are conveniently located and provide access to the residential units and the commercial spaces from the parking level.</p> <p>A maximum of 5 dwellings share a circulation core at each level.</p>	<p>Complies</p> <p>Complies</p>

4G Storage																	
<p>Objective 4G-1</p> <p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table><tr><th>Dwelling type</th><th>Storage size volume</th><th></th></tr><tr><td>Studio apartments</td><td>4m³</td><td></td></tr><tr><td>1 bedroom apartments</td><td>6m³</td><td></td></tr><tr><td>2 bedroom apartments</td><td>8m³</td><td></td></tr><tr><td>3+ bedroom apartments</td><td>10m³</td><td></td></tr></table> <p>At least 50% of the required storage is to be located within the apartment</p> <p>Objective 4G-2</p> <p>Additional storage is conveniently located, accessible and nominated for individual apartments</p>	Dwelling type	Storage size volume		Studio apartments	4m³		1 bedroom apartments	6m³		2 bedroom apartments	8m³		3+ bedroom apartments	10m³		<p>All units are provided with suitable storage within the unit and in the basement.</p>	<p>Complies</p> <p>Complies</p>
Dwelling type	Storage size volume																
Studio apartments	4m³																
1 bedroom apartments	6m³																
2 bedroom apartments	8m³																
3+ bedroom apartments	10m³																
4H Acoustic privacy																	
<p>Objective 4H-1</p> <p>Noise transfer is minimised through the siting of buildings and building layout</p> <p>Objective 4H-2</p> <p>Noise impacts are mitigated within apartments through layout and acoustic treatments</p>	<p>Noted</p> <p>The proposed development does not significantly alter the acoustic impact associated with the approved development.</p>	<p>Complies</p> <p>Complies</p>															
4J Noise and pollution																	
<p>Objective 4J-1</p> <p>In noisy or hostile environments, the impacts of external noise and pollution are minimised through the careful siting and layout of buildings</p> <p>Objective 4J-2</p> <p>Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission</p>		<p>Complies</p> <p>Complies</p>															

Configuration		
4K Apartment mix		
<p>Objective 4K-1 A range of apartment types and sizes is provided to cater for different household type now and into the future.</p>	<p>The dwellings provide choice and are optimal for all age groups. A mix of one, two and three bedroom units are provided.</p>	<p>Complies</p>
<p>Objective 4K-2 The apartment mix is distributed to suitable locations within the building.</p>	<p>The mix of apartments is suitably distributed throughout the development.</p>	<p>Complies</p>
4L Ground floor apartments		
<p>Objective 4L-1 Street frontage activity is maximised where ground floor apartments are located</p>		<p>N/A</p>
<p>Objective 4L-2 Design of ground floor apartments delivers amenity and safety for residents.</p>		<p>N/A</p>
4M Facades		
<p>Objective 4M-1 Building facades provides visual interest along the street while respecting the character of the local area.</p>	<p>The development will be compatible with the E1 zone. The building is sensitive to surrounding residential development, with massing and setbacks that are generally consistent with those originally approved.</p>	<p>Complies</p>
<p>Objective 4M-2 Building functions are expressed by the facades.</p>	<p>The approved façade treatments will convey a clear interpretation of the uses on each level.</p>	<p>Complies</p>
4N Roof Design		
<p>Objective 4N-1 Roof treatments are integrated into the building design and positively respond to the street.</p>	<p>The development will be compatible with the surrounding commercial and residential development.</p>	<p>Complies</p>
<p>Objective 4N-2 Opportunities to use roof space for residential accommodation and open space are maximised.</p>	<p>The development will provide visual interest to the streetscape through the design techniques.</p>	<p>N/A</p>

