

# STATEMENT OF ENVIRONMENTAL EFFECTS

Proposed Shop Top  
Housing Development

1 – 5 Rickard Road,  
North Narrabeen

Suite 1, 9 Narabang Way Belrose NSW 2085

Phone: (02) 9986 2535 | [www.bbfplanners.com.au](http://www.bbfplanners.com.au)

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

# Statement of Environmental Effects

## Proposed Shop Top Housing Development



**1 - 5 Rickard Road, North Narrabeen**

### **Greg Boston**

B Urb & Reg Plan (UNE) MPIA  
Boston Blyth Fleming Pty Ltd  
(ACN 121 577 768)

Suite 1/9 Narabang Way  
Belrose NSW 2085

Tel: (02) 99862535

July 2024

**TABLE OF CONTENTS**

**1.0 Introduction ..... 4**

**2.0 Site description and Locality ..... 8**

    2.1 The Site ..... 8

    2.2 The Locality ..... 10

**3.0 Proposed Development ..... 13**

**4.0 Statutory Planning Framework ..... 15**

    4.1 Pittwater Local Environmental Plan 2014 ..... 15

        4.1.1 Zoning ..... 15

        4.1.2 Height of Buildings ..... 17

        4.1.3 Flood Planning ..... 18

        4.1.4 Acid Sulfate Soils ..... 19

        4.1.5 Earthworks ..... 19

        4.1.6 Essential Services ..... 19

    4.2 Pittwater 21 Development Control Plan ..... 21

        4.2.1 North Narrabeen Locality ..... 21

        4.2.2 P21 DCP Compliance Table ..... 23

    4.3 State Environmental Planning Policy (Sustainable Buildings) 2022 ..... 35

    4.4 State Environmental Planning Policy (Resilience and Hazards) 2021 ..... 35

        4.4.1 Coastal Hazard ..... 35

        4.4.2 Remediation of Land ..... 36

    4.5 State Environmental Planning Policy (Housing) 2021 – Design Quality of Residential  
Apartment Development ..... 36

**5.0 Matters for Consideration Pursuant to Section 4.15(1) of the EP&A Act ..... 38**

**6.0 Conclusion ..... 43**

**ANNEXURE 1 – Clause 4.6 variation request – Height of buildings**

## 1.0 Introduction

This document has been prepared to accompany the lodgement of a development application proposing the construction of a shop top housing development comprising 16 residential apartments above 5 retail (commercial) tenancies including parking for 42 vehicles over 2 levels. The application also proposes the implementation of an enhanced site landscape regime.

In the preparation of this application consideration has been given to the minutes arising from formal pre-lodgement engagement with Council and the Northern Beaches Design and Sustainability Advisory Panel (DSAP) (PLM2023/0102) with the final design detailing responsive to the associated recommendations. Particular attention has been given to key data obtained from a comprehensive flood information report obtained from Northern Beaches Council which provides flood data based on two previous flood studies. The key data can be summarised as follows:

Flood Information	Site Details
1% AEP Flood Level	3.03 m AHD
1% AEP (Climate Change) Flood Level	3.90 m AHD
PMF Flood Level	4.90 m AHD
FPL with climate change	4.40 m AHD

It is also evident from a review of recently approved/ currently proposed shop top housing development within this particular Flood Risk Precinct that the extent of flooding affectation makes compliance with Council’s no net loss of flood storage requirement extremely difficult to achieve in a practical and cost-effective manner.

In this regard, a fundamental component of the application is to provide a sub floor flood zone for flood storage as detailed within the accompanying Flood Management Report prepared by ACOR Consultants. This report confirms that the flood affectation of the site is not increased or made worse by the proposed development due to increased flood storage and accordingly will not create an increment in the flood level outside the site since the flood storage has not been compromise compared to the existing condition. In fact, the proposal provides for an increase in flood storage on the site.

The proposed design also locates all car parking at or above the 1% AEP Flood Level and all commercial and residential floor space above the Flood Planning Level (with climate change) being RL 4.40m AHD and the PMF of RL 4.90m AHD. Whilst the flood storage and floor level design outcomes satisfy Council’s flood planning controls it does have the consequence of increasing the overall height of the development to accommodate two residential floor levels above commercial floorspace. Such increase in overall building height is compensated for through the absence of rooftop shelter in place open space which is not required given that all commercial and residential floor levels are located above the Flood Planning Level (with climate change) and PMF Flood Level.

The final design, the subject of this application, represents a highly considered and resolved response to the constraints and opportunities identified, with the proposed development exhibiting good design not only in its architectural form, function and amenity but importantly, its success in responding to the significant constraint associated with the flood affectation and the current and desired future character of the area.

In addition to this SEE, the application is also accompanied by the following:

- Architectural Plans
- Boundary Survey
- Flood Management Report
- Landscape Plans
- Traffic and Parking Assessment Report
- Accessibility Report
- BCA Assessment Report
- Stormwater Management Plans
- Preliminary Site Investigation
- Geotechnical Investigation Report
- Arborist Report
- Acoustic Design and Construction Advice
- Waste Management Plan
- QS Report
- Architect Design Verification Statement
- ADG Compliance Table
- BASIX Certificate

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

- Environmental Planning and Assessment Act 1979, as amended (**EP&A Act**)
- Water Management Act 2000
- Pittwater Local Environmental Plan 2014 (**PLEP 2014**)
- Pittwater 21 Development Control Plan 2014 (**P21 DCP**)

- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Housing) 2021 - Design Quality of Residential Apartment Development
- State Environmental Planning Policy (Sustainable Buildings) 2022.

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

- The accompanying Flood Management Report prepared by ACOR Consultants confirms that the flood affectation of the site is not increased or made worse by the proposed development due to increased flood storage and accordingly will not create an increment in the flood level outside the site since the flood storage has not been compromise compared to the existing condition.
- Whilst the flood storage and floor level design outcomes satisfy Council's flood planning controls it does have the consequence of increasing the overall height of the development to accommodate two residential floor levels above commercial floorspace. Such increase in overall building height is compensated for through the absence of rooftop shelter in place open space which is not required given that all commercial and residential floor levels are located above the Flood Planning Level (with climate change) and PMF Flood Level.
- The overall building height is set by the minimum Finished Floor Level of an enclosed car park as required by the controls at D5 of Pittwater 21 DCP. The controls applying to basement parking on flood effected sites have removed the ability for development to be delivered in an orderly and economic manner. The minimum floor level for above ground parking remains at the 1% AEP (RL3.03). The proposal provides 2 levels of residential floor space above commercial as accepted in the Court approved shop top housing developments at 1 Gondolla Road, 3 Gondolla Road and 2-8 Rickard Road.
- The provision of basement parking within this flood precinct is neither orderly nor economic as evidenced by the fact that no recent approvals involving shop top housing with basement parking have been commenced. The adoption of the floor level and flood storage outcomes proposed across this Local Centre precinct will unlock the development potential of the area which is ideally suited to increased density given its E1 Local Centre zoning and proximity to the B-Line bus service.
- Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191, we have formed the considered opinion that most observers would not find the height or bulk of the proposed development offensive, jarring or unsympathetic in the streetscape context. We are of the opinion that the proposal will create a favourable precedent for the appropriate design of shop top housing within the North Narrabeen flood precinct.

- Whilst the proposal requires the consent authority to give favourable consideration to a variation to the building height development standard, strict compliance has been found to be unreasonable and unnecessary in this instance as the development is otherwise consistent with the objectives of the development standards and sufficient environmental planning grounds exist to support the variation (as outlined in the attached Clause 4.6 Variation Request).
- The areas of non-compliance with regard to the percentage of retail floor space and the undergrounding of overhead wires have been acknowledged and appropriately justified having regard to the associated objectives. Such variations succeed pursuant to section 4.15(3A)(b) of the EP&A Act which requires Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the objects of the DCP standards for dealing with that aspect of the development.
- The site is assessed as suitable for the proposal having regard to the relevant considerations pursuant to the SEPP (Housing) 2021 - Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guide (ADG).

