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# 231 Whale Beach Road, Whale Beach



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## Statement of Support for Section 4.55(2) Modification Application



10 December 2024

FINAL

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# Executive Summary

This Statement of Support (SoS) has been prepared in support of a Section 4.55(2) Modification Application, made to Northern Beaches Council (“the Council”) under Part 4 of the *Environmental Planning and Assessment (EP&A) Act 1979*.

This Section 4.55(2) Application seeks consent to modify the existing development consent REV2021/0034 as modified by LEC No. 2022/331015 (‘as modified’), relating to development at 231 Whale Beach Road, Whale Beach (‘the site’).

The proposed modifications consist of 58 minor amendments, as outlined in the Schedule of Amendments prepared by Richard Cole Architects. Of these, 16 are design-related changes, while the remaining adjustments are necessitated by conditions of consent from REV2021/0034 (as modified) or are required for compliance with various regulatory bodies, including Transport Road and Maritime, engineering standards (fire, vertical transport, hydraulic, mechanical, electrical, structural, and waterproofing), traffic, access, BCA, and Ausgrid.

Excluding compliance-driven modifications, the key design changes include the addition of storerooms within the building's existing footprint, the reconfiguration of dividing walls in Retail Tenancy 1, and the replacement of steel balustrades with frameless glass balustrading. There has also been a reconfiguration of entry doors, bathrooms, and access areas in Apartments 1, 2 (upper), and 3, along with window adjustments to improve access and ventilation. Built-in BBQ benches have been removed from the terraces of Apartments 1 and 5, and terrace balustrades in Apartments 2, 3, and 4 have been revised to feature full glazing with some brickwork. Additionally, the awning roof has been modified, and a new skylight has been added alongside a revision of the existing skylight.

Overall, the proposed amendments result in the following key changes:

- Minor additional excavation;
- Minor increase in floor area, totalling the proposed floor area to 1241.92m<sup>2</sup>;
- Revised landscape design;
- Minor reconfiguration to apartment layouts; and
- Increased storage.

The s4.55(2) Application and this SoS have been prepared in accordance with the *Environmental Planning and Assessment (EP&A) Act 1979* and the Environmental Planning and Assessment Regulation 2021.

This SoS addresses the relevant heads of consideration listed under Section 4.15(1) of the *EP&A Act 1979* and provides an assessment of the proposed development against the relevant Environmental Planning Instruments (EPIs) and other planning controls applicable to the site and to the proposal.

The key planning controls are included within:

- Pittwater Local Environmental Plan (PLEP) 2014; and
- Pittwater 21 Development Control Plan (P21 DCP).

The proposed development is permissible with consent in the E1 Local Centre zone under PLEP 2014 and will continue to be consistent with the broad objectives of the zone. The development also complies with the maximum height of 8.5m applying to the site.

The modifications proposed are appropriate for the locality, result in a development that is substantially the same as the approved development and will not have any adverse impact to neighbouring properties.

The proposal seeks to maximise residential amenity, which is in the public interest.

Based on the assessment undertaken, approval of the s4.55(2) Modification Application is sought.

# 1. Introduction

## 1.1 Overview

This SoS has been prepared in support of a s4.55(2) Modification Application to undertake amendments to approved development under consent REV2021/0034, as modified by LEC No. 2022/331015.

Development Consent REV2021/0034 was issued on 6 December 2021 which granted consent for demolition works and construction of a mixed-use development comprising shop top housing and retail premises, with associated carparking, landscaping and strata subdivision.

The application has been most recently modified by LEC No. 2022/331015 to increase the number of patrons permitted in the restaurant on the ground floor, including internal and external areas. This modification makes no operational changes to that modification consent.

This application seeks Council's approval for a modification under the provisions of s4.55(2) of the *EP&A Act 1979* for 58 minor design amendments which are detailed in the Schedule of Amendments prepared by Richard Cole Architects. Of the 58 amendments, 16 amendments are design amendments. All other amendments are design changes required by the conditions of consent in REV2021/0034 (as modified) and those required for compliance.

## 1.2 Scope and Format of the Statement of Support

This Statement has been prepared in accordance with the requirements of Part 3, Division 1 of the *EP&A Regulation 2021* and provides an assessment consistent with the heads of consideration under Section 4.15 of the *EP&A Act 1979*, which are relevant to the consent authority's assessment of the application.

Accordingly, the SoS is structured into sections as follows:

- Section 1 - provides an overview of the project and of this SoS;
- Section 2 - describes the site, locality and surrounding development;
- Section 3 - describes the proposed modifications;
- Section 4 - identifies the applicable statutory controls and policies, and provides an evaluation of the proposed development against the relevant controls;
- Section 5 - provides an assessment of the proposal and its likely impacts on the environment, and in particular the potential impacts on adjoining properties and the surrounding area; and
- Section 6 - provides a conclusion on the proposal.

### 1.3 Supporting Plans and Documentation

This statement has been prepared with input from a number of technical and design documents which have been prepared to accompany this s4.55(2) Modification Application. These documents are included as Attachments to this statement and are identified in Table 1 below.

Document name	Prepared by
Survey Plan	Rygate Surveyors
Architectural Drawing Package	Richard Cole Architecture
Access Report	Accessible Building Solutions
Schedule of Amendments	Richard Cole Architecture
BCA Design Compliance Report	MBC Group
Landscape Plans	Trish Dobson Landscape Architecture
BASIX Certificate No. 1048605M_05	Bonnefin Consulting
NatHERS Certificate No. 0009476890	Certified Energy
Section J Energy Efficiency Report	Certified Energy
Traffic Letter	TEF Consulting
Geotechnical Addendum Letter	Douglas Partners
Stormwater Plan	Barrenjoey Consulting Engineers
Public Domain Civil Works	Barrenjoey Consulting Engineers
Arboricultural Impact Assessment and Management Plan	George Palmer, Botanics
Photomontage	Richard Cole Architecture

*Table 1: Plans and documents prepared to accompany this statement*

### 1.4 Cost of Works

The cost of works for the purpose of determining the DA fee for the proposed development has been calculated in accordance with Clause 251(1) of the EP&A Regulation 2021. The cost of works remains unchanged from the approved DA.



## 2. Site Description and Context

### 2.1 Site Description

The site is located at 231 Whale Beach Road, Whale Beach and is legally described as Lot B DP 316404.

The site has an area of 844.7m<sup>2</sup> and is an irregularly shaped allotment with a frontage to Whale Beach Road to the west, and to Surf Road to the northeast. The curvature of Surf Road is such that the site has a direct view to the beachfront beyond over the intersection of Surf Road and The Strand. The site has a 25.49m frontage to Whale Beach Road and secondary frontage of 20.66m to Surf Road.

The land slopes steeply down to the east as detailed in the Survey Plan prepared by Rygate Surveyors.

The location of the site is shown in Figure 1 below.



Figure 1: Aerial view of site and locality (Source: SixMaps)

#### 2.1.1 Existing Development on the Site

The site contains a multi-level, mixed-use development including retail and business premises facing Whale Beach Road. The eastern section of the site fronting Surf Road is occupied by residential apartments with a ground level double carport.

Photographs of the site are provided in Figures 2-5.



