

Planning Report – Section 8.2 Review of DA 2020/0442



Source: Richard Cole Architecture, 2020

Demolition of existing structures and construction of a five-storey shop-top housing development, comprising five (5) residential apartments, three (3) retail premises, basement car parking, associated site and landscaping works and strata subdivision

231 Whale Beach Road, Whale Beach NSW 2107
Lot B DP316404
Northern Beaches Council

August 2021

1. INTRODUCTION

Tomasy Pty. Ltd. has been engaged to prepare a Planning Report to support an application for a Section 8.2 Review under the *Environmental Planning and Assessment Act 1979* (as amended) as it relates to a Notice of Determination for refusal for DA 2020/0442 which was determined by Council on 3 December 2020.

The Section 8.2 Review relates to the Development Application for the demolition of existing structures and construction of a new five storey shop-top housing development comprising five (5) residential apartments, three (3) retail premises, basement carparking, associated site and landscaping works and strata subdivision. This report is to be read in conjunction with the revised DA Application for Review architectural report prepared by the project architect, *Richard Cole Architecture* dated June 2021.

In preparing this report, consideration has been given to the following legislative requirements including:

- *Environmental Planning and Assessment Act 1979*;
- Environmental Planning and Assessment Regulation 2000;
- State Environmental Planning Policy No. 55 – Remediation of Land;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- State Environmental Planning Policy (Coastal Management) 2018;
- State Environmental Planning Policy (Infrastructure) 2007;
- State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development;
- Pittwater Local Environmental Plan 2014;
- Pittwater 21 Development Control Plan.

In addition, consideration has also been given to the additional information that has been provided by project architect, Richard Cole Architecture, as follows:

- Revised architectural drawings – Richard Cole Architecture;
- 3D Digital Model – Richard Cole Architecture;
- Design Verification Statement (SEPP 65) – Richard Cole Architecture;
- Statement of Compliance Access for People with a Disability – Issue A 07.10.20 - Accessible Building Solutions;
- Letter Arboricultural Issues 07.10.02 - Urban Forestry Australia;
- Waste Management Plan (updated) – Richard Cole Architecture;
- Landscape - Trish Dobson Landscape Architecture;
- Traffic - TEF Consulting;
- BASIX & Energy - Insight Energy;
- BCA - Modern Building Certifiers (MBC).

This Section 8.2 Review has given due consideration to the relevant provisions of Section 8.2 of the EP&A Act 1979 (as amended). The review has considered Council's reasons for refusal of the Development Application and has particular regard to Section 8.2 and Section 4.15 of the EP&A Act 1979 (as amended). The review has examined the grounds of refusal as set out in the Notice of Determination of 3 December 2020 and the responses that have now been prepared by the project architect in response to the grounds that led to the refusal and following discussions with Senior Planning staff at Council.

The proposal that has been amended by the project architect is deemed to have a number of significant benefits to the local community which include the following:

- Increased pedestrian safety, both in Whale Beach Road and Surf Road;
- Expanded retail facilities in close proximity to Whale Beach which is considered to be a popular outdoor recreation area that abuts the ocean;

- Retail facilities provided to both street frontages;
- Increased viable retail spaces with improved services and amenities;
- Disabled access throughout the building and public areas;
- Increased intensity of landscaping which provides for a more attractive and less bulky building;
- A building which now responds more sensitively to the topography and steps down the site with improved amenity for future occupants without impacting upon adjoining residential development;
- Improved visual impacts to Surf Road and in particular Whale Beach Road;
- A development that is supported by adequate infrastructure including roads, water and sewage facilities;
- Geotechnical stabilisation of the topography which has been an ongoing issue for some time;
- Improved stormwater services to Whale Beach Road reducing the risk of localised flooding;
- The development of an under-utilised parcel of land in close proximity to recreation facilities (outdoor) and represents sound urban consolidation principles and in-fill development on a site that is zoned B1 Neighbourhood Centre;
- A service bay for more efficient and safer deliveries and collection of waste to both Surf Road and Whale Beach Road;
- Improved traffic safety with a wider road to Surf Road;
- A single driveway rather than multiple driveways to both Surf and Whale Beach Road frontages;
- Provision of 18 parking spaces which is an additional 16 parking spaces for the locality;
- Improved streetscape with additional street planting;
- Provision of an exceptionally high standard of residential amenity for future residents in terms of solar access, privacy, natural ventilation and landscaped environment;
- The development is considered to be the right neighbourhood fit for this locality.

The proposal represents a development of an exceptionally high standard of residential amenity for future residents in terms of solar access, privacy, natural ventilation, acoustics and landscaped environment. The development is considered to be a right neighbourhood fit for this locality.

The proposed development adopts a built form and scale in response to its immediate context providing a highly sculptured building form with balconies that are orientated towards ocean views to the east while creating visual interest within the immediate context. The forms respond carefully to the need for privacy as well as outlook. The development is also designed in such a way that it would not have any adverse impacts on the streetscape and, in fact, substantially enhances the present streetscape, particularly on the Whale Beach Road frontage.

There are significant community benefits associated with the amended proposal, which are detailed above.

The development, as amended, falls within the jurisdiction of a Section 8.2 Review and represents a development compatible with the Whale Beach precinct and succeeds on its merits. The development is considered to be acceptable from environmental, social and planning perspectives and, accordingly, the development application should be approved by Northern Beaches Council, subject to conditions as deemed appropriate.

2. BACKGROUND INFORMATION

The original DA was submitted on 6 May 2020. The application was for the demolition of existing structures and construction of a five-storey shop-top housing development comprising five residential apartments, three retail premises, basement car parking, associated site and landscaping works and a strata sub-division.

On 23 September 2020, the applicant received correspondence from Council outlining reasons why the application should not be supported. A revised application was submitted on 9 October 2020 together with a letter from Tomasy Planning dated 19 October 2020 addressing a number of concerns raised by Council in respect to the proposed shop-top housing.

It is understood that this application, as amended, was not advertised or assessed by Council's planning staff. The original application as submitted on 6 May 2020 was assessed by the local Planning Panel and refused on 3 December 2020.

Following the refusal of the application, discussions were held with Council's Director of Planning and Place on 11 December 2020, in an endeavour to resolve the best outcome for the site. Since the applicant met with the Director, there have been extensive discussions with Council's senior planners to identify and address the primary issues of concern and to confirm a path forward with the subject proposal by way of a Section 8.2 Review.

Set out below are the grounds of refusal as identified in the Notice of Determination:

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

The project architect has provided a comprehensive response to the reasons for refusal and the issues raised in the Assessment Officer's report that was submitted to the local planning panel at the time the application was determined.

3. SUMMARY OF AMENDMENTS FOR THE 8.2 REVIEW

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

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

appearance of the building, help to break down the bulk and scale and provide better alignment with the desired future character of the locality.

42. The retaining wall along the northern boundary has been moved to the south by 1.5m and screen planting provided within the site at the existing ground level along the boundary. This will provide screen planting to offset the bulk and scale of the development, soften the form and mitigate visual impacts when viewed from adjoining properties and public spaces.
43. The usage of Retail 2 on Whale Beach Road has been changed from a café to a neighbourhood shop. This will provide better acoustic and privacy amenity to neighbouring properties.
44. An internal stair has been provided to Apartment 5 to comply with the BCA provision for escape requirements.
45. Five car stackers have been provided to accommodate parking without a second driveway. This provides parking for 18 cars including 10 residential, 6 retail and 2 visitor spaces including one disabled parking space. This is the maximum number of compliant parking spaces on a single level.