## 2.0 Site description and Locality

### 2.1 The Site

The subject properties are legally described as Lots 7, 8 and 9, No's 1, 3 and 5 Rickard, North Narrabeen. The consolidated property is irregular in shape, tapering in width towards its southern rear boundary, with a 42.41m wide primary frontage to Rickard Road, secondary frontage to Minarto Lane of 39.045m and an area of 1425.8m<sup>2</sup>. The sites are generally flat and occupied by single story dwelling houses with various ancillary structures including carport accommodation. Rickard Road is a two-lane local road with on-street parallel parking on both sides of the street. This frontage contains kerb, guttering, a public footpath and a bus stop. Minarto Lane is also two-way however there is no stopping along both sides of the laneway which is kerb and guttered. A site survey extract is at Figure 1 below with an aerial context/location and site photographs at Figures 2 - 3 over page.

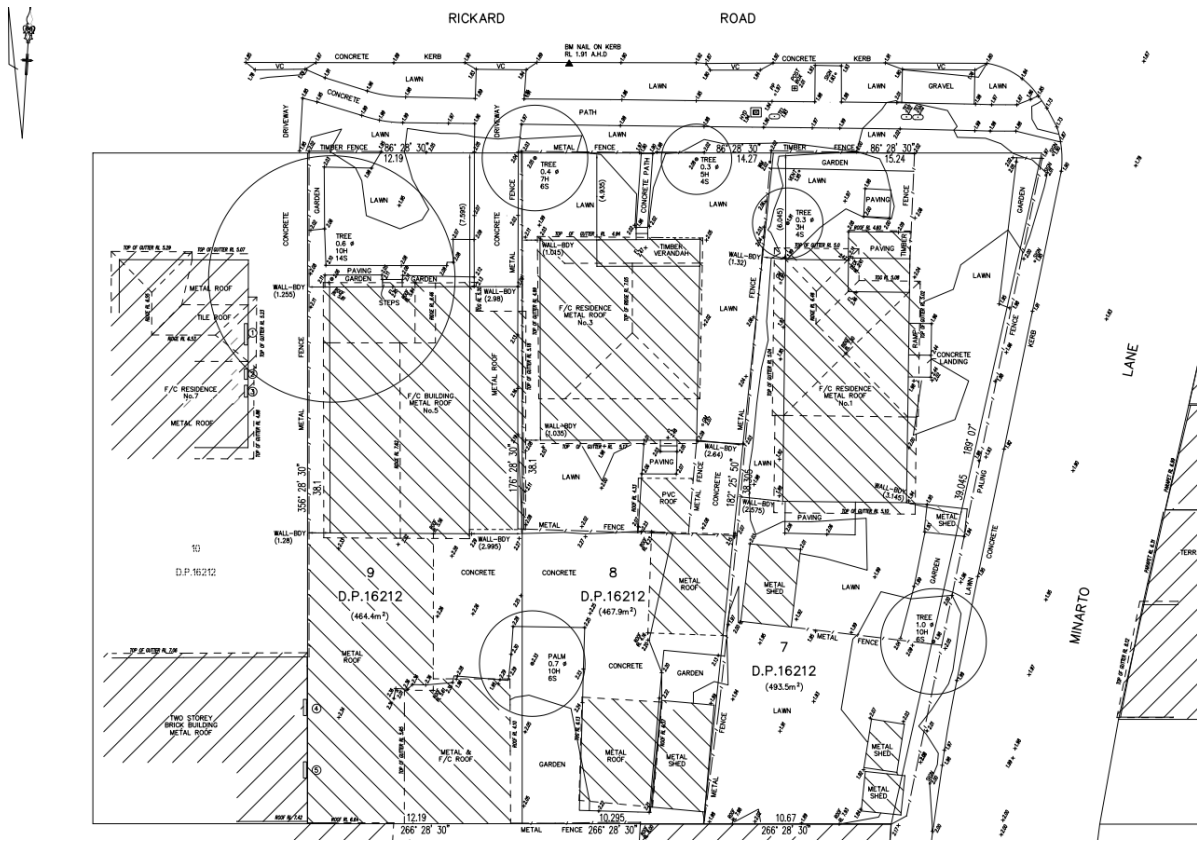


Figure 1 – Extract of site survey





Figure 2 – Aerial photograph



Figure 3 – Subject site as viewed from Rickard Road

## 2.2 The Locality

The extension of the tram to Narrabeen in 1913 established the North Narrabeen Locality as a popular area for holidays and camping. Until this time, the locality remained relatively undeveloped, used mainly as a through-route to Mona Vale and land further north. A bridge constructed across Narrabeen Lagoon in 1880, and the opening of the Wakehurst Parkway in 1946, connected the locality and rest of Pittwater with land to the south. From the 1950s, residential development intensified in the locality.

Since this time, the locality has developed into a predominantly low-density residential area, with dwellings built along the valley floor, slopes, and adjacent to Narrabeen Lagoon. The locality is characterised by one and two-storey dwelling houses on 450-650 square metre allotments (some smaller allotments may exist). The residential areas are of a diverse style and architecture, a common thread being the landscaped, treed frontages and subdued external finishes.

The locality is serviced by a neighbourhood retail centre at Pittwater Road, which also serves as a retail centre for passing motorists, and nearby residents descending from Elanora Heights. A smaller neighbourhood centre is located at the corner of Powderworks Road and Garden Street. This services the local industrial area that is dominated by car uses including servicing, repair and sales, that is located between Garden and Warraba Road. The locality also contains Narrabeen RSL club, a community centre and recreational facilities including tennis courts, several reserves and Narrabeen Lake.

The locality is characterised by a valley and steeper slopes to the north, south, and west, and lowlands extending to Narrabeen Lake to the east and Mullet Creek. Due to the topography, some significant views can be obtained to the east and south. Conversely, the slopes and ridge tops of the locality are visually prominent. Much of the natural vegetation has been removed and replaced with non-indigenous species. Much of the tree canopy around the escarpment has been retained. The natural features of the locality result in a high risk of bushfire, landslide and flood.

The major roads within the locality are Pittwater Road, Rickard Road, and the Wakehurst Parkway. Powderworks Road is a common through-route from the beaches to land further north/west, and similarly, the Wakehurst Parkway is a major link with land further west and south. Several pedestrian links and pathways exist within the locality, including a popular pedestrian/cycleway adjacent to Narrabeen Lake.

The property is located within the North Narrabeen Local Centre which is characterised predominantly by 1 and 2 storey commercial development fronting Pittwater Road and more contemporary 3 storey shop top housing development. The development of this Local Centre has been slowed by virtue of the high hazard flooding affectation and the fragmented nature of ownership, particularly in relation to the Pittwater Road fronting properties.

The property to the immediate west (7 Rickard Road) is occupied by a single storey dwelling house whilst the properties to the south, having frontage and address to Windsor Parade, are occupied by a single storey dwelling house (6 Windsor Parade) and a single storey commercial building as depicted in Figures 4 and 5.