Figure 2. The site as viewed from Surf Road



Figure 3. The site as viewed from Surf Road



Figure 4. The site as viewed from Whale Beach Road



Figure 5. The site as viewed from Whale Beach Road

## 2.2 Context and Locality

The site is located within the Northern Beaches LGA and within the suburb of Whale Beach.

The locality is characterised by a mix of low-mid-rise residential buildings with some commercial uses spread along Whale Beach Road and The Strand. Due to the topography of the area which slopes down to the east towards Whale Beach, the locality has varying built forms and densities with buildings ranging from one-storey to five-storeys.

The location of the site in this context is shown in Figure 6.





	On 1 December 2021, the Review Application, REV2021/0034 was considered by the Northern Beaches Local Planning Panel, and consent was granted (the original consent). Relevantly, the original was for basement parking for 14 vehicles.
Mod2021/0987	A Section 4.55(1) modification application to REV2021/0034 to amend a misdescription was approved on 27 January 2022
MOD2021/0983	<p>On 1 February 2022, the Applicant lodged modification application MOD2021/0983 with the Respondent, seeking to modify the terms of Condition 99 as originally granted by REV2021/0034, to increase the number of patrons permitted in the restaurant on the ground floor, including internal and external areas, to a total of 170 patrons, comprising 140 indoor patrons, and 30 outdoor patrons, and 18 staff (Exhibit 1, folio 29).</p> <p>On 2 August 2022, the Northern Beach Local Planning Panel refused the modification application</p>
LEC No. 2022/331015	<p>The Applicant filed an appeal under s 8.9 of the EPA Act in Class 1 of the Court's jurisdiction on 4 November 2022.</p> <p>The appeal was upheld on 11 April 2024.</p>

*Table 2. Development Approval History*

# 3. Proposed Modifications

## 3.1 Description of Modification

The proposal seeks consent for the modification of the approved development to amend the approved architectural plans.

The proposed changes include 58 minor design amendments which are detailed in the Architectural Drawings Package and Schedule of Amendments prepared by Richard Cole Architects. Of the 58 amendments, 16 amendments are design amendments. All other amendments are design changes required by the conditions of consent in REV2021/0034 (as modified) and those required for compliance by:

- Transport Road and Maritime
- Engineering including fire, vertical transport, hydraulic and mechanical service, electrical, structural, and waterproofing
- Traffic
- Access
- BCA
- Ausgrid

Excluding those changes required by for compliance with the above, the proposed design changes are limited to:

### Basement

- A storeroom has been added to the northwestern corner wholly within the existing footprint of the approved building to provide increased storage capacity and amenity for the apartment owners

### Ground floor

- Dividing walls to Retail 1 have been reconfigured
- The steel balustrade to the northern wall of the driveway has been revised to frameless glass balustrading

### Level 1

- A storeroom has been added to the northwestern corner of Apartment 2 (lower level) wholly within the existing footprint of the approved building. The tank room to the ground floor requires excavation of this area
- The entry door, bathroom, ensuite and access to the storeroom, laundry and two adjacent bedrooms in Apartment 1 have been reconfigured
- The sill levels of window W A103-105 have been lowered to ground level and a new paved area provided
- The built in BBQ bench and BBQ have been deleted from the terrace of Apartment 1

## Level 2

- The plan and layout of a bedroom, ensuite bathroom and kitchen to Apartment 2 (upper) has been reconfigured and a bar and storage unit has been added to the entry
- The entry door, bathroom, ensuite and access to the rumpus room, laundry and two adjacent bedrooms in Apartment 3 have been reconfigured
- Window W A304 (previously W311) has been reconfigured to provide access to the adjacent landscaped terrace and a clothesline adjacent to Apartment 3 laundry. W303 (previously W312) has been changed from one fixed panel and one louvre panel to full louvre panel for increased ventilation to the rumpus room. A fixed glazed balustrade has been added to the eastern edge of the planter bed
- Apartment 2 (upper) and Apartment 3 terrace balustrades have been revised to fully glazed with sections of brickwork

## Level 3

- The balustrades to Apartment 4 terraces have been revised to glazing

## Level 4

- The built in BBQ bench has been deleted from the Apartment 5 Terrace
- The awning roof has been revised
- The northern wall and door has been moved approximately 450mm north to align with the approved stair wall and allow the reconfiguration of the bed and bedhead joinery. Adjacent windows to the eastern wall have been reconfigured to align

## Roof

- An additional skylight SK-01 has been added to the northern side of the service core. The approved skylight SK-02 has been revised and reduced in size

### **3.2 Modification of the Determination**

#### **3.2.1 Modifications to Description of the Development**

The description of the development does not require modification.

#### **3.2.2 Modifications to the Conditions of Consent**

##### Condition 1 - Approved Plans and Supporting Documentation

The modification requests amendments to Condition 1 to amend the approved plans and supporting reports to reflect the proposed works detailed above and in the Architectural Drawings Package prepared Richard Cole Architecture, dated 14 August 2024.

##### Condition 5 (n) - General Requirements

The modification application requests amendments to Condition 5 to delete Condition 5(n) which relates to requirements for swimming pools/spas:

~~(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.~~

~~(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following:  
Relevant legislative requirements and relevant Australian Standards (including but not limited) to:~~

- ~~(i) Swimming Pools Act 1992~~
- ~~(ii) Swimming Pools Amendment Act 2009~~
- ~~(iii) Swimming Pools Regulation 2018~~
- ~~(iv) Australian Standard AS1926 Swimming Pool Safety~~
- ~~(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools~~
- ~~(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.~~

~~(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.~~

~~(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewerred areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.~~

~~(4) Swimming pools and spas must be registered with the Division of Local~~

~~Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.~~

The spa is proposed to be deleted from the site and the condition is no longer relevant.

#### Condition 19 - Amendments to the Approved Plans

The modification requests amendments to Condition 19 to amend the conditioned material of the privacy screens as this is in conflict with fire safety requirements.

The following amendments are to be made to the Approved Plans:

- Excavation: The proposed area of excavation adjacent to the bedrooms of Apartment 1 is to be continued through to the east, extending to the point where the proposed excavated level meets existing ground level.
- Overland flow path: The 1.0m wide overland flow path along the Southern Boundary is to be reduced in width to 0.6m. Conversely, the setback between the overland flow path and the southern elevation is to be increased by 0.4m.
- Apartment 3 terrace: The planter box proposed on the southern elevation of the terrace associated with Apartment 3 is to continue the entire length of the terrace. A fixed privacy screen to a height of 1.7m above the FFL of the terrace is to be incorporated on the inside edge of the planter, for a minimum distance of 3m measured from the eastern facade of the external wall. The privacy screen can be constructed of translucent glazing or ~~timber~~ aluminium screens (TS), of the same detail of those proposed on Level 4.
- Apartment 4 Terrace: The planter box proposed on the southern elevation of the terrace associated with Apartment 4 is to continue the entire length of the terrace. A fixed privacy screen to a height of 1.7m above the FFL of the terrace is to be incorporated on the inside edge of the planter, for a minimum distance of 3m measured from the eastern facade of the external wall. The privacy screen can be constructed of translucent glazing or ~~timber~~ aluminium screens (TS), of the same detail of those proposed on Level 4.
- Spa: The spa on the Level 4 terrace is to be deleted from the plans and is not authorised by this consent

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate. Reason: To ensure the development achieves appropriate internal amenity.