Objective 4N-3 Roof design incorporates sustainability features.	The proposed façade treatments will convey a clear interpretation of the predominantly residential development except where commercial uses are provided for at the lower levels.	Complies
4O Landscape design		
Objective 4O-1 Landscape design is viable and sustainable.	The proposed landscaping provides visual interest with low maintenance.	Complies
Objective 4O-2 Landscape design contributes to the streetscape and amenity.	Landscaping will contribute to the development as viewed from the neighbouring residential properties and the public domain, through the provision of privacy and the softening of the built form.	Complies
4S Mixed use		
Objective 4S-1 Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement.	The proposed mixed-use development is in a suitable location.	Complies
Objective 4S-2 Residential levels of the building are integrated within the development and safety and amenity is maximised for residents.	The residential levels are suitably integrated into the development, with safety and amenity to be maximised for the residential units.	Complies
4T Awnings and signage		
Objective 4T-1 Awnings are well located and complement and integrate with the building design.	The modified proposal maintains the approved awnings to the Rickard Road and Minarto Lane frontages for weather protection.	Complies
Objective 4T-2 Signage responds to the context and desired streetscape character.	Commercial signage may follow in the future with the occupation of the commercial units.	N/A

Performance		
4U Energy efficiency		
Objective 4U-1 Development incorporates passive environmental design.	The development will maximise natural light and ventilation into habitable rooms.	Complies
Objective 4U-2 Development incorporated passive solar design to optimise heat storage in winter and reduce heat transfer in summer.	The development is subject to SEPP (BASIX) and will comply with any energy efficiency requirements.	Complies
Objective 4U-3 Adequate natural ventilation minimises the need for mechanical ventilation.	Natural ventilation is maximised throughout the design of the dwellings.	Complies
4V Water management and conservation		
Objective 4V-1 Potable water use is minimised.	Noted. Water storage will be subject to Council's policies.	Complies
Objective 4V-2 Urban stormwater is treated on site before being discharged to receiving waters.	Noted. Stormwater treatment will be subject to Council's policies.	Complies
Objective 4V-3 Flood management systems are integrated into site design.		N/A
4W Waste management		
Objective 4W-1 Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.	Waste storage is located in the basement level, with separate waste areas for the commercial and residential waste.	Complies
Objective 4W-2 Domestic waste is minimised by providing safe and convenient source separation and recycling.	Access for waste removal from the commercial bin storage area will be via Rickard Road. The residential waste will be removed via Minarto Lane. The residential bin storage area will be accessible by all residents and the area will not be visible from public areas. Recycling facilities will also be provided within the bin storage area.	Complies

4X Building maintenance		
Objective 4X-1 Building design detail provides protection from weathering.	The proposed development will be weather protected according to conventional construction standards.	Complies
Objective 4X-2 Systems and access enable ease of maintenance.		Complies
Objective 4X-3 Material selection reduces ongoing maintenance costs.		Complies

4.5 Pittwater Local Environmental Plan 2014

The land is zoned E1 Local Centre under the provisions of the PLEP 2014.



Fig 11: Extract of Warringah Local Environmental Plan 2011

The approved shop-top housing development is permissible with consent in the E1 Local Centre zone.

The E1 Local Centre zone objectives are noted as:

- To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.
- To encourage investment in local commercial development that generates employment opportunities and economic growth.
- To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse, and functional streets and public spaces.
- To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.

It is considered that the proposed modified development will remain consistent with the Objectives of the zone for the following reasons:

- The proposal will be consistent with the existing and desired future character for mixed use development in the locality, and complement the existing residential and commercial development within the locality.
- The proposed development respects the scale and form of other development in the vicinity and therefore complements the locality. The proposal provides for a mixed use development with basement car parking, which is considered acceptable having regard for the context and impact on neighbouring properties. Additionally, the proposal is in keeping with the desired future character of the locality.
- The setbacks are compatible with the existing surrounding development.
- The proposal does not have any impact on long distance views.

Clause 4.3 provides controls relating to the height of buildings.

The maximum building height in this portion of Narrabeen is 8m above the flood planning level of RL 4.1m AHD.

The proposal will maintain the approved overall height of the development and therefore the general bulk and scale as perceived from the surrounding public spaces.

Clause 4.4 – Floor Space Ratio

The site is not noted as being subject to any Floor Space Ratio requirements.