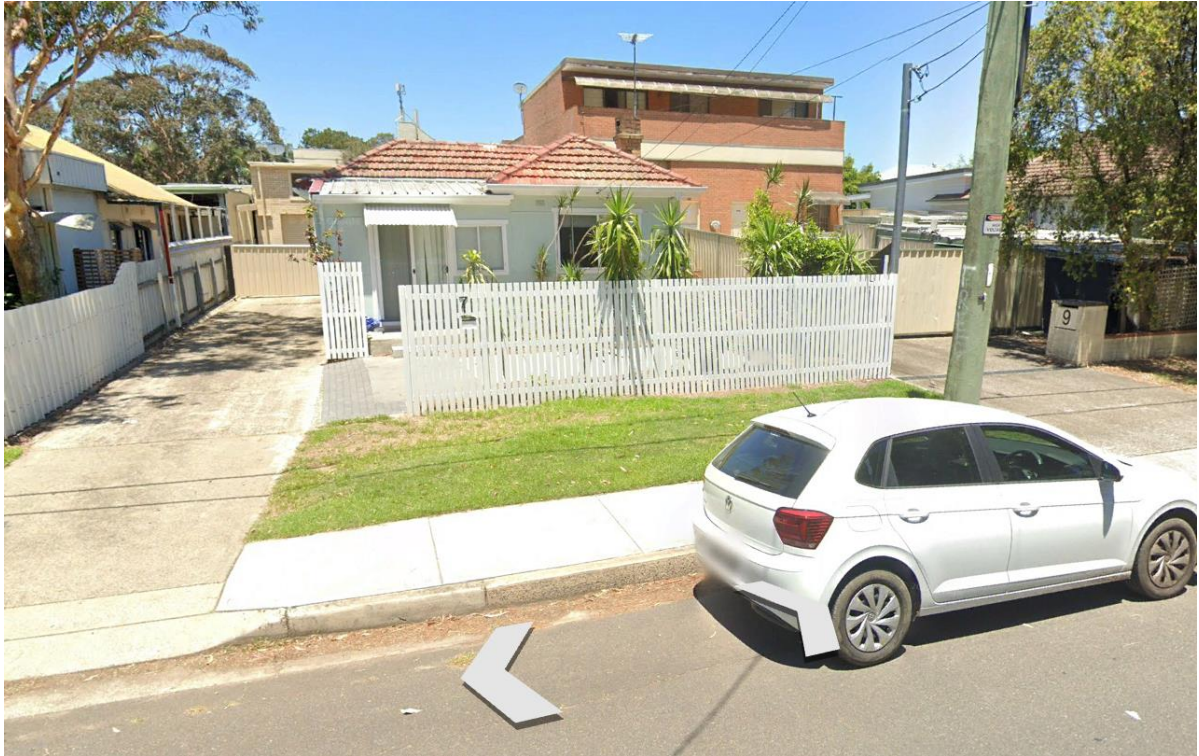


Figure 4 – Property to the west 7 Rickard Road

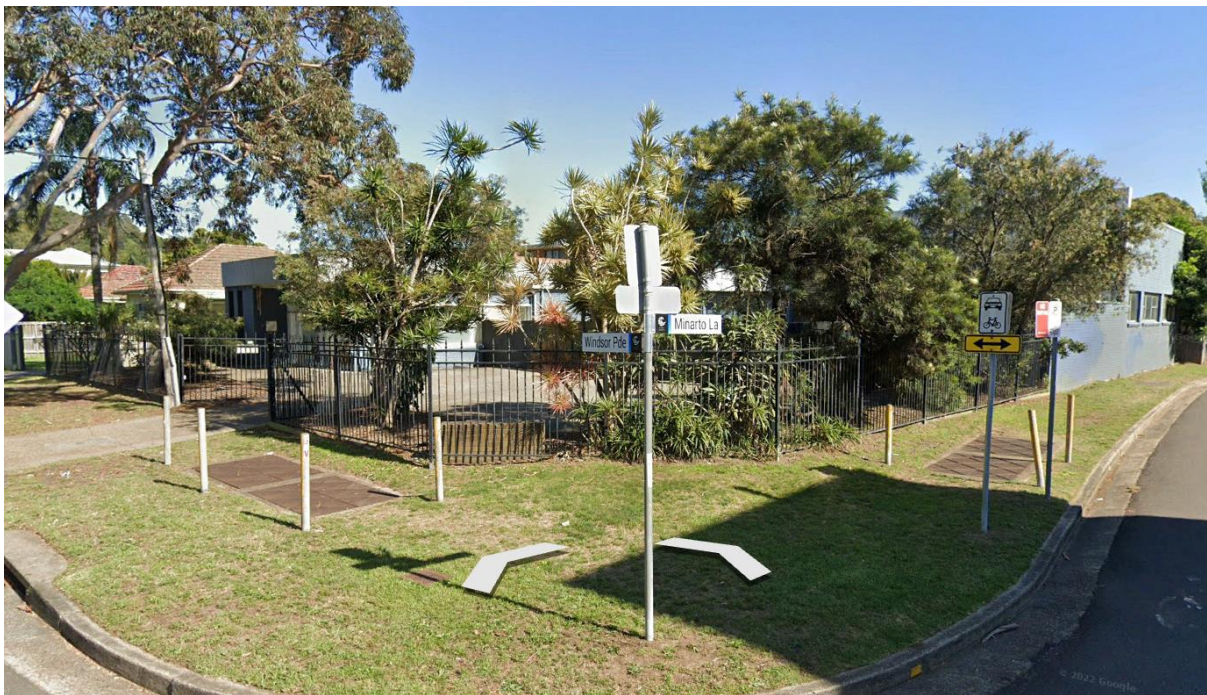


Figure 5 – Properties to the south having frontage and address to Windsor Parade

The property located on the eastern side are Minarto Lane on the Corner of Pittwater Road, Rickard Road and Minarto Lane (1473 Pittwater Road) is occupied by a shop top housing development with 2 levels of residential accommodation above commercial floor space located above ground level car parking as depicted in Figure 6.



**Figure 6** – Shop top housing development to the east 1473 Pittwater Road

The properties further to the south along Pittwater Road are occupied by older 1 and 2 storey commercial development with frontages to Pittwater Road with servicing generally occurring from Minarto Lane.

The property is within walking distance of regularly serviced bus stops, including the B-Line bus service at Narrabeen Town Centre. The site is in close proximity to Narrabeen Lake and a plethora of open space recreational areas. Such characteristics makes the site ideally suited for medium density housing which will contribute towards well located in-fill housing and the State Governments initiatives for sustainable cities.

### 3.0 Proposed Development

The application seeks consent for the demolition of existing site structures and the construction of a shop top housing development comprising 16 residential apartments above 5 retail (commercial) tenancies including parking for 42 vehicles over 2 levels. The application also proposes the implementation of an enhanced site landscape regime. The detail of the application is depicted on the following Architectural Plans prepared by Gartner Trovato Architects:

<b>DEVELOPMENT APPLICATION DRAWING LIST</b>	
<b>No:</b>	<b>Drawing Name</b>
DA 00	COVER
DA 01	CONTEXT ANALYSIS PLAN
DA 02	DEMOLITION PLAN
DA 03	SITE PLAN
DA 04	SUB FLOOR FLOOD ZONE
DA 05	GROUND PARKING LEVEL
DA 06	COMMERCIAL/RETAIL LEVEL
DA 07	RESIDENTIAL LEVEL 01
DA 08	RESIDENTIAL LEVEL 02
DA 09	ROOF LEVEL
DA 10	ELEVATIONS NORTH + EAST
DA 11	ELEVATIONS SOUTH + WEST
DA 12	SECTIONS
DA 13	AREA CALCULATIONS
DA 14	3D VIEWS
DA 15	SHADOW DIAGRAMS
DA 16	SUN ACCESS DIAGRAMS
DA 17	HEIGHT CONTROL DIAGRAM

Specifically, the proposed development incorporates the following:

- Demolition of the existing site structures,
- Construction of a multi-storey storey shop top housing development, comprising:

- 16 apartments comprising 9 x 2 and 7 x 3 bedrooms (including 3 adaptable units),
- 5 x retail/ commercial tenancies with a total GFA of 456m<sup>2</sup> (21% of total GFA),
- Carparking for 42 vehicles comprising 31 residential spaces, 3 residential visitor spaces and 8 commercial spaces accessed via a ramp to Minarto Lane,
- Separated residential and commercial bin storage,
- Podium level communal open space,
- Landscaping, including at-grade and upper-level planters, and
- Stormwater infrastructure.

The development is a considered design solution for the site, that appropriately responds to the evolving context of the North Narrabeen locality and the flood affectation of the land.

The final design is responsive to the minutes arising from formal pre-lodgement engagement with Council and the Northern Beaches Design and Sustainability Advisory Panel (DSAP) (PLM2023/0102) including:

- A greater level of commercial/ retail activation to both frontages.
- The rationalisation of vehicular access from Minarto Lane.
- Provision of a greater level of building articulation.
- Enhanced amenity to the podium level communal open space.
- Provision of sperate residential and commercial lobbies.
- Provision of landscape treatments to create streetscape connectivity.

The modulated façade treatments and varied design elements provide a contemporary building with a high degree of visual interest whilst the proposed landscape treatments to the front of building will soften the building form in a streetscape context.

All stormwater will be gravity drained to Minarto Lane with the elevated nature of the ground floor area of the development determined by the required flood planning levels and flood storage requirements as detailed in the accompanying Flood Management Report. The application is accompanied by a detailed Finishes Schedule demonstrating a suitable palette for the streetscape context and the locality.