## 4. Section 4.55 Assessment

### 4.1 Section 4.55 of the EP&A Act 1979 – Modifications

The assessment of the proposal, outlined below, addresses matters listed under Section 4.55 of the *EP&A Act 1979*. The assessment set out in this section is provided to assist Council in its consideration of the application.

### 4.2 Section 4.55(2) of the EP&A Act 1979 – Other Modifications

In accordance with Section 4.55(2) of the *EP&A Act 1979*, Council may consent to the modification of a 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 consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with—*
  - (i) the regulations, if the regulations so require, or*
  - (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*
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.”*

The proposed Section 4.55(2) modification seeks minor alternations with regard to the approved development under REV2021/0034 (as modified). The proposed changes have arisen from detailed design development and include those required for compliance and as per conditions of consent in addition to 16 minor design amendments. The proposed modification is in accordance with Section 4.55(2) of the *EP&A Act 1979* as discussed in the table below.



Section 4.55(2) requirement	Comment
(a) substantially the same development	<p>The proposal does not change the categorisation of the approved development and therefore, the proposed modification will result in development that is substantially the same as the development originally approved by Rev2021/0034.</p> <p>The proposed modification is considered to be consistent with the original consent and directly responds to the original DA condition requirements in addition to minor additional amendments.</p> <p>Additionally, the proposed modification does not seek to alter the predominant bulk/scale of the approved development. In this regard, the proposal will not result in any overshadowing, view or privacy impacts relative to REV2021/0034 (as modified).</p> <p>Accordingly, the proposed modifications satisfy Section 4.55(2)(a) of the <i>EP&amp;A Act 1979</i> as they result in a development that is substantially the same as the development originally approved by Council, being for demolition works and construction of a mixed-use development comprising shop top housing and retail premises, with associated carparking, landscaping and strata subdivision.</p>
(b) - (d) consultation and notification	<p>The application will be notified in accordance with Council's notification policy. At completion of this notification process, Council will be subsequently required to review any submissions received.</p>

Table 3. Consideration of Section 4.55(2) of the *EP&A Act 1979*

### 4.3 Section 4.55(3) of the *EP&A Act 1979*

In accordance with Section 4.55(3) of the *EP&A Act 1979*, when determining an application to modify a consent, *"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."*

The modified development has regard to the reasons for which consent to Rev2021/0034 was originally granted in the following ways:

- The modified development continues to generally comply with the aims, objectives and design parameters contained in the relevant EPI, being the Pittwater Local Environmental Plan (PLEP) 2014 and Pittwater 21 Development Control (P21 DCP).
- The development will not result in adverse impacts on the amenity of adjoining premises and the streetscape.
- The modified development will maintain compliance with the conditions of consent (as modified) that were suitably imposed.
- The proposal does not impact the overall bulk and scale of the building as the proposed modification does not alter the siting of the building and does not increase the height relative to the approved.

An assessment of the proposed modifications with regard to relevant matters referred to in Section 4.15 is outlined in Section 5 of this document.

## 5. Statutory Assessment

### 5.1 Section 4.15

Section 4.15 of the *EP&A Act 1979* sets out the statutory matters for consideration against which the proposed development is to be evaluated. The matters for consideration under Section 4.15 are as follows:

- “(1) **Matters for consideration—general** In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:
- (a) the provisions of:
    - (i) any environmental planning instrument, and
    - (ii) 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
    - (iii) any development control plan, and
    - (iiia) 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, and
    - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),
    - (v) (Repealed)that apply to the land to which the development application relates,
  - (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
  - (c) the suitability of the site for the development,
  - (d) any submissions made in accordance with this Act or the regulations,
  - (e) the public interest.”

The matters for consideration identified in S4.15(1)(a) of the *EP&A Act 1979* are addressed in the following section. Subsections (b) to (e) of S4.15(1) of the *EP&A Act 1979* are addressed in Section 6 of this SoS.

### 5.2 Overview of Statutory and Policy Controls

The Environmental Planning Instruments and other statutory planning documents and policies which were relevant to the approved development pursuant to S4.15(1)(a) are identified below:

- State Environmental Planning Policy (Resilience and Hazards) 2021;
- State Environmental Planning Policy (Biodiversity and Conservation) 2021;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX SEPP);
- Pittwater Local Environmental Plan (PLEP) 2014; and
- Pittwater 21 Development Control (P21 DCP).

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

#### **5.3.1 Coastal Management**

Part 2.2 of the State Environmental Planning Policy (Resilience and Hazards) 2021 ('the Resilience and Hazards SEPP') prescribes matters for consideration and management objectives for land use planning within coastal management areas.

The site is identified as being within a 'Coastal Use Area', and as such, Chapter 2 of the Resilience and Hazards SEPP has been taken into consideration. Coastal Engineering Advice was submitted in support of the approved application under REV2021/0034 (as modified). Council was satisfied that that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. Due to the minor nature of the additional works, the proposed modification is unlikely to cause any adverse impacts and is satisfactory having regard to the matters for consideration.

#### **5.3.2 Remediation of land**

Chapter 4 of the Resilience and Hazards SEPP prescribes a statutory process associated with the development of land that is contaminated and needs remediation.

Clause 4.6 of the Resilience and Hazards SEPP provides the following:

- “(1) A consent authority must not consent to the carrying out of any development on land unless:*
- (a) it has considered whether the land is contaminated, and*
  - (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
  - (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.”*

The site was considered suitable for its use as shop top housing in the approval of Rev2021/0034 (as modified). In this regard, the proposal is consistent with Chapter 4 of the Resilience and Hazards SEPP.

### **5.4 State Environmental Planning Policy (Biodiversity and Conservation) 2021**

#### **5.4.1 Vegetation in Non-Rural Areas**

Chapter 2 of the State Environmental Planning Policy (SEPP) (Biodiversity and Conservation) 2021 aims to protect the biodiversity and amenity values of trees within non-rural areas of the state.

An updated Arboricultural Impact Assessment has been prepared by George Palmer Botanics and confirms that the proposed modification has no impact on existing trees surrounding the site. Accordingly, approval from the Native Vegetation Panel is not necessary and further consideration of Chapter 2 of the SEPP is not required.

### **5.5 State Environmental Planning Policy (Sustainable Buildings) 2022**

This SEPP operates in conjunction with *EP&A Regulation 2021* to ensure the effective introduction of BASIX in NSW.

In accordance with Clause 6(1) of the SEPP, BASIX applies to BASIX affected development as defined by the Regulation. The proposed development is defined as a BASIX affected development as it involves construction activities with a value over \$50,000.

A revised BASIX Certificate has been prepared for the proposed modification and demonstrates that the building satisfies the requirements of the SEPP.

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

Chapter 4 of the State Environmental Planning Policy (Housing) 2021 (Housing SEPP) applies to development only if:

*(a) the development consists of—*

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

Notwithstanding, an assessment against the provisions of the Apartment Design Guide (ADG) has been undertaken which found that no non-compliances that differ from the original approval, arise from the amended DA.