Clause 7.1 – Acid sulfate soils

The site is identified as being within the Class 3 Acid Sulfate Soils area. The proposed works will not be more than 1m below the natural ground surface, and it is not anticipated that the proposed works will lower the water table by more than 1m. Accordingly, the proposal is in keeping with the provisions of this clause.

Clause 7.2 – Earthworks

The proposal will see excavation of the site to accommodate the construction of the basement car park. All works will be carried out under the supervision of the Consulting Geotechnical & Structural Engineers.

Clause 7.3 – Flood Planning

The proposal will maintain the previous flood provisions as determined in the original consent.

Clause 7.10 – Essential Services

The site has existing access to the essential services which will be required to accommodate the proposed mixed use development.

There are no other clauses of the PLEP 2014 that are considered to be relevant to the proposed development. It is considered that the proposal achieves the requirements of the PLEP.

4.6 Pittwater 21 Development Control Plan

Council's Pittwater 21 DCP provides a range of outcomes and controls which form the primary criteria control for development within the subject locality.

5.4.1 Section A Introduction

A4.11 North Narrabeen

Desired Character

The desired character of the North Narrabeen Locality is summarised as:

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

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

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

The design, scale and treatment of future development within the North Narrabeen commercial centre on Pittwater Road will reflect the status of the centre as the 'gateway' to Pittwater through building design, signage and landscaping, and will reflect principles of good urban design.

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

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

Vehicular, pedestrian and cycle access within and through the locality will be maintained and

upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities."

It is considered that the proposal modifications maintain consistency with the desired character of the locality by providing for a mixed use development comprising commercial and residential components which will continue to serve the needs of the local residents and will support the desired future character of North Narrabeen. The multi-unit housing is appropriately located at the fringe of the commercial area as envisaged in the Locality Statement.

5.4.2 Section B General Controls

The General Controls applicable to the proposed works are summarised as:

B2.6 Dwelling Density and Subdivision – Shop-Top Housing

The controls seek to achieve the outcomes of:

Achieve the desired future character of the Locality. (S)

The density and scale of development reflects the infrastructure capability of the area. (En, S)

Design opportunities and site layout efficiencies are improved through amalgamation of allotments. (En, S)

The development does not adversely impact upon adjoining residential development. (En, S)

An appropriate mix of residential and commercial development is provided, ensuring the functionality of commercial centres. (S, Ec)

Meet the economic and employment needs of Pittwater Community (Ec.S).

The controls require that the commercial/retail component of a development must be a minimum of 25% of the Gross Floor Area (GFA) of the building.

The GFA for the development will be 2363m².

The GLA of the retail/commercial component required is 590.75m² (25% of the GFA). The development provides for a GLA of 440.9m², which whilst not compliant with the minimum control, will make a significant contribution to the commercial space within the North Narrabeen retail precinct.

The proposed retail space will be provided within three separate tenancies which open to the central atrium courtyard. The layout of the tenancies will allow for the retail space to be used for a range of uses, including shops, offices or refreshment room/restaurant uses.

The inclusion of the open atrium is within an area that could otherwise be developed as floor space and comfortably comply with the 25% control. However, in this instance the distinctive design adds a significant positive contribution to this development which has been identified by Council as a 'gateway' to the new North Narrabeen precinct and befits such a prestige location in the community's longer term vision for the locality.

Notwithstanding the total GLA will be less than the requirements of the control, the viability of the shopping precinct will not be unreasonably compromised by this development.

The maximum housing density of 1 dwelling per 150m² per site area applies to this locality. The total site area is 1952.50m² and therefore the control seeks a maximum of thirteen (13) dwellings may be provided. This proposal comprises twenty dwellings which will exceed the control.

The proposed dwelling density may contemplate up to 13 x 3 bedroom dwellings, with a total of 39 bedrooms as a potential yield on the site.

The approach with this development is to provide for a mix of units, which whilst contained within 20 individual dwellings comprising 6 x 1 beds, 12 x 2 beds & 2 x 3 beds. From any neighbouring vantage point, the building will appear as two storeys over the podium level commercial space.