Reference is made to the amended architectural package which comprises the following documentation:

| Sheet Number | Issue | Sheet Name |
|--------------|-------|-----------------------------------|
| DA01 | U | Site Plan |
| DA02 | U | Locality Plan |
| DA03 | U | Basement Plan |
| DA04 | U | Ground Floor Plan |
| DA05 | U | Level 1 Plan |
| DA06 | U | Level 2 Plan |
| DA07 | U | Level 3 Plan |
| DA08 | U | Level 4 Plan |
| DA09 | U | Roof Plan |
| DA10 | U | Elevations |
| DA11 | U | Elevations |
| DA12 | U | Boundary Elevations |
| DA13 | U | Section |
| DA14 | U | Section |
| DA15 | U | Shadow Diagram - 900am June 21 |
| DA16 | U | Shadow Diagram - 1200noon June 21 |
| DA17 | U | Shadow Diagram - 300pm June 21 |
| DA18 | U | Neighbouring Shadow Studies |
| DA19 | U | Solar Access Study |
| DA20 | U | Driveway Profile |
| DA21 | U | Photomontage - Whale Beach Road |
| DA22 | U | Photomontage - Surf Road |
| DA23 | U | Site Analysis - Existing |
| DA24 | U | Site Analysis - Proposed |
| DA30 | U | Sectional Perspective (Site) |
| DA31 | U | Compliance Check |
| DA32 | U | Gross Floor Area Calculations |
| DA33 | U | Area Calculations |

| | | |
|------|---|-----------------------------------|
| DA33 | U | Area Calculations |
| DA34 | U | Landscaped Areas |
| DA35 | U | Finishes Board - Surf Road |
| DA36 | U | Finishes Board - Whale Beach Road |
| DA37 | U | Building Height Plane |
| DA39 | U | BASIX Requirements |
| DA40 | U | Retail 1 Plan |
| DA41 | U | Apartment 1 Plan |
| DA42 | U | Apartment 2 Plan (lower) |
| DA43 | U | Apartment 2 Plan (upper) |
| DA44 | U | Apartment 3 Plan |
| DA45 | U | Retail 2 & 3 Plan |
| DA46 | U | Apartment 4 Plan |
| DA47 | U | Apartment 5 Plan |
| DA50 | U | 196 WBR View Impact Study |
| DA51 | U | 196 WBR View Impact Study |
| DA52 | U | 194 WBR View Impact Study |
| DA53 | U | 194 WBR View Impact Study |
| DA54 | U | 198 WBR View Impact Study |
| DA55 | U | 200 WBR View Impact Study |
| DA56 | U | 229 WBR View Impact Study |
| DA57 | U | 229 WBR View Impact Study |
| DA58 | U | 229 WBR View Impact Study |
| DA59 | U | 229 WBR View Impact Study |
| DA60 | U | 229 WBR View Impact Study |
| DA61 | U | 233 WBR View Impact Study |
| DA62 | U | 233 WBR View Impact Study |
| DA63 | U | No.229 View Study - Plan |
| DA64 | U | No 202 View Impact Study |

4. SITE CHARACTERISTICS

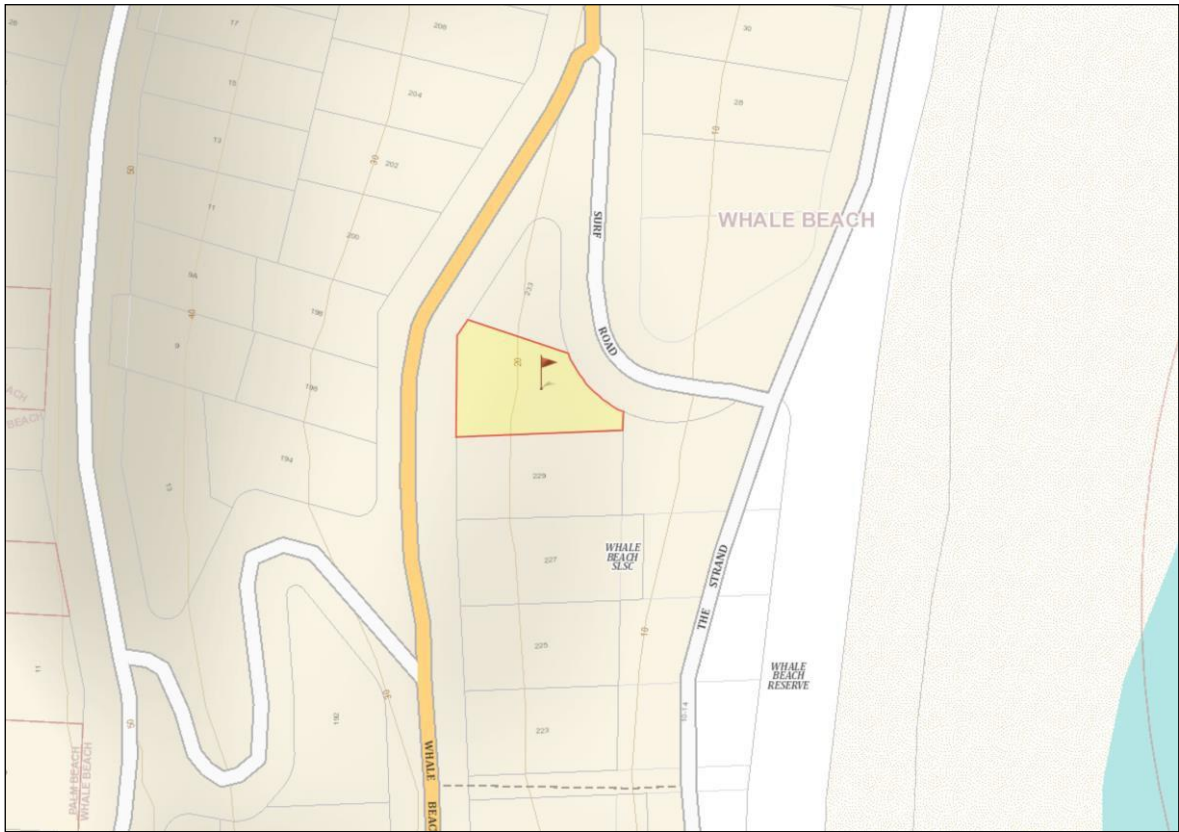
The site is legally known as Lot B in DP316404, being 231 Whale Beach Road, Whale Beach. The site is located with dual frontage to both Whale Beach Road and Surf Road.

Topographically, the site is steep in nature with a fall from Whale Beach Road to Surf Road (sloping west to East).

Immediately to the north of the site is a two-storey residential dwelling and to the south a three-storey residential dwelling. Further to the south adjoining the southern neighbour is a five-storey commercial/community building which houses Whale Beach Surf Lifesaving Club, which also includes Moby Dicks Function Centre. To the east, is a grassed area for the Whale Beach Surf Club patrol members to park vehicles and across the road is Whale Beach. On the west of the site across Whale Beach Road are two-three storey residential dwellings. The character of the immediate locality is predominately residential with a mixture of commercial uses spread along Whale Beach Road and The Strand. Due to the topography of the area, the locality has varying built forms and densities with sites ranging from one-storey to five-storeys.



Source: SIX Maps 2020



Source: SIX Maps 2020



View from Whale Beach Road. Source: Google Maps October 2019



View from Whale Beach Road. Source: Google Maps October 2019



View from Surf Road. Source: Google Maps September 2019



View from The Strand. Source: Google Maps September 2019

5. STATUTORY PLANNING REQUIREMENTS

The statutory planning controls that are relevant to the proposed development are as follows:

- *Environmental Planning and Assessment Act 1979* (as amended);
- Environmental Planning Regulations 2000;
- State Environmental Planning Policy No. 55 – Remediation of Land;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- State Environmental Planning Policy (Coastal Management) 2018;
- State Environmental Planning Policy (Infrastructure) 2007;
- State Environmental Planning Policy No. 64 – Advertising and Signage;
- State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development;
- Pittwater Local Environmental Plan 2014;
- Pittwater 21 Development Control Plan.

5.1 Environmental Planning and Assessment Act 1979 (as amended) Section 8.2 Reviews

8.2 Determinations and decisions subject to review (cf previous ss 82A(1), 82B(1))

(1) *The following determinations or decisions of a consent authority under Part 4 are subject to review under this Division—*

(a) the determination of an application for development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary),

(b) the determination of an application for the modification of a development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary),

(c) the decision of a council to reject and not determine an application for development consent.

(2) *However, a determination or decision in connection with an application relating to the following is not subject to review under this Division—*

(a) a complying development certificate,

(b) designated development,

(c) Crown development (referred to in Division 4.6).

(3) *A determination or decision reviewed under this Division is not subject to further review under this Division.*

Comment: The amended application is considered to be within the parameters of a Section 8.2 Review as the decision of refusal was made by the external planning panel and the Notice of Determination was issued by Northern Beaches Council. Therefore, all relevant provisions pertaining to the proposal, the subject of the amended plans, is considered permissible.

5.2 State Environmental Planning Policy No. 55 – Remediation of Land

This matter was adequately addressed in the Statement of Environmental Effects that accompanied the DA in May 2020. There is no evidence of dispute on this matter by Council in the grounds of refusal.

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

SEPP Building Sustainability Index (BASIX) 2004 is applicable to the subject site. Clause 6 of the SEPP Provisions prescribe that the proposal is deemed to be a 'BASIX affected development' under the *Environmental Planning and Assessment Act 1979* and a BASIX certificate is required to accompany any prospective Development Application for the proposed works.

A revised BASIX and Naters Certificate have been prepared by Insight Energy supporting documentation to the Section 8.2 Review.

5.4 State Environmental Planning Policy (Infrastructure) 2007

This application does not require a referral to the electricity supply authority as the proposal is not affected by any of the defined clauses within the SEPP.