The Housing SEPP establishes nine (9) Design Principles for residential apartment development, as set out in Schedule 9:

- 1 Context and neighbourhood character
- 2 Built form and scale
- 3 Density
- 4 Sustainability
- 5 Landscape
- 6 Amenity
- 7 Safety
- 8 Housing diversity and social interaction
- 9 Aesthetics

The proposed modifications do not alter the building compliance against any of the Design Principles for residential apartment development.

## **5.7 Pittwater Local Environmental Plan (PLEP) 2014**

### **5.7.1 Land Use and Permissibility**

The site is located within the E1 Local Centre zone under PLEP 2014 (refer extract of the Land Zoning Map in Figure 7).

No change is sought to the approved use under Rev2021/0034 (as modified). Notwithstanding, shop top housing is permissible with consent in the E1 Local Centre zone.



Figure 7: Extract of PLEP 2014 Land Zoning Map

#### 5.7.2 Height of Buildings (Clause 4.3)

Clause 4.3 of PLEP 2014 establishes an 8.5m maximum building height for the site, as illustrated in the extract of the Height of Buildings Map included in Figure 8.

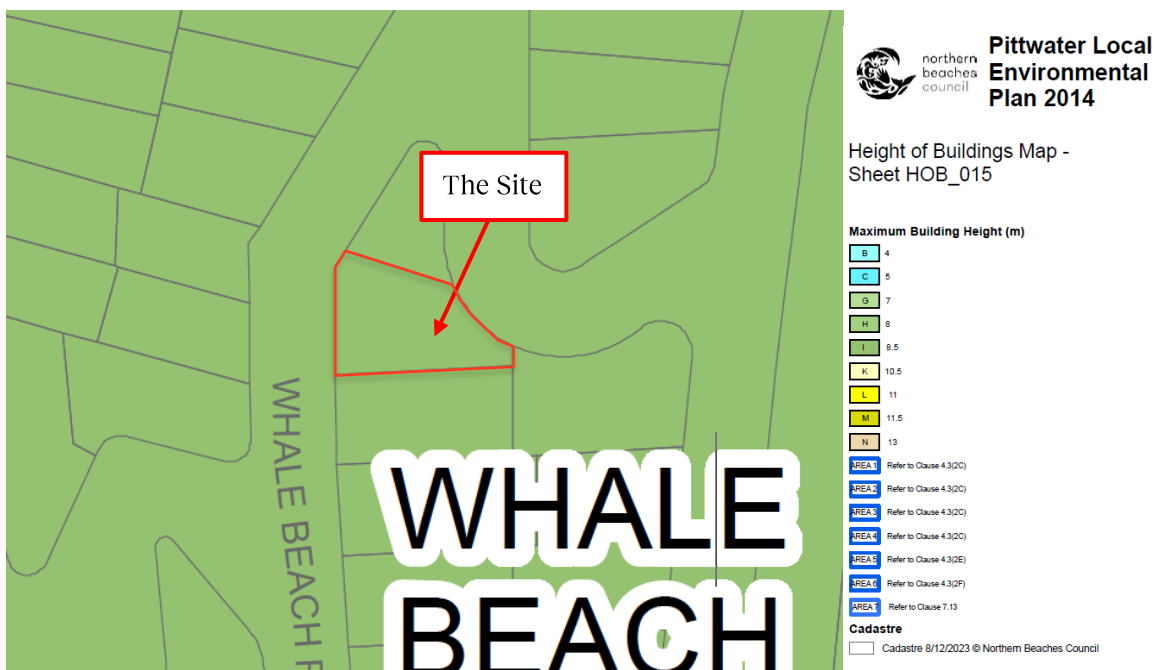


Figure 8: Extract of PLEP 2014 Height of Buildings Map

The proposed modification does not seek to alter the height of the approved building. The development, as proposed to be modified does not increase the height relative to the approved DA as shown in the Architectural Drawings and reproduced in Figure 9 below. The proposed development will maintain a maximum building height of 8.5m. In this regard, further consideration of clause 4.3 is not necessary.

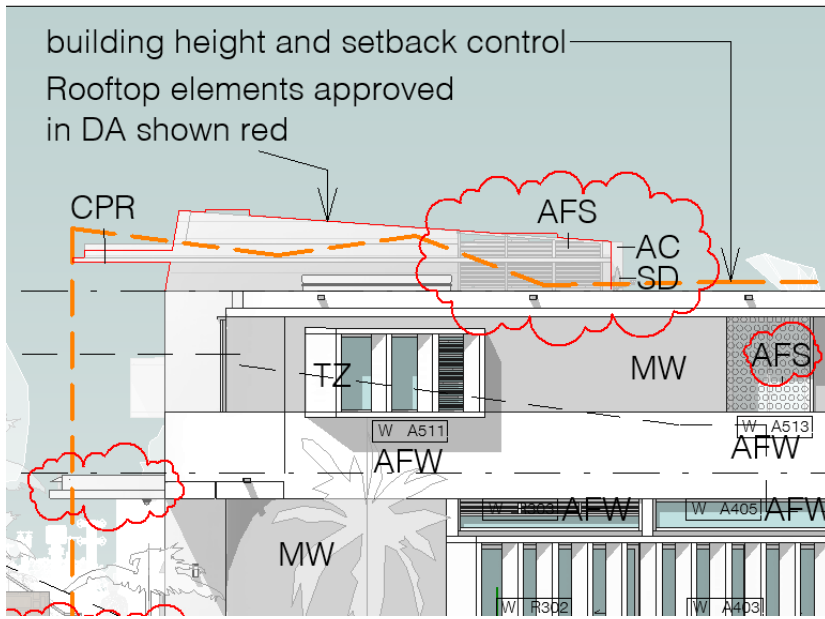


Figure 9. Part Elevation on DA10 showing approved DA compared to Section 4.55 application rooftop elements

### 5.7.3 Floor Space Ratio (Clause 4.4)

There is no maximum floor space ratio control applicable to the site under Clause 4.4 of PLEP 2014.

### 5.7.4 Residential Density (Clause 4.5A)

The site is located in “Area 1” on the Land Zoning Map which requires a maximum of 1 dwelling per 150 square metres of site area for shop top housing developments.

No changes are proposed to the total number of dwellings proposed. The proposal continues to comply with Clause 4.5A with a site area of 844.7m<sup>2</sup> and a proposed five (5) apartments.

### 5.7.5 Geotechnical Hazard (Clause 7.7)

The subject site is identified within the Geotechnical Hazard HI area, as shown in the extract of the Geotechnical Hazard Map included in Figure 10.