The development will provide for thirty-six bedrooms, which is less than the potential yield.

The design will provide for the new dwellings within a well-articulated and sympathetic built form which will present a significant positive contribution to the locality.

B3.6 Contaminated Land and Potentially Contaminated Land

The controls seek to achieve the outcomes of:

Protection of public health. (S)

Protection of the natural environment. (En)

Successful remediation of contaminated land. (En, S)

The site has a history of residential use and therefore no further investigation is deemed necessary in this instance.

B3.11 Flood Prone Land

The controls seek to achieve the outcomes of:

Protection of public health.

Protection of the natural environment.

Successful remediation of contaminated land.

The site is noted as being Flood Prone Land and Land Within Risk to Life H3 & H5. The proposal will maintain the approved floor levels and also the original flood storage provisions is determined under the original consent.

B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)

The controls seek to achieve the outcomes of:

To protect people. (S)

To protect the natural environment. (En)

To protect private and public infrastructure and assets. (Ec)

As discussed, the proposal maintains the approved floor levels and the original flood provisions determined under the original consent

B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land

The controls seek to achieve the outcomes of:

The long-term viability and enhancement of locally native flora and fauna and their habitats. (En)

The works will not see the removal of protected vegetation or any significant excavation of the site. Managed replanting of the site will be undertaken, with a landscape plan prepared by Space Landscape Designs dated 24 July 2023 to support the proposal. The planting regime for the site will adopt locally occurring indigenous planting in accordance with Council's requirements.

The landscape plan provides for screen planting at the ground level, with taller shrub and understorey planting being provided to screen the built form. Planting to the upper level will be provided in planter boxes to assist in reducing the potential overlooking to the neighbouring residential dwellings and will also enhance the streetscape view of the built form.

B5.5 Stormwater Management - Rainwater Tanks - Business, Light Industrial and Other Development

The controls seek to achieve the outcomes of:

Water conservation and reduction in mains water demand. (En, Ec)

Development is compatible with Water Sensitive Urban Design principles. (En)

The approved stormwater arrangements will remain unchanged.

B5.15 Stormwater

The controls seek to achieve the outcomes of:

No increase in pollutants discharged with stormwater into the environment. (En)

Development is compatible with Water Sensitive Urban Design principles. (En)

As discussed, the approved stormwater arrangements will remain unchanged.

B6.1 Access Driveways and Works on the Public Road Reserve

The controls seek to achieve the outcomes of:

- Safe and convenient access. (S)*
- Adverse visual impact of driveways is reduced. (S)*
- Pedestrian safety (S)*
- An effective road drainage system (En, S)*

The approved vehicular access arrangements will remain unchanged.

B6.2 Internal Driveways

The controls seek to achieve the outcomes of:

- Safe and convenient access. (S)*
- Adverse visual impact of driveways is reduced. (S)*
- Pedestrian safety (S)*
- An effective road drainage system (En, S)*
- Vehicle/pedestrian conflict is minimised in commercial centres (Ec, S)*
- Maximise retention of native vegetation and trees.*
- Reduce contaminate run-off from driveways.*

The approved vehicular access arrangements will remain unchanged.

B6.3 Off-Street Vehicle Parking Requirements

The controls seek to achieve the outcomes of:

- An adequate number of parking and service spaces that meets the demands generated by the development. (S)*
- Functional parking that minimises rainwater runoff and adverse visual or environmental impacts while maximising pedestrian and vehicle safety. (En, S)*
- Small retail facilities are encouraged in the Newport Commercial Centre. (Ec, S)*

The proposal largely retains the original parking provisions, with 55 car spaces being attained within the site.

B6.7 Transport and Traffic Management

The controls seek to achieve the outcomes of:

- Safe and orderly traffic, pedestrian and cyclist access to and from all development via the surrounding road network and transport infrastructure. (En, S)*
- The developer meets the cost of upgrading the surrounding road, and traffic and transport infrastructure to meet the needs generated by the development. (S, Ec)*

The traffic generated by the modifications are considered to remain largely unchanged. It is considered that the proposal will not place any unreasonable demand on the public infrastructure and will cater for light vehicle access only which will not present any constraint to traffic movement in the locality.