5.5 State Environmental Planning Policy (Coastal Management) 2018



Division 4 Coastal use area

14 Development on land within the coastal use area

(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—

(a) has considered whether the proposed development is likely to cause an adverse impact on the following—

- (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
- (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
- (iv) Aboriginal cultural heritage, practices and places,
- (v) cultural and built environment heritage, and

(b) is satisfied that—

- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
- (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- (iii) if that impact cannot be minimised—the development will be managed to

mitigate that impact, and
(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

(2) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of [Sydney Regional Environmental Plan \(Sydney Harbour Catchment\) 2005](#).

Division 5 General

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

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

Comment: The proposed development will not result in an increased risk of coastal hazards on the site or adjoining sites.

16 Development in coastal zone generally—coastal management programs to be considered
Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment: This matter was adequately address in the SoEE with the original DA submitted on 6 May 2020 and there is no evidence that the comments are in dispute.

17 Other development controls not affected

Subject to clause 7, for the avoidance of doubt, nothing in this Part—

(a) permits the carrying out of development that is prohibited development under another environmental planning instrument, or

(b) permits the carrying out of development without development consent where another environmental planning instrument provides that the development may be carried out only with development consent.

Comment: This matter was adequately address in the SoEE with the original DA submitted on 6 May 2020 and there is no evidence that the comments are in dispute.

18 Hierarchy of development controls if overlapping

If a single parcel of land is identified by this Policy as being within more than one coastal management area and the development controls of those coastal management areas are inconsistent, the development controls of the highest of the following coastal management areas (set out highest to lowest) prevail to the extent of the inconsistency—

(a) the coastal wetlands and littoral rainforests area,

(b) the coastal vulnerability area,

(c) the coastal environment area,

(d) the coastal use area.

Comment: The site is identified as being within the coastal use area only.

5.7 State Environmental Planning Policy No. 64 Advertising and Signage

All developments in New South Wales that incorporate signage into the proposal are required to address Schedule 1 – Assessment Criteria of State Environmental Planning Policy No. 64 Advertising and Signage. Schedule 1 is addressed below:

| | |
|---|--|
| 1 Character of the area | |
| Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located? | The proposed signage is compatible with the contemporary future character of the immediate locality. The proposed signage is minimalistic and will not dominate the building facades. |
| Is the proposal consistent with a particular theme for outdoor advertising in the area or locality? | There is no overriding theme to outdoor advertising signage in the immediate area. |
| 2 Special areas | |
| Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas? | The proposed development will not detract from the natural features of the Whale Beach locality. The proposed signage is integrated into the building facades. |
| 3 Views and vistas | |
| Does the proposal obscure or compromise important views? Does the proposal dominate the skyline and reduce the quality of vistas? Does the proposal respect the viewing rights of other advertisers? | No. The proposal will not dominate the skyline and will not have no adverse impact on views. |
| 4 Streetscape, setting or landscape | |
| Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape? Does the proposal contribute to the visual interest of the streetscape, setting or landscape? Does the proposal reduce clutter by rationalising and simplifying existing advertising? Does the proposal screen unsightliness? Does the proposal protrude above buildings, structures or tree canopies in the area or locality? Does the proposal require ongoing vegetation management? | The scale and size of the signage proposed is suitable for the wall and awning to which the signs will be affixed. The proposed signage will create visual interest and inform residents and visitors of the businesses operating from the development. The proposed signage does not protrude above the proposed building and will not require ongoing vegetation management. The proposed signage does not promote visual clutter. |

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|---|---|
| 5 Site and Building | |
| <p>Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?</p> <p>Does the proposal respect important features of the site or building, or both?</p> <p>Does the proposal show innovation and imagination in its relationship to the site or building, or both?</p> | <p>The proposed signage is compatible with the proposed mixed-use development and has been carefully designed to complement the architectural features of the building.</p> <p>The proposed signage is innovative and minimalistic in design so as to not dominate the building design.</p> |
| 6 Associated devices and logos with advertisements and advertising structures | |
| <p>Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?</p> | <p>Not applicable.</p> |
| 7 Illumination | |
| <p>Would illumination result in unacceptable glare?</p> <p>Would illumination affect safety for pedestrians, vehicles or aircraft?</p> <p>Would illumination detract from the amenity of any residence or other form of accommodation?</p> <p>Can the intensity of the illumination be adjusted, if necessary?</p> <p>Is the illumination subject to a curfew?</p> | <p>Not applicable.</p> |
| 8 Safety | |
| <ul style="list-style-type: none"> • Would the proposal reduce the safety for any public road? • Would the proposal reduce the safety for pedestrians or bicyclists? • Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas? | <p>The proposed signage will have no adverse impact on the safety of pedestrian or vehicular movements in or around the building.</p> |

Comment: The comments as above submitted with the DA in May 2020 remain unchanged with the proposed signage.

5.8 State Environmental Planning Policy No. 65 Design Quality for Residential Apartment Development

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development is applicable to all residential flat buildings within NSW and aims to improve the design quality of residential apartment development through achieving better built form and aesthetics of buildings and of the streetscapes and the public spaces they define. Clause 4 of the SEPP Provisions prescribe that this policy is applicable to development for the purposes of either a residential flat development, shop top housing or mixed-use development with a residential accommodation if: (a) the development is for the erection of a new building; (b) the substantial redevelopment or refurbishment of an existing building or (c) the conversion of an existing building and must contain at least three or more storeys or at least four or more dwellings.

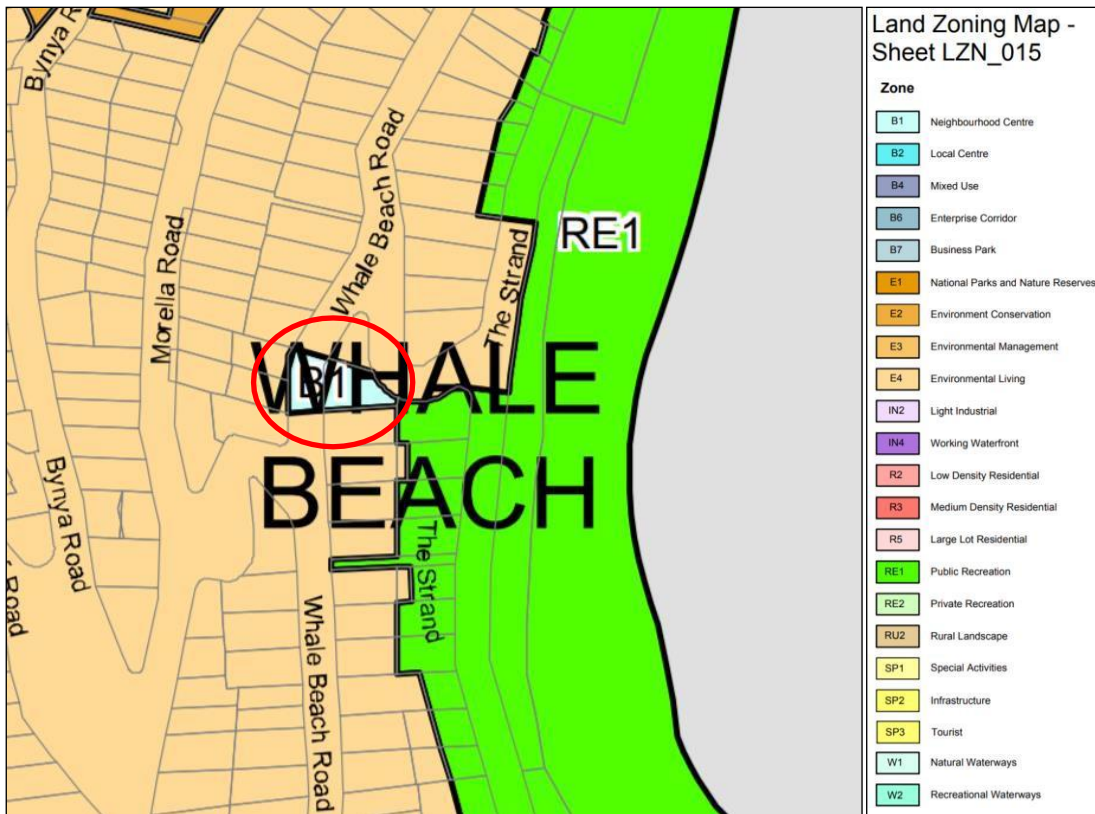
The amended proposal has been the subject of an amended design verification statement prepared by the project architects, Richard Cole Architecture, which addresses all nine design quality principles including context and neighbourhood character; built form and scale; density; sustainability; landscape; amenity; safety; housing diversity and social interaction and aesthetics.

In addition to the above, Clause 28(2)(c) of the SEPP Provisions prescribe that the consent authority must also consider the requirements of the Apartment Design Guide. An assessment of the relevant design criteria of the Apartment Design Guide against the proposed development has been prepared by the project architect as supporting documentation to the 8.2 Review.