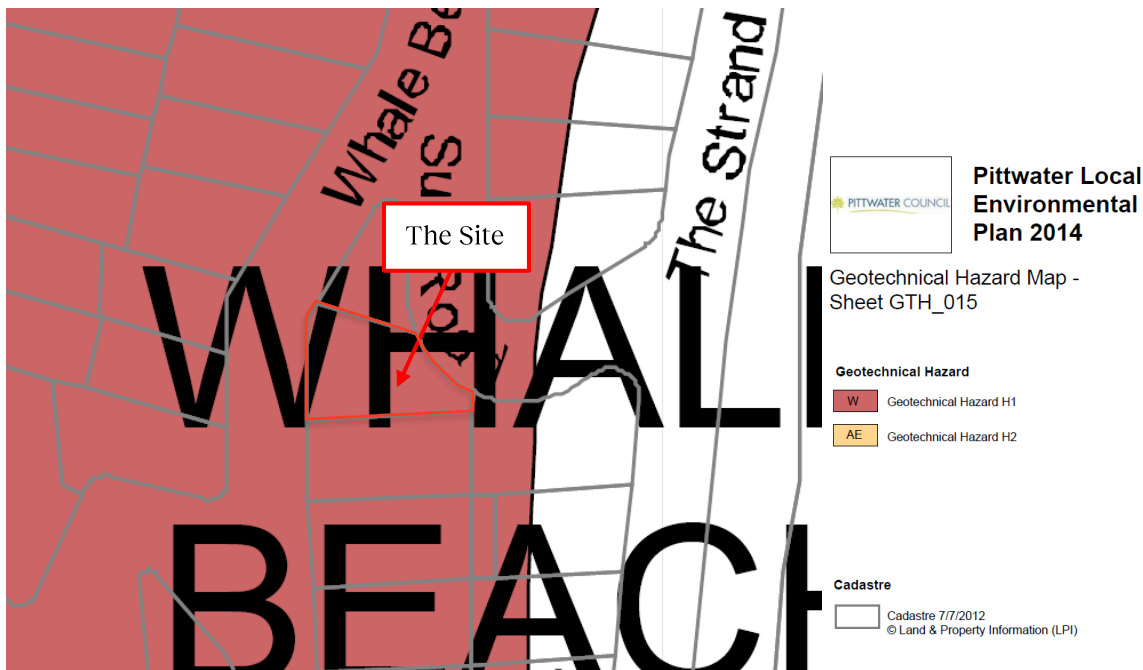


Figure 10: Extract of PLEP 2014 Geotechnical Hazard Map

Minor additional earthworks with a footprint of 29.9m<sup>2</sup> are proposed within the northwestern corner of the site. A Geotechnical Report was prepared by Douglas Partners and submitted with the original DA. The amended proposal does not change the recommendations contained in the Douglas Partners report, as confirmed in a letter of addendum included with this application. The additional excavation is located wholly within the required setbacks and is required only at basement level to facilitate additional storage.

#### 5.7.6 Acid Sulfate Soils (Clause 7.1)

Clause 7.1 seeks to minimise the impacts of Acid Sulfate Soils to the environment. The extract at Figure 11 of the Acid Sulphate Soils Map identifies that the site is located within a Class 5 Acid Sulphate Soils zone. The site is located within 400m of a Class 1 acid sulphate soils location which is located to the west. As previously assessed, the Class 1 acid sulphate soils are located on the other side of the topography peak west of the site and will have no impact on the proposed development.

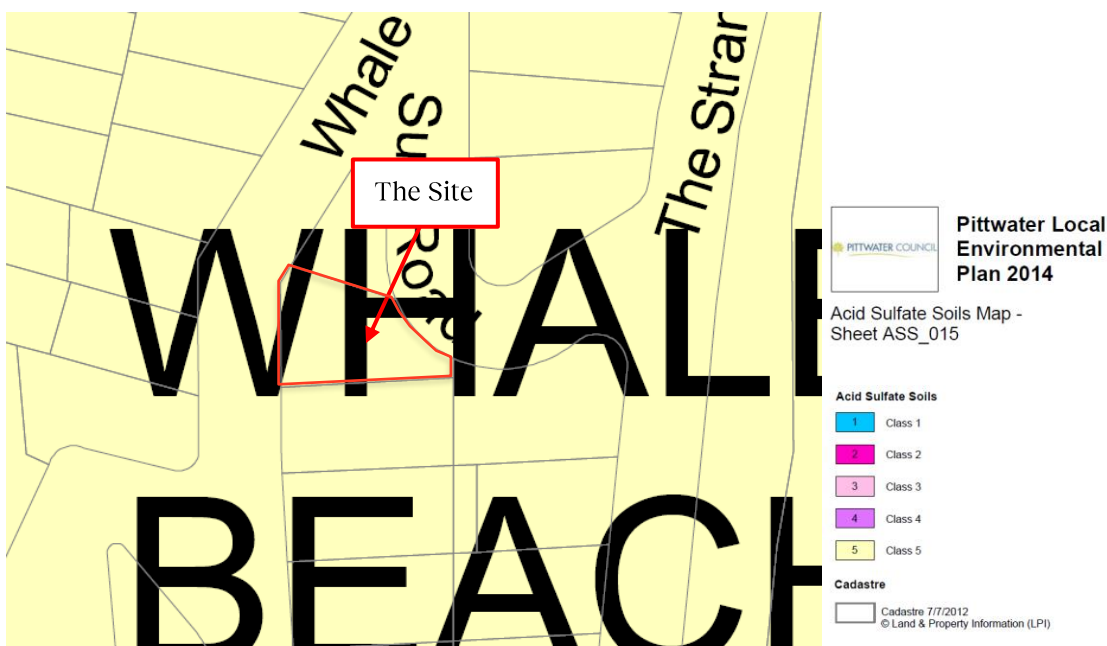


Figure 11. Extract of PLEP 2014 Acid Sulfate Soils Map

A Geotechnical Report was submitted with DA2020/0442 and considered under the assessment of subsequent review, which included recommendations for earthworks during construction to ensure there are no adverse impacts from the proposed development. The proposed minor amendments do not involve lowering of the existing water table, nor substantially alter the development footprint. As such, the report recommendations remain unchanged. A Geotechnical Addendum Letter prepared by Douglas Partners confirms that these recommendations remain applicable to the development as proposed.

#### 5.7.7 Earthworks (Clause 7.2)

The proposed modification increased the excavation footprint by approximately 29.90m<sup>2</sup> on the northwestern corner. A Geotechnical Report Addendum Letter has been prepared by Douglas Partners and confirms that the recommendations/comments provided within the original geotechnical report, submitted with REV2021/0034 (as modified) are still applicable and remain unchanged.

#### 5.7.8 Coastal Risk Planning (Clause 7.5)

The subject site is not within the Coastal Risk Planning Area. The site is in proximity to land affected by wave Inundation, as shown in the extract of the Biodiversity Map included in Figure 12.