B8.2 Construction and Demolition - Erosion and Sediment Management/Waste Minimisation/Site Fencing and Security

The controls seek to achieve the outcomes of:

Waterways, coastal areas, watercourses, drainage systems and the public domain are protected from the transportation of sedimentation from development sites. (En)

Reduction of waste throughout all phases of development. (En)

Public safety is ensured. (S)

Protection of the public domain. (S, En)

The works do not require significant excavation of the site and appropriate sedimentation and erosion control measures will be implemented prior to the commencement of the work.

B8.3 Construction and Demolition - Waste Minimisation

The controls seek to achieve the outcomes of:

Reduction of waste throughout all phases of development. (En)

A waste management report will be provided with the construction certificate which will confirm that waste minimisation practices will be adopted during the demolition and construction phase.

B8.4 Construction and Demolition - Site Fencing and Security

The controls seek to achieve the outcomes of:

Ensuring public safety. (S)

Protection of public domain. (S, Ec)

Appropriate security fencing will be provided to secure the site during the demolition and construction process.

5.4.3 Section C Development Type Controls

C1.3 View Sharing

The controls seek to achieve the outcomes:

A reasonable sharing of views amongst dwellings. (S)
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. (S)
Canopy trees take priority over views. (En, S)

The surrounding properties currently enjoy local views only and the proposal will therefore not impact on any significant views. Accordingly, the proposal is in keeping with this provision.

C1.9 Adaptable Housing & Accessibility

The controls seek to achieve the outcomes:

The community's accessibility needs are met within Pittwater through well designed adaptable development. (S)
All members of the community enjoy equitable access to buildings to which the general public have access. (S)
Equitable access in the public domain. (S)

The modified proposal maintains the original access provisions.

C2.1 Landscaping

The controls seek to achieve the outcomes of:

A built form softened and complemented by landscaping. (En)
Landscaping that reflects the scale and form of development. (En)
Landscape elements provided in accordance with an approved masterplan. (En, Ec)

The application retains the approved generous areas of soft landscaping which will surround the building and soften the impact of the scale of the new works. Refer to the submitted modified Landscape Plan prepared by Space Landscape Designers which accompanies the subject proposal.

C2.2 Safety and Security

The controls seek to achieve the outcomes:

On-going safety and security of the Pittwater community. (S)
Opportunities for vandalism are minimised. (Ec, S)
Unobtrusive security devices that are sympathetic to the character of the building and the streetscape. (S)

Inform applicants of Council's requirements for crime and safety management for new development. (S)

Improve community awareness in relation to Crime Prevention through Environmental Design (CPTED), its principle strategies and legislative requirements (S)

Identify crime and safety priority areas in Pittwater LGA (S, Ec)

Improve community safety and reduce the fear of crime in the Pittwater LGA (S)

Develop and sustain partnerships with key stakeholders in the local area who are involved in community safety. (S)

The works will not reduce the safety and security of the locality. The residential occupants will be able to maintain surveillance of the surrounding locality.

The retail/commercial spaces will allow for casual surveillance of the street area.

C1.4 Solar Access

The controls seek to achieve the outcomes:

Residential development is sited and designed to maximise solar access during mid-winter. (En)

A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development. (En)

Reduce usage and/dependence for artificial lighting. (En)

The main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.

Windows to the principal living area of the proposal, and windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows). Neighbouring properties will continue to maintain suitable solar access.

The proposal is accompanied by an amended detailed Shadow Diagram Analysis which confirms that 80% of the units will continue to receive suitable solar access in accordance with this provision.

As discussed, the reduced set back to the northern boundary does not adversely affect the option of solar access for subject units. Given the neighbouring developed to the north will present a blank wall to the interface with subject site, there is setback is not as important in terms of providing amenity to neighbouring properties.