5.9 Pittwater Local Environmental Plan 2014

The following clauses of Pittwater Local Environmental Plan 2014 (Pittwater LEP2014) are relevant to the proposed development.

5.9.1 Zoning



The site is zoned B1 Neighbourhood Centre as shown within the zoning maps of the Pittwater LEP2014 and is described as follows:

Zone B1 Neighbourhood Centre

1 Objectives of zone

- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.
- To provide healthy, attractive, vibrant and safe neighbourhood centres.

2 Permitted without consent

Home businesses; Home occupations

3 Permitted with consent

Boarding houses; Business premises; Centre-based child care facilities; Community facilities; Environmental protection works; Health consulting rooms; Home-based child care; Home industries; Information and education facilities; Jetties; Kiosks; Markets; Medical centres; Neighbourhood shops; Neighbourhood supermarkets; Oyster aquaculture; Recreation areas; Recreation facilities (indoor); Respite day care centres; Restaurants or cafes; Roads; **Shop top housing**; Shops; Signage; Take away food and drink premises; Tank-based aquaculture; Veterinary hospitals

4 Prohibited

Pond-based aquaculture; Any other development not specified in item 2 or 3

Comment:

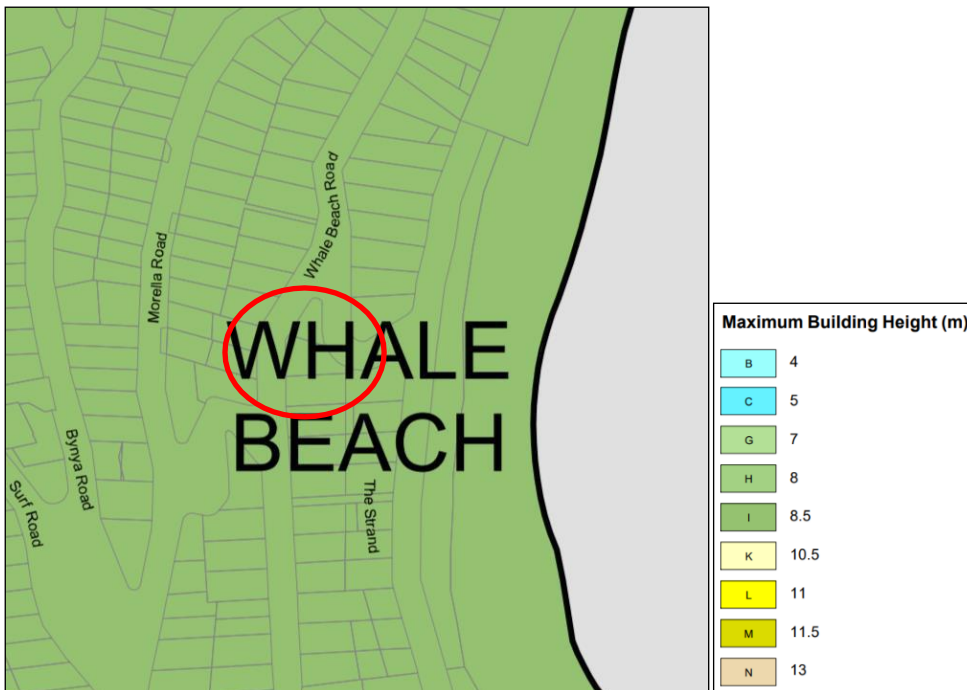
The amended proposal is a permissible form of development under the B1 Neighbourhood Centre Zone. Shop-top housing development is defined within the Dictionary section of Pittwater LEP2014 as follows:

shop top housing means one or more dwellings located above ground floor retail premises or business premises.

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

The amended proposal has been designed to comply with the objectives of the zone including providing a range of small-scale retail premises that will serve the needs of people of who live or work in the surrounding neighbourhood. The proposal will provide a healthy, attractive, vibrant and safe neighbourhood centre which blends in with the existing locality including residential dwellings, small retail premises and the surf lifesaving club with function centre.

5.9.2 Clause 4.3: Height of Buildings



In accordance with the 'Height of Buildings Map' of Pittwater LEP2014, the site has a maximum building height of 8.5m.

4.3 Height of buildings

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

- (a) *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (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.*

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).

(2A) 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.

(2B) 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 11 metres shown for that land on the [Height of Buildings Map](#),

may exceed a height of 11 metres, but not be more than 10.5 metres above the flood planning level.

(2C) Despite subclause (2), development on an area of land shown in Column 1 of the table to this subclause and identified as such on the [Height of Buildings Map](#), may exceed the maximum building height shown on the [Height of Buildings Map](#) for that land, if the height of the development is not greater than the height shown opposite that area in Column 2.

| Column 1 | Column 2 |
|----------|---|
| Area | Maximum height above the flood planning level |
| Area 1 | 11.5 metres |
| Area 2 | 8.5 metres on the street frontage and 10.5 metres at the rear |
| Area 3 | 8.5 metres |
| Area 4 | 7.0 metres |

(2D) Despite subclause (2), development on land 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 10.0 metres if—

(a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the [Height of Buildings Map](#) is minor, and

(b) the objectives of this clause are achieved, and

(c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and

(d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.

(2E) Despite subclause (2), development for the purposes of shop top housing on land identified as “Area 5” on the [Height of Buildings Map](#) may have a height of up to 10 metres if the top floor of the building is setback a minimum of 6 metres from the boundary to the primary street frontage.

(2F) Despite subclause (2), development on land identified as “Area 6” on the [Height of Buildings Map](#) must not exceed 8.5 metres within the area that is 12.5 metres measured from the boundary of any property fronting Orchard Street, Macpherson Street, Warriewood Road or Garden Street.

(2FA) Despite subclause (2), the maximum height for a secondary dwelling or a rural worker’s dwelling in Zone E4 Environmental Living or Zone RU2 Rural Landscape is 5.5 metres if the secondary dwelling or rural worker’s dwelling is separate from the principal dwelling.

(2FB) Despite subclause (2), in the case of a dual occupancy (detached), the maximum height for the dwelling that is furthest back from the primary street frontage of the lot is 5.5 metres.

(2G) In this clause—

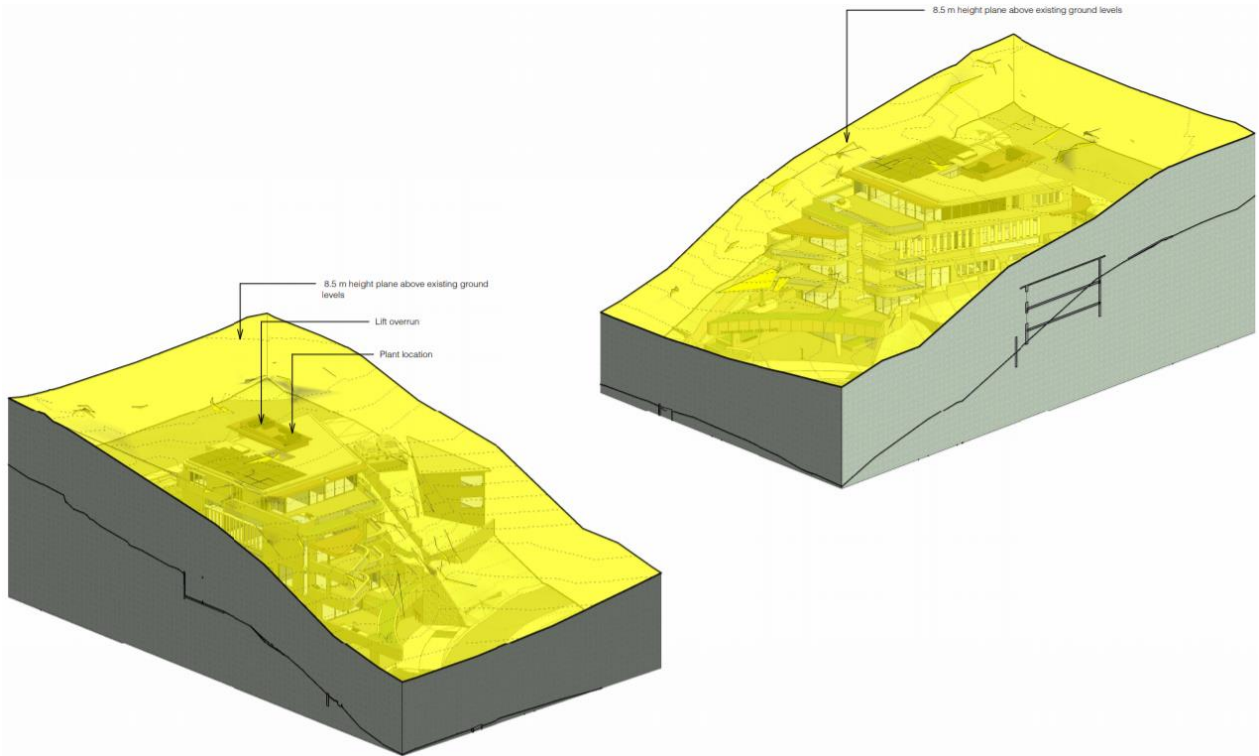
flood planning level means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metres freeboard, or other freeboard determined by an adopted floodplain risk management plan.

floodplain risk management plan has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0), published in 2005 by the NSW Government.