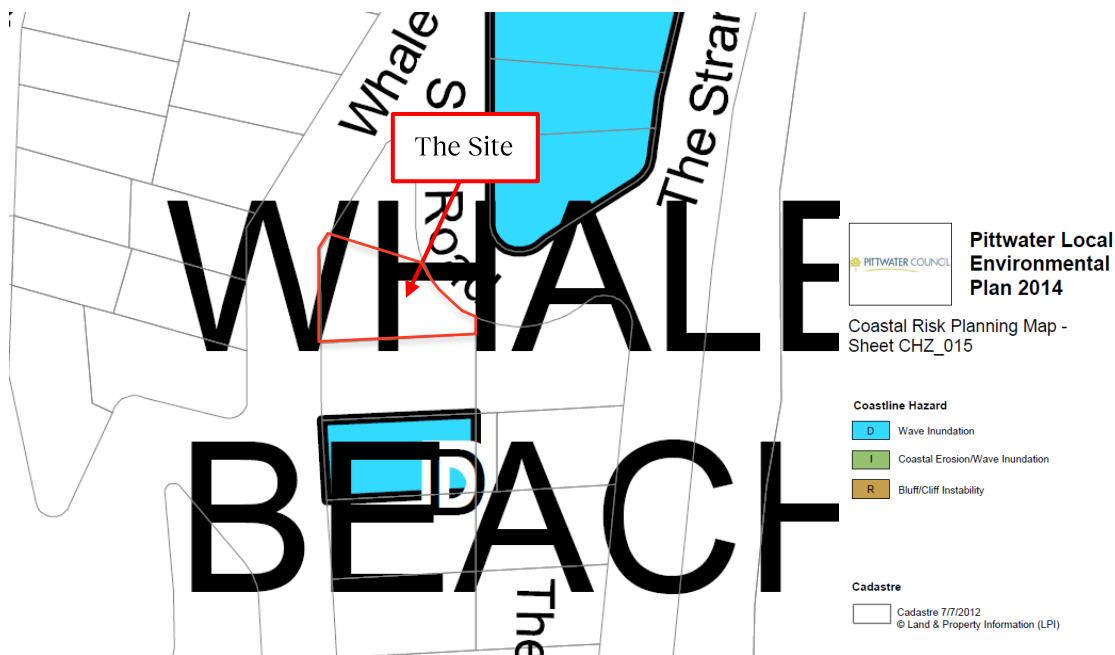


Figure 12. Extract of PLEP 2014 Coastal Risk Planning Map

It was noted in Council's assessment of REV2021/034 (as modified) that the site is located outside the 1% AEP flood extent and as such, the provisions of clause 5.21 of PLEP 2014 and clause B3.11 of P21 DCP are not applicable in this instance. The previous 1.0m wide overland flow path along the Southern Boundary has been reduced in width to 0.6m and the setback between the overland flow path and the southern elevation has been increased by 0.4m to comply with Condition 19 of the previous consent. Minor amendments to the pit detail along Surf Road is proposed as shown in the Stormwater Plans prepared by Barrenjoey Consulting Engineers.



### 5.7.9 Biodiversity (Clause 7.6)

The subject site is not Biodiversity mapped area. However, the site is in proximity to Biodiversity affected land to the west of the site and Whale Beach Road, as shown in the extract of the Biodiversity Map included in Figure 13.

The entire site is approved for development. No further impacts are proposed by way of this application and the assessment as undertaken within the application remains relevant.



Figure 13. Extract of PLEP 2014 Biodiversity Map

### 5.7.10 Essential services (Clause 7.10)

Clause 7.10 ensures the provision of essential services for new developments. As consistent with the previously approved DA, Council can be satisfied that the development will be supported by all relevant essential services.

## 5.8 Northern Beaches Draft Local Environmental Plan 2024

Under the Clause 4.3 Height of Buildings of the Northern Beaches Draft Local Environmental Plan (LEP) 2024, the height is proposed to be increased for 2 and 3 storey mixed use development in centres currently subject to 8.5m and 11m limits to provide greater amenity and flexibility in the use of buildings over their lifespan. The proposed height increases on the site will increase the maximum building height from 8.5m to 9.3m.

The draft Northern Beaches LEP 2024 does not introduce an FSR development standard to the site

## 5.9 Pittwater 21 Development Control Plan (P21 DCP)

The P21 DCP provides detailed provisions to guide future development.

A substantial portion of the development remains unchanged as assessed against the provisions of P21 DCP. The existing consent applies to components of development which have been unaffected by this modification application.

An assessment of the relevant provisions of P21 DCP, against the amended development components, is provided in Table 4.

Control	As approved	As proposed	Comment
Part A: Shaping Development in Pittwater			
A4.12 Palm Beach Locality	Complies	Complies	No change
Part B: General Controls			
<b>B2.6 Dwelling Density and Subdivision - Shop Top Housing</b>	24.5%	25.5% (316.96m <sup>2</sup> )	The proposed amendment increases the ground floor retail area via the extension of the retail to the west.
	1.8% variation	Complies.	
Retail/ Commercial Percentage 25% of GFA (310.48m <sup>2</sup> )			
B3.1 Landslip Hazard	Complies	Complies	Refer to Section 5.7.5 and Geotechnical Addendum Letter prepared by Douglas Partners.
B5.15 Stormwater	Complies	Minor amendments as detailed in the Stormwater Plan prepared by Barrenjoey Consulting Engineers	Refer to amended Stormwater Plan prepared by Barrenjoey Consulting Engineers
B6.1 Access driveways and Works on the Public Road Reserve	Complies	Complies with minor changes to the driveway access. The driveway access remains in the same location.	Refer to the Traffic Letter prepared by TEF Consulting.
B6.2 Internal Driveways	Complies	The driveway satisfies structural and access requirements.	Refer to the swept path diagrams within the Traffic Letter prepared by TEF Consulting.
B6.3 Off-Street Vehicle Parking Requirements	14 off-street parking spaces located in basement.	No change	
B6.6 On-Street Parking Facilities	4 x on-street parking spaces	The 4 x on-street parking spaces and adjoining footpath have been indented to improve traffic management.	Refer to the Traffic Letter prepared by TEF Consulting.

B6.7 Transport and Traffic Management	Complies	<p>The proposed minor amendments to the parking location will not impact the capacity of the existing road network.</p> <p>The proposal will improve road traffic management.</p>	Refer to the Traffic Letter prepared by TEF Consulting.
B8.1 Construction and Demolition - Excavation and Landfill	Complies	The additional excavation which is wholly within the approved building footprint is supported by a Geotechnical Addendum Letter which concludes that no adverse impacts to the site or neighbouring properties arise from the additional excavation.	Refer to Geotechnical Addendum Letter prepared by Douglas Partners.
Section C Development Type Controls			
<p><b>C1.1 Landscaping</b></p> <p>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>above ground gardens are to be incorporated into each dwelling at all levels (other than ground floor).</p> <p>a minimum 4m<sup>2</sup> planter or landscaped area is to be provided as a feature at the ground level of the front building facade.</p> <p>landscaping is to be provided at the front and rear of the development.</p>	Complies	<p>The proposed amendments continue some minor revisions to the landscaping plan. Key changes are proposed to accommodate the revised kiosk location, access ramp and fire hydrants along Whale Beach Road.</p> <p>The amendments have a minor impact on the total landscape which remains compliant overall with a proposed landscaped area of 248.8sqm (29.4%).</p>	Refer to Landscape Plan prepared by Trish Dobson Landscape Architecture.
C1.3 View Sharing	Complies	No additional impacts.	Refer to discussion below this table.
C1.4 Solar Access	Complies	The residential units continue to achieve adequate solar access.	Refer to Section 6.2.