C 1.15 Storage Facilities

The controls seek to achieve the outcomes:

Provision of convenient storage with the development. (S)

A minimum of 8m³ has been provided for each dwelling in the basement garage in accordance with this provision.

C2.7 Building Facades

The controls seek to achieve the outcomes of:

Improved visual aesthetics for building facades. (S)

The building facades will remain largely unchanged, with the development to present a contemporary and attractive building façade which will present a significant contribution to the architectural quality of the locality.

The approved flat parapet roof form and external finishes will be maintained.

C2.8 Energy and Water Conservation

The controls seek to achieve the outcomes of:

More efficient use of resources in Pittwater. (En)

The orientation, design and siting of buildings makes the best use of natural ventilation, daylight and solar energy. (En)

Water sensitive urban design. (En)

The design has regard for the energy and water conservation principles by providing for appropriate solar access to the living spaces and balconies for the dwellings.

A BASIX Certification has been provided for the development and the construction will achieve the commitments identified in the BASIX report.

C2.9 Waste and Recycling Facilities

The controls seek to achieve the outcomes of:

Adequately sized, accessible, convenient waste and recycling facilities that integrate with the development.

Waste and recycling facilities located such that they do not adversely impact upon amenity of the adjoining development or natural environment. (En, S)

The development maintains the approved garbage storage areas which are located at ground floor level and accessible to the street for collection of waste by Council's contractor.

C2.11 Business Identification Signs

The controls seek to achieve the outcomes of:

Business identification signs are compatible with the desired amenity and visual character of

the locality. (S)

Business identification signs do not adversely impact upon any heritage item or conservation area. (S)

Business identification signs do not result in visual clutter of the landscape. (S)

Business identification signs are of high quality design and finish. (S)

Business signage will be provided for the retail/commercial units as part of a future application.

C2.12 Protection of Residential Amenity

The controls seek to achieve the outcomes of:

Business development that does not have an adverse impact upon adjoining residential development. (S)

Maintenance of a reasonable level of solar access and visual privacy to residential properties. (En, S)

The development has been designed to have regard for the amenity of both the surrounding buildings and the proposed new units, in terms of the considered location of habitable room windows and balconies.

C2.16 Undergrounding of Utility Services

The controls seek to achieve the outcomes of:

Visual pollution by aerial cables is reduced (En, S)

Improved safety by removal of visual clutter (En, S)

Opportunities for street tree planting is enhanced (En)

Safety of building occupants is maintained and enhanced. (S)

Security of utility services is improved. (S)

Design and construction of undergrounding is funded by the developer. (Ec)

The proposal will meet these requirements for undergrounding of utility services.

C2.22 Plant, Equipment Boxes and Lift Over-Run

The controls seek to achieve the outcomes of:

To achieve the desired future character of the Locality.

The bulk and scale of the built form is minimised. (En, S)

Equitable preservation of views and vistas to and/or from public/private places. (S)

To achieve reduction in visual clutter. (En, S)

The appropriate location and design of noise generating equipment.

The bulk and scale of the proposal is minimised. Views are protected. The lift over-run is successfully incorporated into the contemporary design of the building.

5.4.4 Section D Locality Specific Development Controls

The **D11 North Narrabeen Locality Statement** contains a number of outcomes for development. The proposed modifications have been assessed in regard to the Locality Statement and is summarised in the following table.

In support of the proposal, it is considered that this proposal is well designed, comprehensive and consistent with the community's vision for development in Pittwater in that it is:

- Proposing a form of development which is compatible with the existing commercial/retail character of the area by maintaining an appropriate development scale which is compatible with the vicinity.
- The development will not place any unreasonable additional demands on local infrastructure or on the sewage disposal system for the site.

A summary of the DCP controls for the **D11 North Narrabeen Locality** is provided below:

D11.1 Character as Viewed from a Public Place

The control seeks to achieve the outcomes:

To achieve the desired future character of the Locality.

To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment.