The acceptability of the access, car parking and servicing arrangements are detailed within the accompanying Traffic and Parking Assessment Report. The proposal is able to comply with the relevant provisions of the BCA as detailed in the BCA Assessment Report with the proposal's acceptability in relation to accessibility addressed in the accompanying Accessibility Report.

Finally, the application is supported by a Waste Management Plan detailing how demolition and construction waste is to be managed during the construction phase and how general waste is to be managed throughout the life of the development.

## 4.0 Statutory Planning Framework

### 4.1 Pittwater Local Environmental Plan 2014

#### 4.1.1 Zoning

The subject property is zoned E1 Local Centre pursuant to the provisions of PLEP 2014 and shop top housing is permissible in the zone. With respect to the shop top housing use, the interpretation of this definition was dealt with in the matter of *Hrsto v Canterbury City Council* (No. 20 [2014] NSWLEWC 121 where Justice Sheahan adopted Council's submissions at paragraphs 33 – 36 of the judgement namely;

33. .... a dwelling must be in the same building as the ground floor retail premises or business premises and on a floor of that building that is at a level higher than the top most part of the ground floor retail premises or business premises in order to be characterised as "shop top housing" as defined.
34. Residential development that has a floor level that is lower than the top most part of ground floor retail premises or business premises could not be properly characterised as "shop top housing".
35. The Respondent accepts that dwellings do not need to be directly or immediately above ground floor retail premises or business premises in order to be characterised as "shop top housing". If it was intended that "shop top housing" be limited to dwellings that are directly or immediately above ground floor retail premises or business premises it is expected that those words would have been included in the definition of the term 'shop top housing'.
36. The Respondent contends that dwellings must be in the same building as the ground floor retail premises or business premises for the purposes of the term "shop top housing". However, the Respondent accepts that a broad interpretation of the word "above" in the definition should be given which would suggest that the dwellings need only be at a floor level that is higher than the top of the ground floor retail or business premises and do not need to be contained in an envelope on the higher floor level that would be intersected by a line drawn vertically from within the envelope of the ground floor retail or business premises.

In this regard, all residential apartments are located entirely above the level of the permissible commercial floor space below. We note that all commercial floor space is accessed via a commercial foyer located at ground level (existing) being the ground floor level of the development. As such we have formed the considered opinion that the proposed development is appropriately defined as shop top housing and permissible with consent.

The proposal is consistent with the stated zone objectives, as follows:

- *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.*

Response: The development provides commercial floor space able to accommodate 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.*

Response: The development provides commercial floor space accessed at ground level. Approval of the application will achieve the objective of encouraging 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.*

Response: The proposal incorporates 16 upper-level apartments which will contribute to a vibrant and active local centre not only in relation to their contribution as actively occupied residential tenancies but also through the introduction of additional population within the local centre 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.*

Response: The development provides for commercial spaces accessed at ground level and to that extent achieves this objective notwithstanding the building height breaching elements.

- *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.*

Response: The ground level commercial spaces will assist in the revitalisation of this local centre with the building design providing for an attractive and vibrant built form outcome which will contribute significantly to the built form quality of development within the centre. The active street frontages proposed will attract pedestrian traffic and contribute to a diverse and functional streetscape. The landscape design has been carefully considered by using sloping garden beds to activate the streetscape whilst creating connectivity to the first floor.

Accordingly, there is no statutory zoning or zone objective impediment to the granting of approval to the proposed development.



#### 4.1.2 Height of Buildings

Pursuant to clause 4.3(2) of PLEP 2014 development the land must not exceed a height of 8.5 metres. Clause 4.3(2A) states that despite subclause (2), development on land:

- (a) *at or below the flood planning level or identified as “Coastal Erosion/Wave Inundation” on the Coastal Risk Planning Map, and*
- (b) *that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map, may exceed a height of 8.5 metres, but not be more than 8.0 metres above the flood planning level.*

The site is identified as being affected by Medium and High Hazard flooding on Council’s Flood Risk Precinct Maps. The Comprehensive Flood Information Report issued by Northern Beaches Council identifies a Flood Planning Level (FPL) of 4.4m AHD. Having regard to clause 4.3(2A) provisions, development on the land must not exceed a height of 8.0m above the FPL, being 12.4m AHD.

The stated objectives of this standard are as follows:

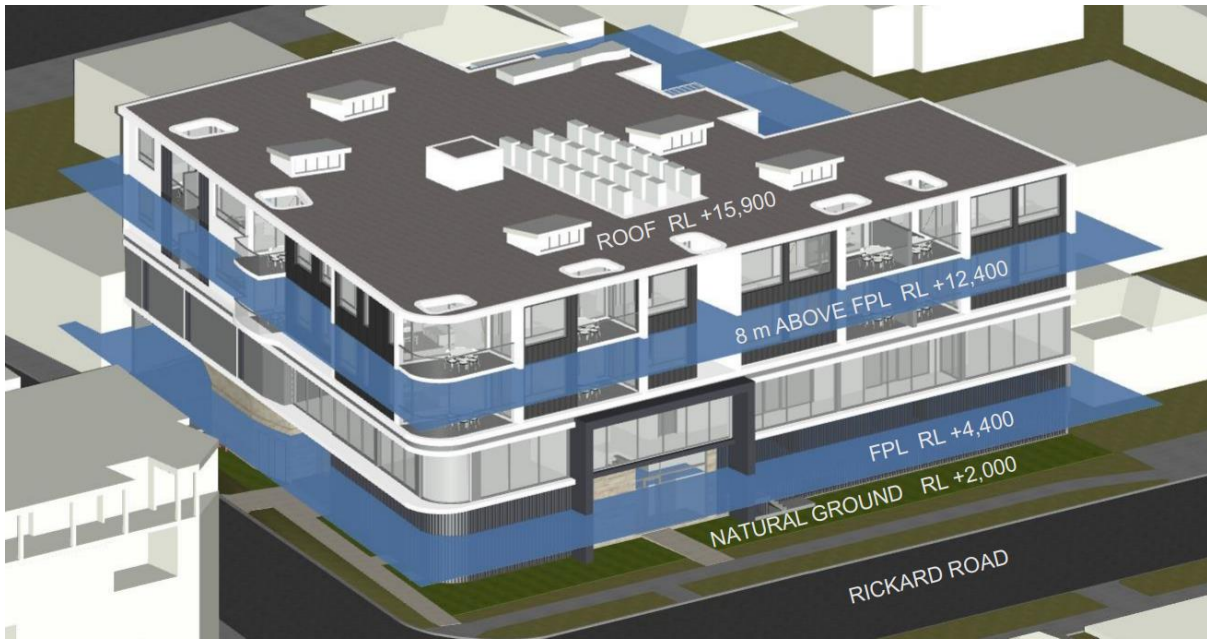
- (a) *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) *to minimise any overshadowing of neighbouring properties,*
- (d) *to allow for the reasonable sharing of views,*
- (e) *to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) *to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

The proposed roof top projections including the proposed lift overrun and clerestory windows reaches a maximum RL of 17.130m AHD, representative of a 4.73m (59%) variation of the building height development standard with the roof parapet having a maximum height of RL 15.9m AHD, representative of a 3.5m (43.7%) variation of the building height standard. The extent of the non-conforming elements is depicted on the Height Plane Diagram at Figure 4 on the following page.

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

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

Having regard to these provisions, strict compliance has been found to be unreasonable and unnecessary having regard to the particular circumstances of the case including the ability to satisfy the objectives of the zone and the objectives of the development standard. Sufficient environmental planning grounds exist to support the variation proposed, as outlined in the accompanying clause 4.6 variation request at **ANNEXURE 1**.



**Figure 7 – Height plane blanket diagram**

### 4.1.3 Flood Planning

The site is identified as being affected by Medium and High Hazard flooding on Council's Flood Risk Precinct Maps and the provisions of clause 5.21 of PLEP 2014 are applicable in relation to the site and the proposed development.