			An additional skylight has been added to the northern side of the service core. The approved skylight SK-02 has been revised and reduced in size.	
C1.5 Visual Privacy	Subject to the imposition of conditions, the proposed development was considered to achieve reasonable privacy between properties.		The proposed development incorporates privacy screens, as conditioned, with the exception of the screen materiality. The change of material from timber to aluminium does not raise any impacts on privacy.	Refer to discussion in Section 6.2.
C1.6 Acoustic Privacy	Complies		<p>No change to location of residential units.</p> <p>Six air conditioning condensers are proposed within the approved service area on the rooftop. The location of these, coupled with other approved services are considered to not give rise to any unreasonable adverse noise impacts as they are screened and well located away from potential sensitive receivers.</p>	Refer to Architectural Package prepared by Richard Cole Architecture.
<b>C1.7 Private Open Space</b>				
private open space at upper levels in the form of front/rear or internal courtyard balconies and terraces are required.				
	<ul style="list-style-type: none"> <li>a minimum area of 10m<sup>2</sup> and a minimum width of 2.4 metres</li> </ul>	Minimum 24m <sup>2</sup>	No change.	
First floor balconies along the side boundary must be designed to limit overlooking and maintain privacy of adjoining residences.				

C1.9 Adaptable Housing and Accessibility	Complies	Access requirements have been incorporated into the amended design.	Refer to Statement of Compliance - Access for People with a Disability prepared by Accessible Building Solutions
		A sprinkler pump tank and booster assembly is required on the north western corner of the site. The tank is subterranean. Appropriate screen planting is proposed on the street side of the booster assembly structure.	
C1.10 Building Facades	Complies	The building façade will not contain any other stormwater, sewer, gas, electrical or communication service pipe or conduit that is visible from the public place.  No change proposed to mailbox location.	
C1.12 Waste and Recycling Facilities	Complies	No change	
C1.25 Plant, Equipment Boxes and Lift Over-Run	Complies	Six air conditioning condensers are proposed within the approved service area on the rooftop. The location of these, coupled with other approved services are considered to not give rise to any unreasonable adverse noise impacts as they are screen and well located away from potential sensitive receivers.  Rooftop plant is not visible from the public domain.	Refer to Architectural Package prepared by Richard Cole Architecture.
C2.1 Landscaping	Complies	The proposed amendments include some minor revisions to the Landscape Plan. Key changes are proposed to accommodate the revised kiosk location, access ramp and fire hydrants along Whale Beach Road.	Refer to Landscape Plan prepared by Trish Dobson Landscape Architecture and updated Arboricultural Impact Assessment prepared by George Palmer Botanics.

		<p>An updated Arboricultural Impact Assessment has been prepared by George Palmer Botanics and confirms that no trees are impacted by the proposed amendments.</p> <p>The amendments have a minor impact on the total landscape which remains compliant overall with a proposed landscaped area of 248.8sqm (29.4%)</p>	
C2.3 Awnings	Notwithstanding that C2.3 requires that It was assessed in the approved DA that a “continuous footpath awning is not required or appropriate in this instance”	The proposal is consistent with this assessment.	Refer to Architectural Package prepared by Richard Cole Architecture.
C2.5 View Sharing	Complies	No additional impacts.	Refer to discussion below this table.
C2.6 Adaptable Housing and Accessibility	Complies	Access requirements have been incorporated into the amended design.	Refer to Statement of Compliance Access for People with a Disability prepared by Accessible Building Solutions
C2.9 Waste and Recycling Facilities	Complies	No change	
C2.12 Protection of Residential Amenity	Subject to the imposition of conditions, the proposed development was considered to achieve reasonable privacy between properties.	<p>The proposed development incorporates privacy screens as conditioned with the exception of the screen materiality. The change of material from timber to aluminium does not raise any impacts on privacy.</p> <p>Access to outdoor space from Apartments 1 and 3 is proposed along the western side of the building.</p>	Refer to discussion in Section 6.2.

C2.20 Public Road Reserve - Landscaping and Infrastructure	Complies	<p>Minor changes are proposed as consistent with access requirements.</p> <p>The approved access ramp has been revised and a new planter bed has been introduced along the western boundary adjacent to Whale Beach Road.</p> <p>The proposed street trees are planted so as not to obstruct pedestrian passage.</p>	Refer to Public Domain Landscape Plan prepared by Trish Dobson Landscape Architecture and Public Domain Infrastructure Works Plan prepared by Barrenjoey Consulting Engineers.
C2.22 Plant, Equipment Boxes and Lift Over-Run	Complies	Six air conditioning condensers are proposed within the approved service area on the rooftop. The location of these, coupled with other approved services are considered to not give rise to any unreasonable adverse noise impacts as they are screened and well located away from potential sensitive receivers.	Refer to Architectural Package prepared by Richard Cole Architecture.
Part D: Locality Specific Development Controls – D12 Palm Beach Locality			
D12.1 Character as viewed from a public place	Complies	<p>The location of the western substation has been altered. This is located below the street and will not raise any visual impacts as viewed from the public domain.</p> <p>Electrical cabling and the like will not be visible from the street.</p> <p>The proposed fire hydrant will be appropriately screened with landscaping as viewed from the street.</p>	
D12.3 Building colours and materials	Consistent with requirement for external colours and materials to be earthy tones with the imposition of	The conditioned timber privacy screens are proposed to be amended to aluminium framed privacy screens as required by Fire Services and NCC requirements.	The timber screens have been assessed to be inappropriate due to flammability risks.

	Condition 19 imposing timber screens.	<p>The proposed fixed aluminium framed privacy screens are proposed on the inside face of planter beds with vegetation negating clear visibility to the aluminium screen as viewed from the public domain.</p> <p>Notwithstanding, the proposed aluminium screens are consistent with the colour schedule in Section D12.3 of the DCP.</p>								
<b>D12.5 Front building line</b>	Whale Beach Road: 3.5m Surf Road: Nil - 11.6m	No change.								
<b>D12.6 Side and rear building line</b>	<p><u>North</u></p> <table><tr><td>Basement: Nil - 4.5m</td></tr><tr><td>Ground: 1.2m - 4.5m</td></tr><tr><td>Levels 1-3: 4.0m</td></tr><tr><td>Level 4: 4.6m</td></tr></table> <p>3m</p> <p><u>South</u></p> <table><tr><td>Basement: 2.5m</td></tr><tr><td>Ground: 2.5m</td></tr><tr><td>Levels 1-3: 4.0m</td></tr><tr><td>Level 4: 4.6m</td></tr></table>	Basement: Nil - 4.5m	Ground: 1.2m - 4.5m	Levels 1-3: 4.0m	Level 4: 4.6m	Basement: 2.5m	Ground: 2.5m	Levels 1-3: 4.0m	Level 4: 4.6m	No change.
Basement: Nil - 4.5m										
Ground: 1.2m - 4.5m										
Levels 1-3: 4.0m										
Level 4: 4.6m										
Basement: 2.5m										
Ground: 2.5m										
Levels 1-3: 4.0m										
Level 4: 4.6m										

Table 4: P21 DCP Assessment Table

### Storage

Condition 27 required that the plans must detail adequate provision for storage including separate storage of food, equipment, chemicals and personal belongings.

Additional storage has been provided in the basement, ground floor and level 1 at the northwestern corner. This is facilitated by some additional excavation which is wholly within the existing footprint of the approved building. The amended design provides adequate storage for both the residential apartments and to support retail and commercial functions.