To enhance the existing streetscapes and promote a scale and density that is in scale with the height of the natural environment

The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation. (En, S, Ec)

High quality buildings designed and built for the natural context and any natural hazards. (En, S)

Buildings do not dominate the streetscape and are at human scale. Within residential areas, buildings give the appearance of being two-storey maximum. (S)

To preserve and enhance district and local views which reinforce and protect Pittwater's natural context.

To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures being a secondary component

To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land. (En, S)

The required controls to achieve the outcomes are to ensure that the building maintains a compatibility with the locality through appropriate design relief including roof forms textures, materials, the arrangement of windows, modulation of wall and roof planes, spatial separation, landscaping etc.

It is considered that the modified development will present a significant positive contribution to the architectural quality of the locality.

D11.2 Scenic Protection - General

The controls seek to achieve the outcomes:

Achieve the desired future character of the Locality.

Bushland landscape is the predominant feature of Pittwater with the built form being the secondary component of the visual catchment. (En, S)

The required controls to achieve the outcomes are to ensure that the development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.

It is considered that the proposed modification will respect the desired outcomes as the development will add positively to the commercial area in general. Views for the public and private properties in the area will be substantially maintained.

The proposed landscaping schedule will re-establish soft landscape cover to the site.

D11.3 Building Colours, Materials and Construction

The controls seek to achieve the outcomes:

Achieve the desired future character of the Locality.

The development enhances the visual quality and identity of the streetscape. (S)

To provide attractive building facades which establish identity and contribute to the streetscape.

To ensure building colours and materials compliments and enhances the visual character and its location with the natural landscapes of Pittwater.

The colours and materials of the development harmonise with the natural environment. (En, S)

The visual prominence of the development is minimised. (S)

Damage to existing native vegetation and habitat is minimised. (En)

The required controls to achieve the outcomes are to ensure that the external colours and materials shall be dark and earthy tones as indicated within the DCP. It is considered that the development is appropriate as the works will utilise complementary finishes and colours which will enhance the streetscape view of the site.

D11.6 Front building line

The controls seek to achieve the outcomes:

Achieve the desired future character of the Locality. (S)

Equitable preservation of views and vistas to and/or from public/private places. (S)

The amenity of residential development adjoining a main road is maintained. (S)

Vegetation is retained and enhanced to visually reduce the built form. (En)

Vehicle manoeuvring in a forward direction is facilitated. (S)

To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.

To encourage attractive street frontages and improve pedestrian amenity.

To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.

The front setback controls seek to provide for a minimum setback of 3.5m for land zoned business.

Land zoned E1 Local Centre is subject to a front building line of 3.5m. The development will stand 3.5m from Minarto Lane and therefore complies with this control.

A secondary setback of 1.75m applies to Rickard Road. The development will maintain a 3m setback from Rickard Road and maintains compliance with this control.

The setbacks are well modulated and deep soil planting zones have been incorporated to deliver substantial screen planting opportunity to further supplement the public domain.

The street façade to both Rickard Road & Minarto Lane has been modulated to present an attractive street presentation, with planter box relief to the upper floors and the inclusion of planting zones within the site at ground level. Additional street trees and landscaping can be provided within the road reserve in conjunction with Council's open space controls.

D11.7 Side and rear building line

The control seeks to achieve the outcomes:

To achieve the desired future character of the Locality. (S)

The bulk and scale of the built form is minimised. (En, S)

Equitable preservation of views and vistas to and/or from public/private places. (S)

To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)

Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)

Flexibility in the siting of buildings and access. (En, S)

Vegetation is retained and enhanced to visually reduce the built form. (En)

To ensure a landscaped buffer between commercial and residential zones is established. (En, S)

The controls provide a nil side and rear setback control for development in the E1 Local Centre zone.

The proposal is set back from the northern and western side boundaries and comply with this provision.

The side setback areas are adequate to provide for substantial planting zones which will assist in screening the built form.