Pursuant to clause 5.21(2) of PLEP 2014, development consent must not be granted unless the consent authority is satisfied that the development:

- (a) *is compatible with the flood function and behaviour on the land, and*
- (b) *will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) *will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) *incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) *will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

The application is supported by a Flood Management Report that addresses these points of consideration and concludes:

*Based on available information, the proposed development has been assessed against Pittwater DCP Clause B3.11.*

*The site has been assessed as Medium and High Risk Precincts, and Flood Life Hazard Category in PMF has been assessed as H5.*

*It is anticipated the 1% AEP floodwaters impact the site at elevation 3.03 m AHD, causing inundation of the site up to 1.21 m depths, while the PMF floodwaters impact the site frontage at elevation 4.90 m AHD.*

*The first floor (6.03 m AHD) and habitable floor level ( $\geq 9.63$  m AHD) are located above the FPL (4.40 m AHD), hence enabling shelter-in-place arrangements during all storms up to and including the PMF.*

*The flood affectation of the site is not increased or made worse by the proposed development due to a net increase of 161.84 m<sup>3</sup> in flood storage.*

*We trust the above complies with Northern Beaches Council's flood requirements upon the proposed development. If there are any queries or wish to discuss anything further, please do not hesitate to contact the undersigned.*

Accordingly, these flood planning provisions are satisfied.

#### **4.1.4 Acid Sulfate Soils**

The site is identified as being within Area 3 on the Acid Sulfate Soils Map of PLEP 2014, and the provisions of clause 7.1 of PLEP 2014 are relevant to the proposal. This application is accompanied by a Geotechnical Investigation Report prepared by Crozier Geotechnical Consultants contains the following conclusion in relation to acid sulfate soil testing:

*Laboratory testing was conducted within both boreholes, which identified soils exhibiting characteristics inherent to Acid Sulfate Soils with net acidity value which exceeded the Action Criteria guidelines. The water table will likely be intersected within the envelope of proposed works as part of pier drilling works, therefore an Acid Sulfate Soils Management Plan (ASSMP) is required for the development.*

No objection is raised to a suitably worded condition requiring the preparation of an Acid Sulfate Soils Management Plan (ASSMP) prior to issue of any Construction Certificate.

These provisions are satisfied.

#### **4.1.5 Earthworks**

The consent authority can be satisfied that the excavation proposed to accommodate the basement will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, consistent with the provisions of clause 7.2 of PLEP 2014. In forming this opinion, we rely on the accompanying Geotechnical Investigation Report prepared by Crozier Geotechnical Consultants.

#### **4.1.6 Essential Services**

Pursuant to clause 6.12 of PLEP 2014, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

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

---

As the three properties, the subject of this application, are currently occupied by dwelling houses the consent authority can be satisfied that the required essential services will be available to service the development.

## 4.2 Pittwater 21 Development Control Plan

The proposed development has been assessed against the relevant provisions of P21 DCP as outlined in the following sections of this report.

### 4.2.1 North Narrabeen Locality

The property is located within the North Narrabeen Locality. The desired future character of the locality described 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.*

The final design, the subject of this application, represents a highly considered and resolved response to the constraints and opportunities identified, with the proposed development exhibiting good design not only in its architectural form, function and amenity but importantly, its success in responding to the significant constraint associated with the flood affectation and the current and desired future character of the area.

Whilst the flood storage and floor level design outcomes satisfy Council's flood planning controls it does have the consequence of increasing the overall height of the development to accommodate two residential floor levels above commercial floorspace. Such increase in overall building height is compensated for through the absence of rooftop shelter in place open space which is not required given that all commercial and residential floor levels are located above the Flood Planning Level (with climate change) and PMF Flood Level.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191, we have formed the considered opinion that most observers would not find the height or bulk of the proposed development offensive, jarring or unsympathetic in the streetscape context. We are of the opinion that the proposal will create a favourable precedent for the appropriate design of shop top housing within the North Narrabeen flood precinct.

External materials and finishes will be consistent with the colours and materials anticipated in the locality. In this regard, the development is consistent with the desired future character of the North Narrabeen locality.

#### 4.2.2 P21 DCP Compliance Table

Control	Requirement	Proposed	Compliance
<b>Part B General Controls</b>			
<b>B1.3 Heritage Conservation - General</b>	If a property, the subject of a development application, is identified as possibly meeting any of the criteria for heritage listing (encompassing the four values of the Burra Charter, being historical, aesthetic, scientific and social significance) then additional independent information on the potential heritage significance may be requested. If the property meets the criteria for heritage listing then development control B1.1 of this DCP will apply.	The subject sites are not considered to meet any of the criteria for heritage listing.	Yes
<b>B1.4 Aboriginal Heritage Significance</b>	If a property, the subject of a development application is identified as possibly meeting any of the criteria for being a potential Aboriginal place or containing an Aboriginal object then additional independent information on the potential heritage significance may be requested.	The sites are heavily disturbed and is unlikely to contain any items of Aboriginal Heritage Significance.	Yes
<b>B2.6 Dwelling Density and Subdivision – Shop Top Housing</b>	The commercial/retail component of the development must be a minimum of 25% of the	Retail component: 21%  The size/area of the ground floor retail spaces are compromised by the flood	<b>No</b> Acceptable on merit

Control	Requirement	Proposed	Compliance
	<p>gross floor area of the building.</p>	<p>affectation which necessitates flood storage and elevated parking areas.</p> <p>Despite non-compliance, both the floor space and the presentation of the commercial tenancies to the street has been maximised to a degree that is commensurate with surrounding and nearby mixed use developments and will appropriately activate both street frontages.</p>	
<p><b>B3.6 Contaminated Land and Potentially Contaminated Land</b></p>	<p>Council shall consider:</p> <ul style="list-style-type: none"> <li>• whether the land is contaminated; and</li> <li>• if the land is contaminated, whether the land is suitable in its contaminated state (or will be suitable after remediation) for the purpose for which the development is proposed to be carried out; and</li> <li>• if the land requires remediation, whether the land will be remediated before the land is used for that purpose.</li> </ul>	<p>The application is supported by a Preliminary Site Investigation with no objection to the conclusions contained within this document forming appropriately worded conditions of development consent.</p>	<p>Yes</p>
<p><b>B3.11 Flood Prone Land</b></p>	<p>Development must comply with the prescriptive controls.</p> <p>Development on flood prone land requires the preparation of a Flood</p>	<p>The application is supported by a Flood Management Report addressing the applicable flood planning provisions.</p>	<p>Yes</p>



Control	Requirement	Proposed	Compliance
	Management Report by a suitably qualified professional.		
<b>B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)</b>	The Flood Risk Management Report is to include consideration of climate change, specifically the impacts of sea level rise and the impacts of sea level rise combined with increased rainfall volume.	The application is supported by a Flood Management Report that addresses climate change.	Yes
<b>B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land</b>	<p>Development shall retain and enhance habitat for threatened species, endangered populations, endangered ecological communities and locally native species.</p> <p>Development shall provide flora and fauna habitat by active restoration, regeneration, and / or creation.</p> <p>Development shall result in no significant onsite loss of canopy cover or a net loss in native canopy trees.</p> <p>Landscaping is not to include environmental weeds.</p>	<p>The application will result in the enhancement of landscaping on the site, as demonstrated on the accompanying Landscape Plans prepared by Sym Studios.</p> <p>The landscape plan proposes a combination of at grade deep soil landscaping adjacent to the Rickard Road frontage, podium level communal open space planting and street tree plantings to both frontages.</p> <p>Tree retention has been achieved where possible with 2 street trees retained along the Rickard Road frontage.</p>	Yes
<b>B5.15 Stormwater</b>	Stormwater runoff must not cause downstream flooding and must have minimal environmental impact on any receiving stormwater	The application is supported by Stormwater Management Plans prepared by ACOR Consultants that demonstrate consistency with Council's Water	Yes

Control	Requirement	Proposed	Compliance
	<p>infrastructure, watercourse, stream, lagoon, lake and waterway or the like. The stormwater drainage systems for all developments are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.</p>	<p>Management for Development Policy.</p>	
<p><b>B6.1 Access Driveways and Works on the Public Road Reserve</b></p>	<p>The design of all Access Driveways shall be in accordance with the current edition of Australian Standard <i>AS/NZS 2890.1-2004: Parking Facilities - Part 1: Off-Street Car Parking</i>.</p>	<p>The suitability of the proposed driveway crossing is confirmed in the Traffic and Parking Assessment Report prepared to accompany this application.</p>	<p>Yes</p>
<p><b>B6.2 Internal Driveways</b></p>	<p>Internal Driveways are to be designed and constructed to provide safe access and shall have a maximum gradient of 1:5 (V:H). Recommended maximum gradient of an Internal Driveway for a distance of 2m on the approach to a garage, parking area or carport is 1:20 (V:H). There must be a minimum 2 metre long transition between the driveway and the garage/parking area/carport in accordance with the standards.</p>	<p>The suitability of the proposed driveway is confirmed in the Traffic and Parking Assessment Report prepared to accompany this application.</p>	<p>Yes</p>