## Views

Height poles were erected as part of REV2021/0034 (as modified) to demonstrate the indicative height of the proposal (refer to Figures below). An assessment of the level of impact based upon these height poles and with regard to the four step View Sharing Planning Principle was undertaken in the assessment of REV2021/0034 (as modified).



Image 3 - North-easterly view from loft at 194 Whale Beach Rd. Approximate extent of impact highlighted in red, noting all height poles are not visible.



Image 4 - View from east facing living room balcony at 198 Whale Beach Road. Height poles highlighted in red.



Image 5 - View from east facing master bedroom balcony at 198 Whale Beach Road. Height poles highlighted in red.



Image 7 - View from east facing terrace at 11 Morella Road. Height poles highlighted in red.

The additional floor area is restricted to the ground level and level 1 at the northwestern corner and does not adversely impact any identified views beyond those from the approved building.

## 6. Impacts of the Development

This section of the SoS identifies potential impacts which may occur as a result of the proposed development and are relevant matters for the consideration of the DA under s4.15(1)(b) to (e) of the *EP&A Act 1979*.

### 6.1 Construction Impacts

All construction works will be undertaken in accordance with the relevant conditions of REV2021/0034 (as modified) relating to construction hours and waste management.

### 6.2 Amenity Impacts on Neighbouring Properties

#### Bulk and scale

The proposed modification does not seek to alter the height or predominant bulk/scale of the approved development. In this regard, the proposal will not result in any overshadowing or view loss impacts above those previously considered as part of the approved DA.

There will be no significant change to the approved solar access arrangements or overshadowing outcomes as a result of the proposed modifications. Additionally, the proposal will not result in acoustic or visual privacy impacts above those previously considered in the approval of REV2021/0034 (as modified).

#### Traffic and Parking

The location of the proposed four on street carparks and adjacent footpath along Surf Road have been adjusted to accommodate the indentation of parking spaces. This has been amended for road and traffic safety as informed by TEF Consulting. The traffic letter confirms the suitability of this arrangement:

*Pursuant to the provisions of Clause A5G3 of BCA 2022, I hereby certify that the amended design of the car parking area is in accordance with normal engineering practice and meets the requirements of*

- AS/NZS 2890.1:2004: *Parking Facilities - Off-street car parking*
- AS 2890.6:2022: *Parking Facilities - Off-street parking for people with disabilities*
- *Conditions of Consent 15, 16 and 98*

The proposed amendment provides unimpeded movement for vehicles exiting the intersecting road and ensures sufficient sight distance for vehicles turning onto the intersecting road.

#### Acoustic

The proposed amendments do not alter the approved patron numbers or associated acoustic impacts. The proposed amendments do not contradict Conditions No 99 & No. 99A of REV2021/0034 (as modified), as imposed to ensure acoustic measures are carried out and residential amenity is protected.

### Views from public domain

Condition No. 00 requires that “no plant equipment is permitted on the roof or in a location that is visible from the public domain”. The proposed plant has been visually massed and is shown in Figures 14-16 below. Rooftop plant equipment does not protrude above the height of the copper roof and will not be visible from the public domain.



Figure 14. View of proposed building from Whale Beach Road - north of the site



Figure 15. View of proposed building from directly across Whale Beach Road



Figure 16. View of proposed building from Whale Beach Road - south of the site



## Privacy

The amendments have minimal potential impacts in regards to privacy. Amendments that relate to windows or private open spaces are as follows.

The proposed development incorporates privacy screens as conditioned with the exception of the screen materiality. The change of material from timber to aluminium does not raise any impacts on privacy.

Ground floor windows G02 and R102 are proposed to be reduced in size to accommodate the adjacent reinforced concrete supporting wall.

Along the southern edge of level 1, windows A103-105 in Apartment 1 have been lowered to the floor level, essentially converting the windows to sliding doors. A new paved area has been added to facilitate access to an outdoor clothesline. Similarly, at level 2, on the southwestern corner of Apartment 3, window A304 (formerly W311) has been redesigned to provide access to the adjoining landscaped terrace and a proposed clothesline next to Apartment 3's laundry. Window 303 (formerly W312) has been amended to a full louvre panel to improve ventilation in the rumpus room. Additionally, a fixed glazed balustrade has been added on the eastern side of the planter bed, allowing level access to the outdoor clothesline, while also enhancing cross ventilation and natural daylight.

In both instances, these will not be used as a primary balcony as they are supplementary to large primary terraces. Notwithstanding both clothesline locations are located lower than the neighbouring building to the south and will not impose any new adverse privacy impacts.

### **6.3 Social Impacts and Economic Impacts**

The development, as proposed to be modified, will not contribute to any adverse social or economic impacts. The proposed various minor amendments do not alter the number of residential units nor the provision of parking. Rather, the proposal seeks to enhance the residential amenity of the approved development via the provision of increased storage, revised layout, landscaping and the refinement of infrastructure services.

The proposal maintains consistency with the character of the locality and provides a design solution appropriate to the site and that is consistent with development approved under REV2021/0034 (as modified). Hence, the proposal will be of positive social and economic impact.

### **6.4 The Suitability of the Site for the Development**

The site has been assessed as suitable for the proposed development in the granting of REV2021/0034 (as modified). Noting the minor nature of the proposed modifications, it is considered practical and reasonable that the amendments are made.

There are no environmental or built attributes of the site that present a constraint to the modification. Accordingly, the site is considered suitable.

### **6.5 The Public Interest**

The proposed modifications presented by this application will result in a development which is in all fundamental respects, the same as that approved. The proposed works have arisen from detailed design development to an approved development and are in the public interest.

## 7. Conclusion

The application seeks to modify the existing consent REV2021/0034 (as modified) relating to an approved mixed use development comprising shop top housing, with associated carparking, landscaping and strata subdivision at 231 Whale Beach Road, Whale Beach.

The proposal seeks to amend conditions 1, 5(n) and 19 of REV2021/0034 (as modified). The proposed modifications involve minor changes to the approved architectural and landscape plans arising from compliance requirements of REV2021/0034 (as modified) and detailed design development.

The proposed modifications include 58 minor amendments, as outlined in the Schedule of Amendments prepared by Richard Cole Architects. Of these, 16 are design-related changes, while the remaining adjustments are necessitated by conditions of consent from REV2021/0034 (as modified) or are required for compliance with various regulatory bodies, including Transport Road and Maritime, engineering standards (fire, vertical transport, hydraulic, mechanical, electrical, structural, and waterproofing), traffic, access, BCA, and Ausgrid.

Key design changes are driven by user functionality and will enhance storage, ventilation, access, and apartment layouts.

The proposed modifications to the approved development result in a built form that is substantially the same development as that for which consent was originally granted. The modifications will not result in any adverse impacts to existing surrounding development or the public domain.

The proposal remains consistent with the statutory and policy framework applying to the site and will not have any significant adverse impacts to adjoining development. The modifications do not result in any change to the height or predominant bulk/scale of the approved development and do not alter the use or function of the building.

The application as proposed has no adverse environmental impacts and is consistent with the development for which the original consent was granted. The proposal satisfies Section 4.55(2) of the *EP&A Act 1979*.

Based on the assessment undertaken, Council's approval of the modification is sought.