Comment:

Clause 4.3(2) prescribes that the maximum building height for the site is 8.5m as indicated on the Height of Buildings Map. The proposed development does not exceed the maximum prescribed building height above ground level existing at any point.

The site has a significant slope from west to east towards Whale Beach. The proposed development has been designed to respond to this slope as much as possible and present a building that slopes down toward the west and remains compliant with the 8.5m height control. Building height plane plans have been prepared by Richard Cole Architecture to accurately show that there is no breach in the maximum building height control of Pittwater LEP2014. Extracts of the building height plane plans are provided below.



Building Height Plane (DA37). Source: Richard Cole Architecture 2020

5.9.3 Clause 4.5A: Density controls for certain residential accommodation

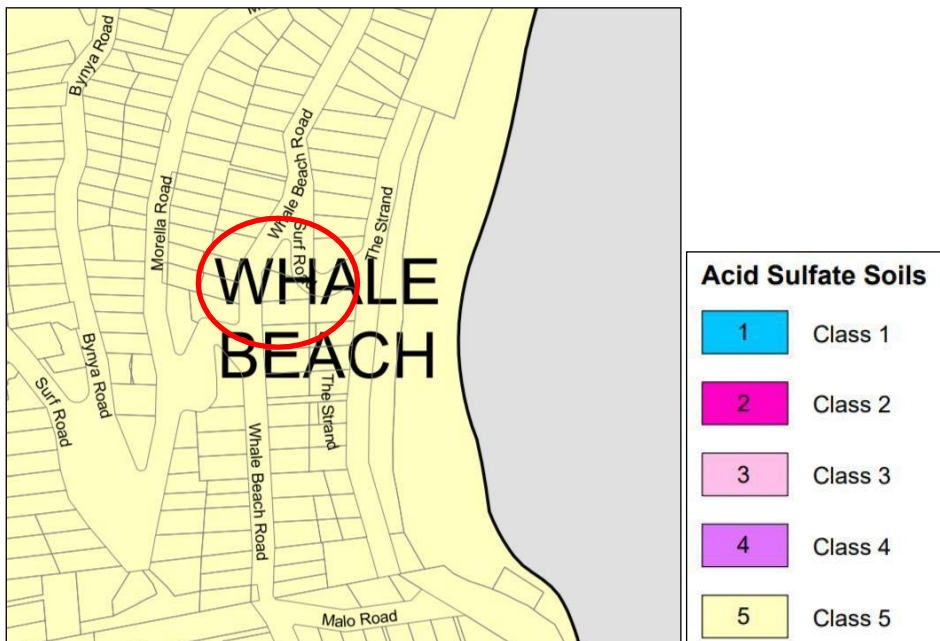
- (1) *The objectives of this clause are as follows—*
 - (a) *to achieve planned residential density in certain zones,*
 - (b) *to ensure building density is consistent with the desired character of the locality.*
- (2) *Development consent must not be granted to development for a purpose specified in Column 1 of the table to this clause on land in the zone shown opposite that development in Column 2 of that table unless the development complies with the density requirements specified in Column 3 of that table.*
- (3) *This clause does not apply to land in the Warriewood Valley Release Area.*
- (4) *In this clause—*
Warriewood Valley Release Area means the area identified as Warriewood Valley Release Area on the [Urban Release Area Map](#).

| Column 1 Specified development | Column 2 Zone | Column 3 Density |
|-----------------------------------|-------------------------------|---|
| Attached dwellings | R3 Medium Density Residential | A maximum of 1 dwelling per 200 square metres of site area. |
| Multi dwelling housing | R3 Medium Density Residential | A maximum of 1 dwelling per 200 square metres of site area. |
| Residential flat buildings | R3 Medium Density Residential | A maximum of 1 dwelling per 200 square metres of site area. |
| Semi-detached dwellings | R3 Medium Density Residential | A maximum of 1 dwelling per 200 square metres of site area. |
| Seniors housing | R3 Medium Density Residential | A maximum of 1 dwelling per 200 square metres of site area. |
| Serviced apartments | R3 Medium Density Residential | A maximum of 1 dwelling per 200 square metres of site area. |
| Shop top housing | B1 Neighbourhood Centre | A maximum of 1 dwelling per 150 square metres of site area. |

Comment:

The site has a shop top housing density control of a maximum of 1 dwelling per 150sqm of site area. The proposal complies with Clause 4.5A with a site area of 866.30sqm and a proposed five (5) apartments (minimum 750sqm required).

5.9.4 Clause 7.1: Acid Sulfate Soils



In accordance with the 'Acid Sulfate Soils (ASS) Map', the site is identified as containing Class 5 Acid Sulfate Soil Zone.

Clause 7.1(2) specifies that development consent is required for the carrying out of works for the following:

| Class of Land | Works: |
|---------------|--|
| 5 | Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the water table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land. |

Comment:

The site is identified as being of Class 5 acid sulphate soil land. While the proposed works are within 500 metres Australian Height Datum of Classes 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum, the proposed works do not involve lowering of the existing water table. The site is located

within 400m of a Class 1 acid sulphate soils location. However, the Class 1 site is located to the north-west, over a hill, and will, therefore, have no impact on the proposed development.

The Geotechnical Report prepared by Douglas Partners provides recommendations for earthworks during construction to ensure there are no adverse impacts from the proposed development.

5.9.5 Clause 7.2 Earthworks

- (1) *The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.*
- (2) *Development consent is required for earthworks unless—*
- (a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or*
 - (b) the earthworks are ancillary to development that is permitted without consent under this Plan or to development for which development consent has been given.*
- (3) *In deciding whether to grant development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—*
- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
 - (b) the effect of the development on the likely future use or redevelopment of the land,*
 - (c) the quality of the fill or the soil to be excavated, or both,*
 - (d) the effect of the development on the existing and likely amenity of adjoining properties,*
 - (e) the source of any fill material and the destination of any excavated material,*
 - (f) the likelihood of disturbing relics,*
 - (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
 - (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development,*
 - (i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.*

- (4) *In this clause—*

environmentally sensitive area has the same meaning as environmentally sensitive area for exempt or complying development in clause 3.3.

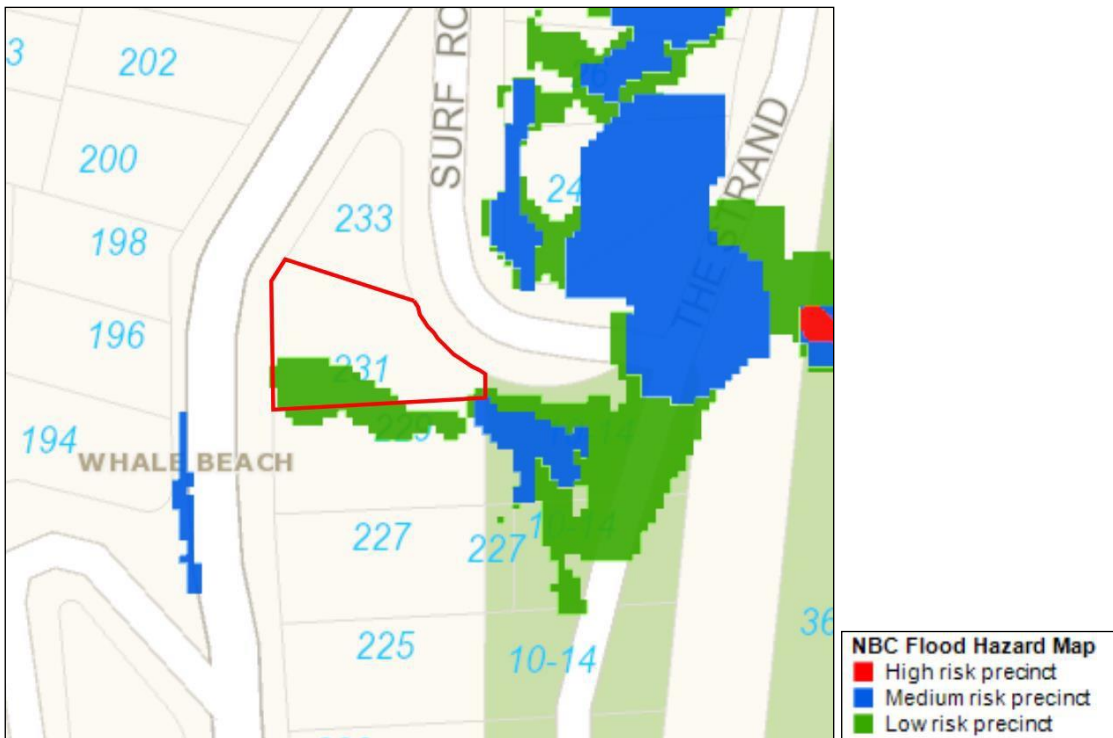
Note. The [National Parks and Wildlife Act 1974](#), particularly section 86, deals with harming Aboriginal objects.