5.0 Matters for Consideration under Section 4.56 of the EP&A Act

The EP&A Act provides for the modification of a consent under Section 4.56 which notes:

- (1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if—*
 - (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
 - (b) it has notified the application in accordance with—*
 - (i) the regulations, if the regulations so require, and*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
 - (c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*
 - (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*
- (1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*
- (1B) (Repealed)*
- (1C) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.*
- (2) After determining an application for modification of a consent under this section, the consent authority must send a notice of its determination to each person who made a submission in respect of the application for modification.*
- (3) The regulations may make provision for or with respect to the following—*
 - (a) the period after which a consent authority, that has not determined an application under this section, is taken to have determined the application by refusing consent,*
 - (b) the effect of any such deemed determination on the power of a consent authority to determine any such application,*
 - (c) the effect of a subsequent determination on the power of a consent authority on any appeal sought under this Act.*

Accordingly, for the Council to approve the S4.56 Modification Application, the Council must be satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted.

To assist in the consideration of whether a development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted,

Justice Bignold established the following test in the *Moto Projects (No 2) Pty Ltd v North Sydney Council* (1999) 106 LGERA 289 (**Moto**) where His Honours states:

[54] The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.

[55] The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the (currently) approved development.

[56] The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).

In my opinion, in terms of both a qualitative and quantitative comparison, the modified development remains substantially the same as that which was approved by N0267/16.

The proposed modifications do not alter the characterisation of the development, and the works continue to provide for the construction of shop top housing development, comprising 3 commercial units, 20 residential units and parking, over 4 levels.

The proposed modifications do not result in a radical transformation of the form or massing of the development, with the height and setbacks of the proposal generally the same as those originally approved.

The proposed modifications will see changes to the basement parking, together with the configuration of a number of the residential apartments.

The provisions of S4.56 are meant to be beneficial and facultative (*Michael Standley & Associates Pty Ltd v North Sydney Council* [2005] NSWLEC 358), and in this respect, the proposed modifications result in a significantly improved architectural outcome compared to that previously approved, with enhanced amenity for future occupants of the development and adjoining properties.

In my view, this application is substantially the same as the original application when considered in the context of the Bignold J determination in *Moto*.

6.0 Matters for Consideration under Section 4.15 of The Environmental Planning and Assessment Act, 1979

6.1 The provisions of any environmental planning instrument

The proposal is subject to the provisions of the various State Environmental Planning Policies and Pittwater Local Environmental Plan 2014. It is considered that the provisions of these environmental planning instruments have been satisfactorily addressed within this report and that the modified proposal achieves compliance with its provisions.

There are no other environmental planning instruments applying to the site.

6.2 Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

There are no draft environmental planning instruments applying to the site.

6.3 Any development control plan

The revised development has been designed to comply with the requirements of the Pittwater Development Control Plan.

It is considered that the proposed design respects the DCP in that it reinforces the existing residential character of the area and is compatible with the existing uses in the vicinity.

6.4 Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

No matters of relevance are raised in regard to the proposed development.

6.5 Any matter prescribed by the regulations that apply to the land to which the development relates.

No matters of relevance are raised in regard to the proposed development.

6.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.

It is considered that the proposal will not unreasonably impact upon the amenity of adjoining commercial and residential properties or upon the character of the surrounding area. It is considered that the resultant development is compatible with and will complement the character of the area.

The proposal is considered to be well designed having regard to the relevant provisions of Council's LEP and DCP.

6.7 The suitability of the site for the development

The subject land is zoned E1 Local Centre and the proposed development remains permissible with the consent of Council. The site is considered suitable for the proposed development.

6.8 Any submissions made in accordance with this Act or the regulations.

This is matter for Council in the consideration of this proposal.

6.9 The public interest

The proposal will not adversely impact upon the environment, the character of the locality or upon the amenity of adjoining properties and is therefore considered to be within the public interest.

7.0 Conclusion

The principal objective of this development is to seek consent for modifications to the shop top housing development approved pursuant to N0267/16, which has been physically commenced.

By maintaining our neighbour's amenity and by complimenting the scale and form of other development in the immediate locality, the stated objectives have been satisfied.

As the proposed development will not have any significant impact on the environment, scenic quality of the area or the amenity of the adjoining allotments, the issue of a Development Consent under the delegation of Council is requested.

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