Control	Requirement	Proposed	Compliance
<p><b>B6.3 Off-Street Vehicle and Parking Requirements</b></p>	<p>2 space per dwelling, 1 space per 3 dwellings for visitors, and 1 space per 30m<sup>2</sup> GLA.</p>	<p>The suitability of the proposed parking arrangements is confirmed in the Traffic and Parking Assessment Report prepared to accompany this application.</p>	<p>No Variation acceptable on merit as detailed in the Traffic and Parking Assessment Report and the PLM minutes.</p>
<p><b>B8.1 Construction and Demolition – Excavation</b></p>	<p>Excavation greater than 1 metre deep, the edge of which is closer to a site boundary or structure to be retained on the site, than the overall depth of the excavation and any excavation greater than 1.5 metres deep below the existing surface must comply with the requirements of the <i>Geotechnical Risk Management Policy for Pittwater</i>.</p>	<p>The application is supported by a Geotechnical Risk Management Report, consistent with the requirements of the <i>Geotechnical Risk Management Policy for Pittwater</i>.  We note that site excavation is limited to that required for ground level footings.</p>	<p>Yes</p>
<p><b>B8.3 Construction and Demolition – Waste Minimisation</b></p>	<p>Waste materials generated through demolition, excavation and construction works is to be minimised by reuse on-site, recycling, or disposal at an appropriate waste facility.</p>	<p>The application is supported by a Waste Management Plan.</p>	<p>Yes</p>

Control	Requirement	Proposed	Compliance
<b>Part C Development Type Controls</b>			
<b>C1.1 and C2.1 Landscaping</b>	<p>A built form softened and complemented by landscaping.</p> <p>For shop top housing, a minimum landscaped area of 20% of the site area, or 35m<sup>2</sup> per dwelling, whichever is the greater, shall be provided.</p> <p>The following soil depths are required in order to be counted as landscaping:</p> <ul style="list-style-type: none"> <li>• 300mm for lawn</li> <li>• 600mm for shrubs</li> <li>• 1metre for trees</li> </ul>	<p>Landscaping works are proposed at the front and rear of the site, and at upper levels of the development, as detailed on the Landscape Plans provided to accompany the application.</p> <p>The landscape design has been carefully considered by using sloping garden beds to activate the streetscape whilst creating connectivity to the first floor.</p> <p>The landscaping will appropriately soften the proposed development and the existing commercial building.</p>	Yes
<b>C1.2 and C2.2 Safety and Security</b>	<p>The development is to be designed in accordance with the four CPTED principles.</p>	<p>The proposed development has been specifically designed to minimise the opportunity for crime by adopting appropriate measures with respect to surveillance, access control, territorial reinforcement and space management.</p>	Yes
<b>C1.3 and C2.5 View Sharing</b>	<p>All new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties.</p>	<p>Upon review of the context of the site, it is unlikely that the proposed development will result in any adverse or unreasonable impacts upon existing view corridors.</p>	Yes

Control	Requirement	Proposed	Compliance
<p><b>C1.4 Solar Access</b></p>	<p>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.</p> <p>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).</p>	<p>The solar access requirements of P21 DCP are inconsistent with those of the ADG. In accordance with the provisions of clause 149 of SEPP (Housing), provisions of a DCP relating to solar access that are inconsistent with those prescribed by the ADG are of no effect.</p>	<p>N/A</p>
<p><b>C1.5 Visual Privacy</b></p>	<p>Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).</p>	<p>The proposed development does not result in any unreasonable overlooking of adjoining properties with well in excess of 6m maintained between habitable rooms and terraces and the western and southern boundaries of the property.</p> <p>Dense landscape screening has been provided at the southern and western boundary interfaces which, coupled with the setbacks proposed, will maintain appropriate levels of visual privacy between adjoining development.</p>	<p>Yes</p>

Control	Requirement	Proposed	Compliance
<p><b>C1.6 Acoustic Privacy</b></p>	<p>Noise-sensitive rooms, such as bedrooms, should be located away from noise sources, including main roads, parking areas, living areas and communal and private open space areas and the like.</p> <p>Walls and/or ceilings of dwellings that are attached to another dwelling/s shall have a noise transmission rating in accordance with Part F(5) of the <i>Building Code of Australia</i>. (Walls and ceilings of attached dwellings must also comply with the fire rating provisions of the <i>Building Code of Australia</i>).</p>	<p>The application is supported by an Acoustic Report prepared by Acoustic Dynamics confirming that the proposed development has been designed to maximise internal amenity with regard to noise levels.</p>	<p>Yes</p>
<p><b>C1.7 Private Open Space</b></p>	<p>For Shop Top Housing, residential flat buildings and multi dwelling housing, private open space at upper levels in the form of front/rear or internal courtyard balconies and terraces are required. The dimension of the balcony should be sufficient so that the area can be usable for recreational purposes (ie a minimum area of 10m<sup>2</sup> and a minimum width of 2.4 metres). First floor balconies along the side boundary must be designed to limit overlooking and maintain</p>	<p>The proposal satisfies the ADG requirements as nominated on the plans.</p>	<p>Yes</p>

Control	Requirement	Proposed	Compliance
	<p>privacy of adjoining residences.</p>		
<p><b>C1.9 and C2.6 Adaptable Housing and Accessibility</b></p>	<p>20% of units (rounded up) are to be adaptable units, designed to meet the silver level of the Liveable Housing Guideline.</p> <p>Development shall include the design and construction of works in the public domain to ensure accessibility for the full frontage of the site to any public road and to ensure access to the site from the public domain.</p>	<p>3 of 16 or 18.75% of the proposed apartments are adaptable units.</p> <p>The suitability of the proposal with regard to adaptability and accessibility is addressed in the Accessibility Report prepared by Accessible Building Solutions that accompanies this application.</p> <p>A minor rounding up of the required quantum of adaptable apartments it is considered reasonable having regard to the assessment contained within the accompanying accessibility report.</p>	<p>No</p> <p>Acceptable on merit</p>
<p><b>C1.10 and C2.7 Building Facades</b></p>	<p>Building facades to any public place including balconies and carpark entry points must not contain any stormwater, sewer, gas, electrical or communication service pipe or conduit that is visible from the public place.</p> <p>For multi dwelling housing, residential flat buildings or seniors housing and similar development that includes multiple dwellings with multiple letterboxes, where</p>	<p>Pipes and conduits will be integrated into the development to minimise visual clutter.</p> <p>The proposed residential mailboxes are located perpendicular to the Minarto Lane frontage.</p>	<p>Yes</p>

Control	Requirement	Proposed	Compliance
	possible mailboxes should be orientated obliquely to the street to reduce visual clutter and the perception of multiple dwellings.		
<b>C1.12 and C2.9 Waste and Recycling Facilities</b>	All development that is, or includes, demolition and/or construction, must comply with the appropriate sections of the Waste Management Guidelines and all relevant Development Applications must be accompanied by a Waste Management Plan.	The application is supported by a Waste Management Plan prepared by Dickens Solutions which addresses Councils Waste Management Guidelines.	Yes
<b>C1.15 Storage Facilities</b>	A lockable storage area of minimum 8 cubic metres per dwelling shall be provided.	A storage area is provided for each of the proposed units within the basement, which is in addition to storage provided within each unit.  All storage areas are at or above the 1% AEP.	Yes
<b>C1.20 and C2.16 Undergrounding of Utility Services</b>	All existing and proposed utility services within the site are to be placed underground or encapsulated within the building.  All existing and proposed utility services to the site, or adjacent to the site within a public road reserve, are to be placed underground for the total	All services connecting to the site will be located underground.  Existing overhead wires are proposed to be retained along the road reserve. The subject site relates to only a portion of an existing span, and it would be an unreasonable burden on the subject development to	Yes  No Acceptable on Merit