Comment:

A Geotechnical Report has been prepared by Douglas Partners. The report prepared outlines recommendations for ensuring the proposed earthworks will have no detrimental impacts on neighbouring properties or existing land uses and will not negatively impact the future use of the site.

The proposed works will have no adverse impact on the coastal environment of Whale Beach or the immediate area. Any potential impacts will be mitigated through recommendations expressed throughout the Geotechnical Report.

5.9.6 Clause 7.3 Flood Planning



7.3 Flood planning

(1) The objectives of this clause are as follows—

- (a) to minimise the flood risk to life and property associated with the use of land,
- (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,
- (c) to avoid significant adverse impacts on flood behaviour and the environment.

(2) This clause applies to land at or below the flood planning level.

(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development—

- (a) is compatible with the flood hazard of the land, and
- (b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and
- (c) incorporates appropriate measures to manage risk to life from flood, and
- (d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and
- (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

(4) A word or expression used in this clause has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0) published by the NSW Government in April 2005, unless it is otherwise defined in this clause.

(5) In this clause—

flood planning level means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metres freeboard, or other freeboard determined by an adopted floodplain risk management plan.

floodplain risk management plan has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0), published in April 2005 by the NSW Government.

Comment:

Clause 7.3(2) prescribes that the requirements of flood planning are applicable to all land at or below the flood planning level. The objectives of this clause are to minimise the flood risk to life and property associated with the use of land and to allow development on land that is compatible with the land's flood hazard taking into account projected changes as a result of climate change.

The site is identified as low risk flood prone land due to the location of the existing stormwater facilities. The development proposes the relocation of the existing stormwater facilities and is supported by a Stormwater Asset Relocation Investigation and Report prepared by Barrenjoey Consulting Engineering Pty Ltd. The proposed relocation of the stormwater pipe and control of potential overland flows through no. 231 will substantially reduce the potential for flooding through the site and adjoining sites.

In considering the above, the proposal will comply with the required flood planning requirements as stipulated within Clause 7.3 of Pittwater LEP2014.

5.9.7 Clause 7.7 Geotechnical hazards

(1) The objectives of this clause are to ensure that development on land susceptible to geotechnical hazards—

- (a) matches the underlying geotechnical conditions of the land, and*
- (b) is restricted on unsuitable land, and*
- (c) does not endanger life or property.*

(2) This clause applies to land identified as “Geotechnical Hazard H1” and “Geotechnical Hazard H2” on the [Geotechnical Hazard Map](#).

(3) Before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks—

- (a) site layout, including access,*
- (b) the development’s design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*
- (d) waste water management, stormwater and drainage across the land,*
- (e) the geotechnical constraints of the site,*
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

(4) Development consent must not be granted to development on land to which this clause applies unless—

- (a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and*
- (b) the consent authority is satisfied that—*
 - (i) the development is designed, sited and will be managed to avoid any geotechnical risk or significant adverse impact on the development and the land surrounding the development, or*
 - (ii) if that risk or impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that risk or impact, or*
 - (iii) if that risk or impact cannot be minimised—the development will be managed to mitigate that risk or impact.*

Comment:

A Geotechnical Report was prepared by Douglas Partners and submitted with the original DA application. The amended proposal does not change the recommendations contained in the Douglas Partners report. It is noted that Council’s assessment report did not provide any explanation for assessment on why this issue was included as a reason for refusal. The Geotechnical report prepared by Douglas Partners supported the proposed original DA and the amended application proposes a significant reduction in the extent of excavation with increased side setbacks between the line of proposed excavation and neighbouring properties.

5.9.8 Clause 7.10 Essential services

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—

- 5.9.8.1 the supply of water,*
- 5.9.8.2 the supply of electricity,*
- 5.9.8.3 the disposal and management of sewage,*
- 5.9.8.4 stormwater drainage or on-site conservation,*
- 5.9.8.5 suitable vehicular access.*

Comment:

The existing site will be serviced by all relevant essential services. The proposed development includes the relocation of the existing Council stormwater drain to reduce the existing potential flooding impacts and provide for an overall enhanced use of the site. The proposed relocation of the existing stormwater is supported by the following documentation prepared by JHA Consulting Engineers and Barrenjoey Consulting Engineering:

- Stormwater Asset Relocation Investigation and Report.
- Stormwater Concept Plan.
- Whale Beach Rd Stormwater Infrastructure Works.

The proposal also includes the inclusion of a new substation in the south-western corner of the property to supplement the existing electrical infrastructure to the site. JHA Consulting Engineers have completed a preliminary supply assessment and coordination investigations with Energy Australia.

6 GROUNDS FOR REFUSAL BY NORTHERN BEACHES COUNCIL NOTICE OF DETERMINATION 11 DECEMBER 2020

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

1. The proposed development is inconsistent with the provisions of State Environmental Planning Policy 65 - Design Quality of Residential Flat Development and its associated Apartment Design Guide.

Comment: The project architect has comprehensively addressed SEPP 65 – Design Quality of Residential Flat Development. The design certification by the project architect has taken into consideration:

- Principle 1 – context and neighbourhood character
- Principle 2 - built form and scale and
- Principle 5 – landscaping

As outlined in the architect’s statement, the amended building has taken into consideration Council’s comments and community comments and has made numerous changes to increase privacy to adjoining developments and provide a more sensitive response to developments that about this development and others in the immediate locality.

2. The proposed development is inconsistent with the Provisions of Clause 7.7 Geotechnical hazards of Pittwater Local Environmental Plan 2014.

Refer to comments made in this report under Section 5.7.7 – Clause 7.7 Geotechnical Hazards as follows:

A Geotechnical Report was prepared by Douglas Partners and submitted with the original DA application. The amended proposal does not change the recommendations contained in the Douglas Partners report. It is noted that Council’s assessment report did not provide any explanation for assessment on why this issue was included as a reason for refusal. The Geotechnical Report prepared by Douglas Partners supported the proposed original DA and the amended application proposes a significant reduction in the extent of excavation with increased side setbacks between the line of proposed excavation and neighbouring properties.

3. The proposed development is not consistent with the Desired Future Character of the location and is an over-development of the site.

Comment: In considering the neighbourhood character and the desired future character of this locality, due consideration has been given to the NSW Planning Guidelines headed, “Local Character and Place Guidelines, February 2019”. This document provides guidelines on how to determine the local character of a locality noting that local character is determined by identifying the existing character and having a clear understanding of the expectations of the desired future character. In determining the future character of an area, the guidelines indicate that there should be an agreed vision on how an area will change over time including the identification of characteristics to be retained or enhanced and that the zoning of the land reflects both the land uses that are permissible and the objectives of the zone.

Having reviewed the relevant contents of the document prepared by NSW Department of Planning on determining local character and place, it is imperative for Council to understand the zoning of the site is B1 Neighbourhood Centre. This is compared with the adjoining E4 Environmental and R2 Residential zones. Different controls and built form standards apply to this site. Therefore, the desired future character of this site is fundamentally different to that of the adjoining site; hence, to approach this proposal on the basis that it should be comparative to adjoining sites in terms of desired future character, consistency, scale and form is onerous and fundamentally flawed.

As noted in project venture developments vs Pittwater Council [2005] NSWLEC 191, consistency is not sameness, and “there are situations where the planning controls envisage a change of character in which case compatibility with the future character is more appropriate than with the existing.”

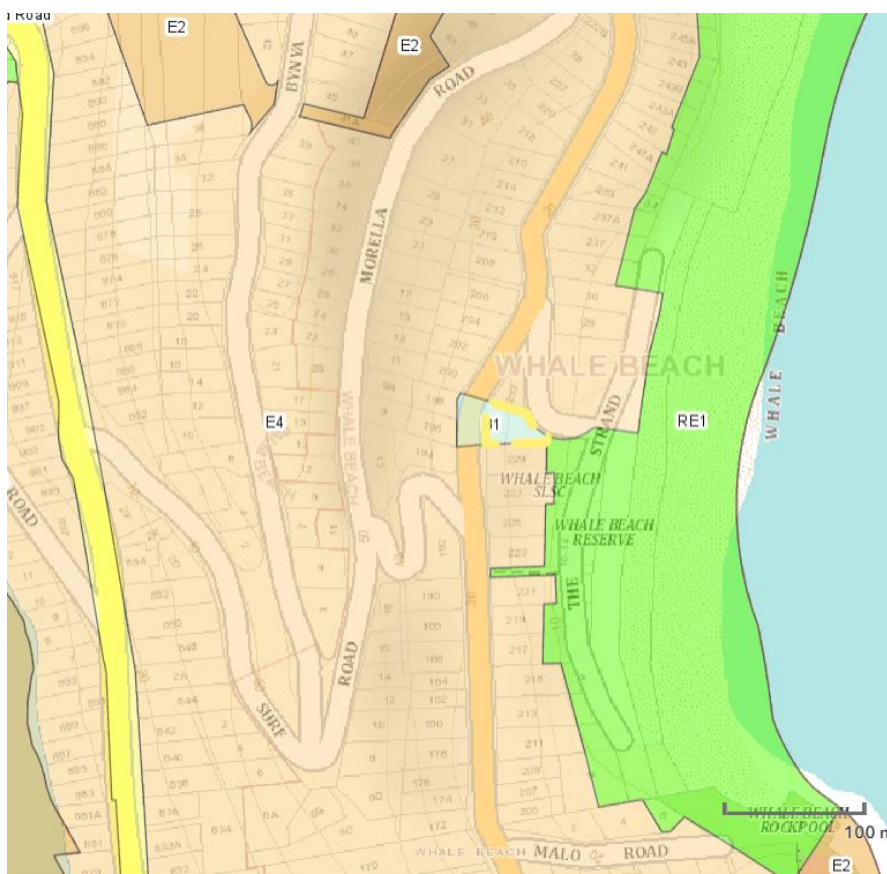
This is precisely the case with this site which promotes a desired future character of a larger development with cafes and neighbourhood shops at ground level. It is noted that a dwelling house is not a permissible land use within the B1 Neighbourhood Centre zone; therefore, the desired future character must be fundamentally different from surrounding dwelling houses.

Hence, while the character of surrounding different zoned properties is low density residential and low scale associated land uses, this is due to their different zonings and controls (low density residential and environmental zoning). No. 231 Whale Beach Road has a dual frontage and maintains a dominant position at the vehicular entrance to Whale Beach and accordingly has different planning controls and has been earmarked by Council for larger scale development. As the NSW Land and Environment Court has noted, “the desired future character of the locality must be represented by Council’s Planning

controls for the site and nearby” (Abrams Vs City of Sydney [2017] NSWLEC 1371 (at 35)) which in this case are the controls that are applicable for the B1 Neighbourhood Centre.

The NSW Planning Guidelines for Character and Place refer to the following:

The Local Environment Plan is the primary land use planning mechanism that influences character. The land use zones, objectives and development standards establish the context for decision making on individual developments which shape local character. Accordingly, where an area has been identified as requiring a stronger consideration of local character, this is reflected in the LEP zoning to ensure it delivers on the community’s desired future character. It is submitted that the development, as amended, is the right fit for the neighbourhood, and consistent with the objectives of the B1 Neighbourhood Centre and in particular the permitted land uses under this zoning.



In this regard, the B1 Neighbourhood Centre zoning as set out below:

Zone B1 Neighbourhood Centre

5 Objectives of zone

- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.
- To provide healthy, attractive, vibrant and safe neighbourhood centres.

6 Permitted without consent

Home businesses; Home occupations

7 Permitted with consent

Boarding houses; Business premises; Centre-based child care facilities; Community facilities; Environmental protection works; Health consulting rooms; Home-based child care; Home industries; Information and education facilities; Jetties; Kiosks; Markets; Medical centres; Neighbourhood shops; Neighbourhood supermarkets; Oyster aquaculture; Recreation areas;

*Recreation facilities (indoor); Respite day care centres; Restaurants or cafes; Roads; **Shop top housing**; Shops; Signage; Take away food and drink premises; Tank-based aquaculture; Veterinary hospitals*

8 Prohibited

Pond-based aquaculture; Any other development not specified in item 2 or 3

It is noted from the above that the following land uses are permissible:

- **Business premises**
- **Medical Centres**
- **Neighbourhood shops**
- **Neighbourhood supermarkets**
- **Shop top housing**
- **Take away food and drink premises**
- **Veterinary hospitals**

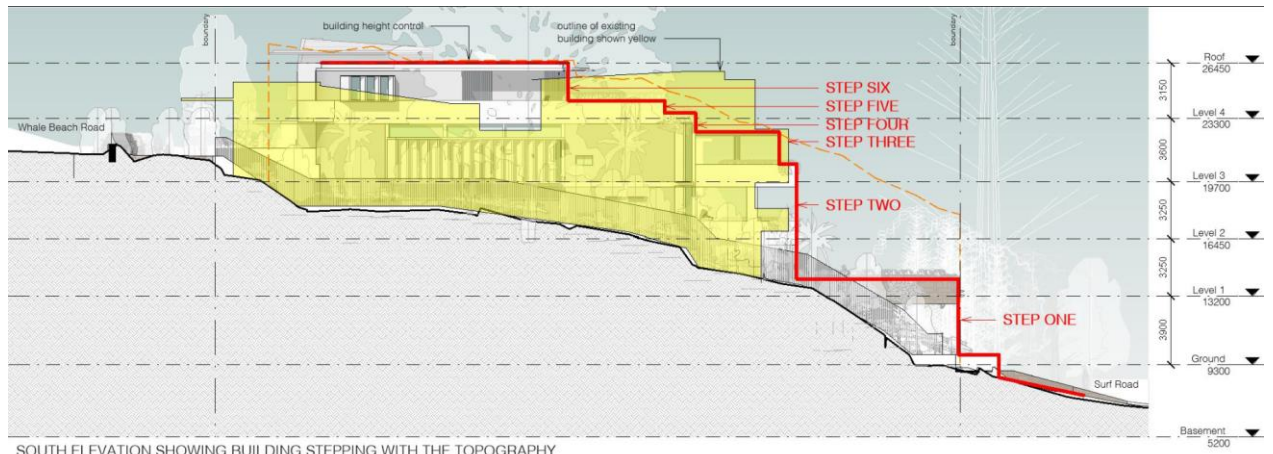
All of these types of land uses are an integral component of determining what is the desired future character of this area, as determined by Council, in the LEP that applies to the land.

The proposal, as amended, further enhances and reinforces the consistency of the development with the objectives and controls of the B1 Neighbourhood Centre zoning as well as providing further compatibility with surrounding land uses. The amended proposal is sensitive to the topography of the area and complies with all relevant building envelope controls and height of building standard.

The development provides a safe and attractive neighbourhood centre that will promote pedestrian activation and will serve the needs of the local community and those visiting Whale Beach. The proposal also provides for upgraded housing opportunities in an extremely desirable place to reside where there is growth in the population within the Northern Beaches seaside areas.

Overdevelopment of the site – building bulk and scale:

The schedule of amendments prepared by the Project Architect responds to the concerns of Council and the general public regarding the bulk and scale of the development and its suitability for the site. Tomasy Planning disagrees with the sentiment expressed by Council's Assessment Officer that the building does not respect the topography of the site and is out of character with the area. The question of character of the area has been adequately addressed under this section of grounds of refusal. In our opinion, the development suitably responds to the topography of the site by stepping the development down towards to the east (Whale Beach). The existing built form of the structure currently erected on-site is more dominant in height, scale and mass as opposed to the new development when viewed from a public place. The amended proposal does take into consideration the prevailing landform and the architect has designed the development to reduce bulk, scale and height by way of the amended documentation.



Source: Richard Cole - Architectural Drawing

Tomasy has reviewed the relevant controls under C1.14, C12.1 and D12.13 and considers these controls are not prescriptive with regard to requiring stepping down a site. Notwithstanding, the above southern elevation demonstrates the development steps down the site while retaining a compliant 8.5m statutory height control. The middle levels, 2 and 3, have been shortened to further reduce the bulk and scale of the building. The levels 2 and 3 balconies are of the same length to ensure consistency in apartment design and outlook to ensure there is no overlooking or privacy issues between the two levels.

The stepping of the building provides a base, middle and top and includes at least one step at each level except for levels 2 and 3, which are aligned vertically but broken down in terms of bulk by the inclusion of open eastern balconies to these levels. In our opinion, this is entirely in keeping with other buildings in the Whale Beach proximity which predominantly have at least 2-3 levels with no stepping or due regard to the topography of the site.