Control	Requirement	Proposed	Compliance
	frontage of the site to any public road.	require the undergrounding of the entire span, particularly when it was not required in relation to the adjoining development.	
<b>C1.25 and C2.22 Plant, Equipment Boxes and Lift Over Run</b>	Where provided, plant and equipment boxes, air conditioning units and lift over-runs are to be integrated internally into the design fabric of the built form of the building.	The lift overrun has been integrated into the design of the roof top terrace.	Yes
<b>Part D11 North Narrabeen Locality</b>			
<b>D11.1 Character as viewed from a public place</b>	<p>The facades of buildings presenting to any public place must address these public places, provide visual interest, have a street presence and incorporate design elements that are compatible with any design themes existing in the immediate vicinity. Blank facades that front public places are not supported.</p> <p>Clear visual connection must be achieved between the public place and the front setback/front façade of the building.</p>	<p>The proposed development is well articulated, with both the ground floor commercial space and upper level residences presenting to both street frontages.</p> <p>The bulk and scale of the development is commensurate with that of surrounding development (existing and approved), with landscaping along the front setback that will soften the visual impact as seen from the street.</p> <p>The lift overrun, clerestory windows and roof top mechanical plant setback from the parapet alignment such that they will not be</p>	Yes

Control	Requirement	Proposed	Compliance
	<p>The bulk and scale of buildings must be minimised.</p> <p>Conceal services.</p>	readily discernible elements in the streetscape.	
<b>D11.3 Building Colours and Materials</b>	Dark and earthy tones.	The application is accompanied by a schedule of finishes. The development incorporates external colours, materials and finishes which are consistent with the predominant colours of development in the North Narrabeen locality.	Yes
<b>D11.6 Front Building Line</b>	<p>3.5m to Gondola Road</p> <p>1.75m to Minarto Lane</p>	<p>3.5m to Gondola Road and variable between 1.5m and 2.2m to Minarto Lane.</p> <p>Strict compliance has been found to be unreasonable and unnecessary given the acceptability of the streetscape outcomes achieved.</p>	<p>Yes</p> <p>Gondola Road</p> <p>No</p> <p>Minarto Lane - Acceptable on merit</p>
<b>D11.7 Side and Rear Building Line</b>	Nil	<p>West: Nil – 8m</p> <p>South: Nil – 6m</p>	Yes

### 4.3 State Environmental Planning Policy (Sustainable Buildings) 2022

State Environmental Planning Policy (Sustainable Buildings) 2022 applies to the residential component of the development and aims to encourage sustainable residential development.

A BASIX Assessment accompanies the development application and demonstrates that the proposal achieves compliance with the BASIX water, energy and thermal efficiency targets.

### 4.4 State Environmental Planning Policy (Resilience and Hazards) 2021

#### 4.4.1 Coastal Hazard

Chapter 2 of SEPP (Resilience and Hazards) aims to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner that is consistent with the objects of the *Coastal Management Act 2016*.

The site is identified as “coastal environmental area” of the Coastal Environment Area Map, and the provisions of Chapter 2 of this policy are applicable.

Clause 2.10(2) of SEPP (Resilience and Hazards) prescribes that development consent must not be granted unless the consent authority is satisfied that the proposed development is designed, sited and will be managed to avoid an adverse impact on the matters referred to in clause 2.10(1) of this policy. The relevant matters are addressed as follows:

- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*

Comment: The application is supported by a Geotechnical Report and Stormwater Management Plans that confirm that the development can be constructed with minimal environmental impact. Excavation is limited to that required for ground level footings.

- (b) *coastal environmental values and natural coastal processes,*

Comment: The proposed works will not result in any adverse impacts upon coastal environmental values and natural coastal processes.

- (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*

Comment: The proposed development is not located in the vicinity of a marine estate.

- (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*

Comment: The proposed development does not result in any unreasonable impacts upon native vegetation and fauna and their habitats.

- (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*

Comment: The proposed works are located within private property and not within a foreshore area.

- (f) *Aboriginal cultural heritage, practices and places,*

Comment: The proposed works do not impact upon any known/nominated sites of Aboriginal cultural significance.

- (g) *the use of the surf zone.*

Comment: The proposed works are not located within the surf zone.

The consent authority can be satisfied with regard to clause 2.10 of SEPP (Resilience and Hazards).

Clause 2.12 of SEPP (Resilience and Hazards) prescribes that development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. The proposed development is not likely to cause increased risk at the site or for adjoining land, and the consent authority can be satisfied in this regard.

#### **4.4.2 Remediation of Land**

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

Clause 4.6(1)(a) of this policy requires the consent authority to consider whether land is contaminated.

The application is supported by a Preliminary Site Investigation (PSI) prepared by EBG Environmental Geoscience. The PSI recommends the preparation of a Detailed Site Investigation (DSI) with no objection raised to the preparation of a DSI being dealt with by way of an appropriately worded Deferred Commencement Consent condition.

#### **4.5 State Environmental Planning Policy (Housing) 2021 - Design Quality of Residential Apartment Development**

Chapter 4 of State Environmental Planning Policy (Housing) 2021 aims to improve the design quality of shop top housing development to provide sustainable housing in social and environmental terms that is a long-term asset to the community and presents a better built form within the streetscape.

It also aims to better provide for a range of residents, provide safety, amenity and satisfy ecologically sustainable development principles. In order to satisfy these aims, the plan sets design principles in relation to context, scale, built form, density, resources, energy and water efficiency, landscaping, amenity, safety and security, social dimensions and aesthetics to improve the design quality of residential flat building in the State.

These provisions apply to new shop top housing developments that are at least 3 or more storeys in height and that contain at least 4 dwellings.

As the proposed development is for the erection of a 3 storey shop top housing development containing 16 dwellings, these provision are applicable to the proposed development.

Clause 147(1)(a) requires the proposal to be assessed against the 9 design quality principles contained in Schedule 9. The proposal's compliance with the design quality principles is detailed in the Architect Design Statement prepared by Gartner Trovato Architects provided to support this application.

Clause 147(1)(b) requires the consent authority to take into consideration the Apartment Design Guide. In this regard, an Apartment Design Guide compliance table prepared by Gartner Trovato Architects accompanies this application.

## 5.0 Matters for Consideration Pursuant to Section 4.15(1) of the EP&A Act

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15(1) of the EP&A Act:

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

The proposal is permissible under the provisions of PLEP 2014 and is generally in conformity with the General, Development Type and Locality Specific Controls contained within P21 DCP. Whilst the application requires the consent authority to give favourable consideration to a variation of the height of buildings development standard contained at clause 4.3 of PLEP 2014, this report demonstrates that strict compliance is both unreasonable and unnecessary given the significant floor level constraint imposed by flooding.

The development satisfies the Design Principles prescribed within Schedule 9 of SEPP (Housing), the associated Clause 148 standards and the objectives specified in the Apartment Design Guide for the relevant design criteria. The height and density proposed is entirely appropriate given the paucity of adverse environmental consequences, the ability to provide appropriately for off-street carparking and the developments consistency with the Department of Planning's Sydney's Metropolitan Strategy 'City of Cities' and the Subregional Strategy as it relates to the appropriate concentration of residential density.

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

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

#### *Context and Setting*

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

The proposed development has been developed through detailed site, contextual, flood planning and urban design analysis.

The final design, the subject of this application, represents a considered and resolved response to the constraints and opportunities identified during the initial site analysis with the proposed development exhibiting good design not only in its architectural form, function and amenity but importantly, its success in responding to the significant constraint imposed by flooding and the current and desired future character of the area.

The property is within walking distance of regularly serviced bus stops, including the B-Line bus service at Narrabeen Town Centre. The site is in close proximity to Narrabeen Lake and a plethora of open space recreational areas. Such characteristics makes the site ideally suited for medium density housing which will contribute towards well located in-fill housing and the State Governments initiatives for sustainable cities.

ii) *What are the potential impacts on adjacent properties in terms of:*

- *relationship and compatibility of adjacent land uses?*
- *sunlight access (overshadowing)?*
- *visual and acoustic privacy?*
- *views and vistas?*
- *edge conditions such as boundary treatments and fencing?*

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

#### *Access, transport and traffic*

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

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

The proposed development provides appropriately for commercial, resident and visitor car parking and has good access to public transport as outlined in the accompanying traffic and parking assessment report.

### *Public domain*

The landscape quality and accessibility within the public domain will be retained as a consequence of the works proposed. The proposed development will contribute positively to the public domain.

### *Utilities*

Existing and upgraded utility services will adequately service the development.

### *Flora and fauna*

The application is accompanied by Landscape Plans prepared by Sym Studio which detail the proposed landscape regime for the entire site. The development will sit within a landscaped setting.

### *Waste*

Normal domestic and commercial waste collection applies to this development. The application is accompanied by a Waste Management Plan prepared by Dickens Solutions.

### *Natural hazards*

The site is in a medium and high-risk flood area and a detailed Flood Risk Management Report accompanies this application.

### *Economic impact in the locality*

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

### *Site design and internal design*

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



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

ii) *How would the development affect the health and safety of the occupants in terms of:*

- *lighting, ventilation and insulation?*
- *building fire risk – prevention and suppression/*
- *building materials and finishes?*
- *a common wall structure and design?*
- *access and facilities for the disabled?*
- *likely compliance with the Building Code of Australia?*

The proposed development will comply with the provisions of the Building Code of Australia as detailed in the accompanying BCA report prepared by Jensen Hughes. There will be no detrimental effects on the occupants through the building design which will achieve the relevant standards pertaining to health and safety.

#### *Construction*

i) *What would be the impacts of construction activities in terms of:*

- *the environmental planning issues listed above?*
- *site safety?*

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

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

*Does the proposal fit in the locality?*

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

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

*Are the site attributes conducive to development?*

The constraints associated with the natural hazards that affect the site do not inhibit development of the nature proposed.

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

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

**The public interest.**

The proposed development has been developed through detailed site, contextual, flood planning and urban design analysis and in response to the minutes arising from formal pre-DA discussions with Council. The final design, the subject of this application, represents a considered and resolved response to the constraints and opportunities identified during the initial site analysis with the proposed development exhibiting good design not only in its architectural form, function and amenity but importantly, its success in responding to the significant constraint imposed by flooding and the current and desired future character of the area. The development will not only provide a quality built form outcome on the site and greater housing choice in this particular locality but also improve the commercial and retail viability of this commercial centre.

It is considered that the public interest is best served in providing certainty in the planning process through encouraging development of good design that satisfies the outcomes and controls contained within the adopted legislative framework. Accordingly, approval of the development would be in the public interest.

## 6.0 Conclusion

The proposal is permissible under the provisions of PLEP 2014 and generally in conformity with the General, Development Type and Locality Specific Controls contained within P21DCP. Whilst the application requires the consent authority to give favourable consideration to a variation of the height of buildings development standard contained at clause 4.3 of PLEP 2014, this report demonstrates that strict compliance is both unreasonable and unnecessary given the significant floor level constraint imposed by flooding.

The development satisfies the Design Principles prescribed by Schedule 9 of SEPP (Housing), the associated Clause 148 standards and the objectives specified in the Apartment Design Guide for the relevant design criteria. The height and density proposed is entirely appropriate given the paucity of adverse environmental consequences, the ability to provide appropriately for off-street carparking and the developments consistency with the Department of Planning's Sydney's Metropolitan Strategy 'City of Cities' and the Subregional Strategy as it relates to the appropriate concentration of residential density.

In the preparation of this application consideration has been given to the minutes arising from formal pre-lodgement engagement with Council and the Northern Beaches Design and Sustainability Advisory Panel (DSAP) (PLM2023/0102) with the final design detailing responsive to the associated recommendations. Particular attention has been given to key data obtained from a comprehensive flood information report obtained from Northern Beaches Council which provides flood data based on two previous flood studies. The key data can be summarised as follows:

<b>Flood Information</b>	<b>Site Details</b>
1% AEP Flood Level	3.03 m AHD
1% AEP (Climate Change) Flood Level	3.90 m AHD
PMF Flood Level	4.90 m AHD
FPL with climate change	4.40 m AHD

It is also evident from a review of recently approved/ currently proposed shop top housing development within this particular Flood Risk Precinct that the extent of flooding affectation makes compliance with Council's no net loss of flood storage requirement extremely difficult to achieve in a practical and cost-effective manner.

In this regard, a fundamental component of the application is to provide a sub floor flood zone for flood storage as detailed within the accompanying Flood Management Report prepared by ACOR Consultants. This report confirms that the flood affectation of the site is not increased or made worse by the proposed development due to increased flood storage and accordingly will not create an increment in the flood level outside the site since the flood storage has not been compromise compared to the existing condition. In fact, the proposal provides for an increase in flood storage on the site.

The proposed design also locates all car parking at or above the 1% AEP Flood Level and all commercial and residential floor space above the Flood Planning Level (with climate change) being RL 4.40m AHD and the PMF of RL 4.90m AHD. Whilst the flood storage and floor level design outcomes satisfy Council's flood planning controls it does have the consequence of increasing the overall height of the development to accommodate two residential floor levels above commercial floorspace. Such increase in overall building height is compensated for through the absence of rooftop shelter in place open space which is not required given that all commercial and residential floor levels are located above the Flood Planning Level (with climate change) and PMF Flood Level.

The final design, the subject of this application, represents a highly considered and resolved response to the constraints and opportunities identified, with the proposed development exhibiting good design not only in its architectural form, function and amenity but importantly, its success in responding to the significant constraint associated with the flood affectation and the current and desired future character of the area.

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

- The accompanying Flood Management Report prepared by ACOR Consultants confirms that the flood affectation of the site is not increased or made worse by the proposed development due to increased flood storage and accordingly will not create an increment in the flood level outside the site since the flood storage has not been compromise compared to the existing condition.
- Whilst the flood storage and floor level design outcomes satisfy Council's flood planning controls it does have the consequence of increasing the overall height of the development to accommodate two residential floor levels above commercial floorspace. Such increase in overall building height is compensated for through the absence of rooftop shelter in place open space which is not required given that all commercial and residential floor levels are located above the Flood Planning Level (with climate change) and PMF Flood Level.
- The overall building height is set by the minimum Finished Floor Level of an enclosed car park as required by the controls at D5 of Pittwater 21 DCP. The controls applying to basement parking on flood effected sites have removed the ability for development to be delivered in an orderly and economic manner. The minimum floor level for above ground parking remains at the 1% AEP (RL3.03). The proposal provides 2 levels of residential floor space above commercial as accepted in the Court approved shop top housing developments at 1 Gondolla Road, 3 Gondolla Road and 2-8 Rickard Road.
- The provision of basement parking within this flood precinct is neither orderly nor economic as evidenced by the fact that no recent approvals involving shop top housing with basement parking have been commenced. The adoption of the floor level and flood storage outcomes proposed across this Local Centre precinct will unlock the development potential of the area which is ideally suited to increased density given its E1 Local Centre zoning and proximity to the B-Line bus service.

- Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191, we have formed the considered opinion that most observers would not find the height or bulk of the proposed development offensive, jarring or unsympathetic in the streetscape context. We are of the opinion that the proposal will create a favourable precedent for the appropriate design of shop top housing within the North Narrabeen flood precinct.
- Whilst the proposal requires the consent authority to give favourable consideration to a variation to the building height development standard, strict compliance has been found to be unreasonable and unnecessary in this instance as the development is otherwise consistent with the objectives of the development standards and sufficient environmental planning grounds exist to support the variation (as outlined in the attached Clause 4.6 Variation Request).
- The areas of non-compliance with regard to the percentage of retail floor space and the undergrounding of overhead wires have been acknowledged and appropriately justified having regard to the associated objectives. Such variations succeed pursuant to section 4.15(3A)(b) of the EP&A Act which requires Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the objects of the DCP standards for dealing with that aspect of the development.

## **BOSTON BLYTH FLEMING TOWN PLANNERS**



**Greg Boston**

**ANNEXURE 1**

**CLAUSE 4.6 VARIATION REQUEST – HEIGHT OF BUILDINGS**

**Attached Separately**