For Council to request further stepping would be unreasonable and unjustified and would negatively affect the overall appearance of the building and could create unnecessary changes in levels within the internal layout of the apartments.

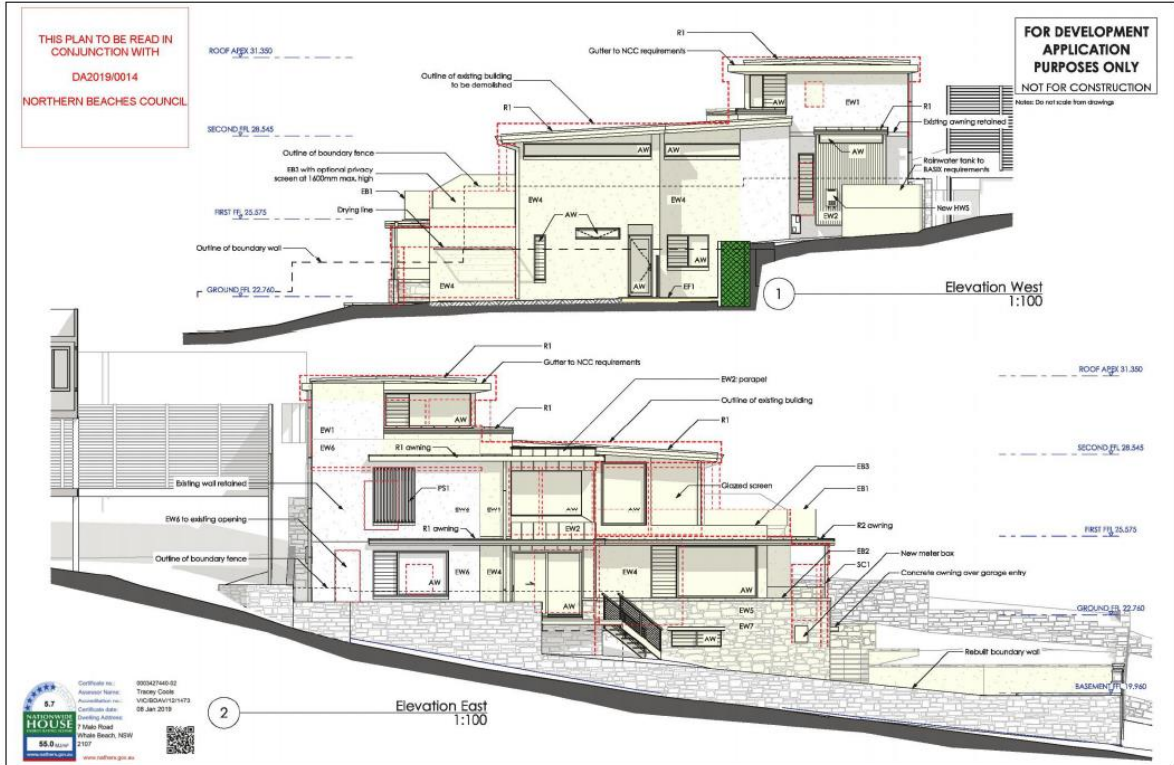
It is important for Council to acknowledge that development in this locality, when viewed from Surf Road or from the open space area on the corner of Surf Road and the Strand, is dominated by the development at 227 Whale Beach Road (Moby Dicks restaurant and function centre) together with the two residential buildings immediately to the north (which includes the subject site). All three of these existing developments do not step down with the topography of the site and the resultant development has inadequately distributed the bulk and scale of the buildings.



Source: Google Maps 2021

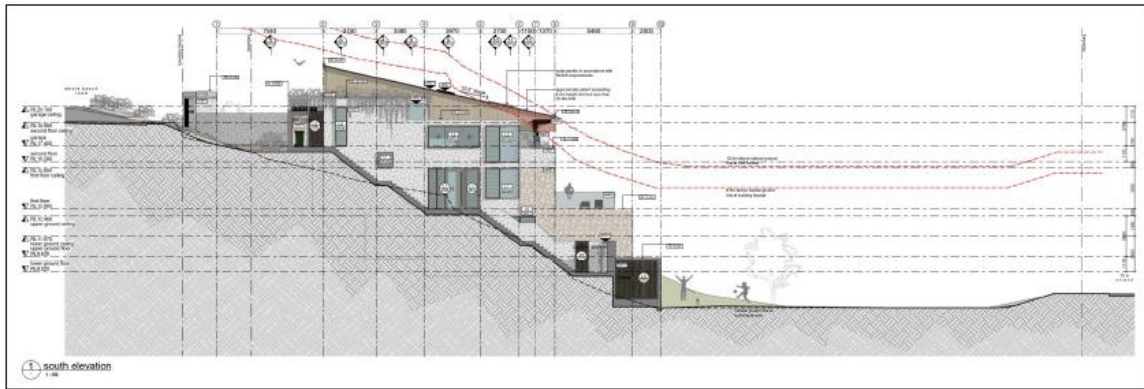
There are many other examples of buildings in this immediate locality which do not adequately respond to the topography of the land and do not successfully step down with the site with a resultant built form of dwellings of significant height, mass and scale. A number of these developments appear to breach the 8.5m height limit control. Examples of buildings which have been approved by Council which do not adequately step down the site and in some cases, breach the height limit are set out on the following pages.

- 7 Malo Road, Whale Beach (DA2019/0014) – significant bulk and scale.



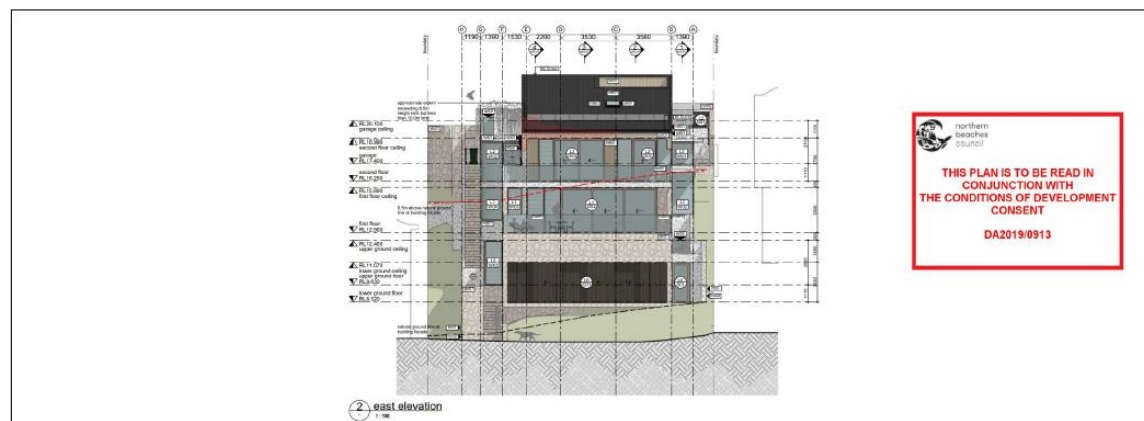
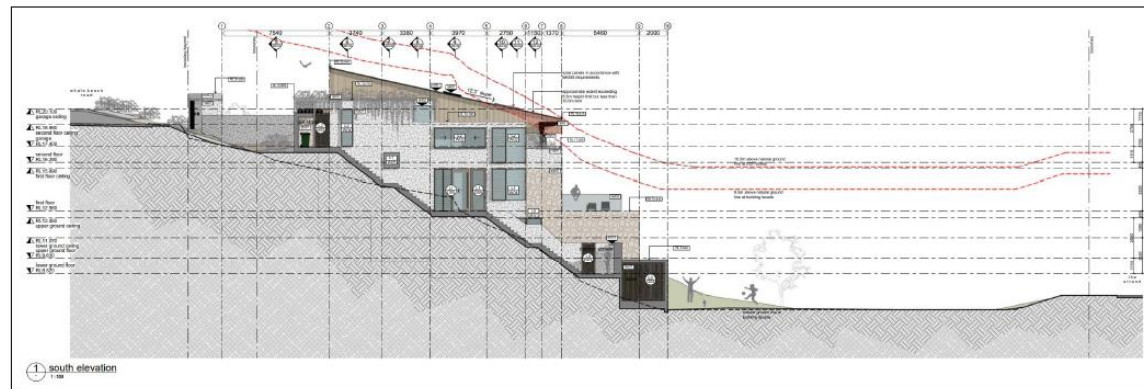
Source: James de Souyres and Associates 2018

- 32 The Strand, Whale Beach (DA2019/0913) – 8.5m height breach and significant bulk and scale.



northern beaches council
THIS PLAN IS TO BE READ IN CONJUNCTION WITH THE CONDITIONS OF DEVELOPMENT CONSENT
 DA2019/0913

Source: Shaun Lockyer Architects 2019



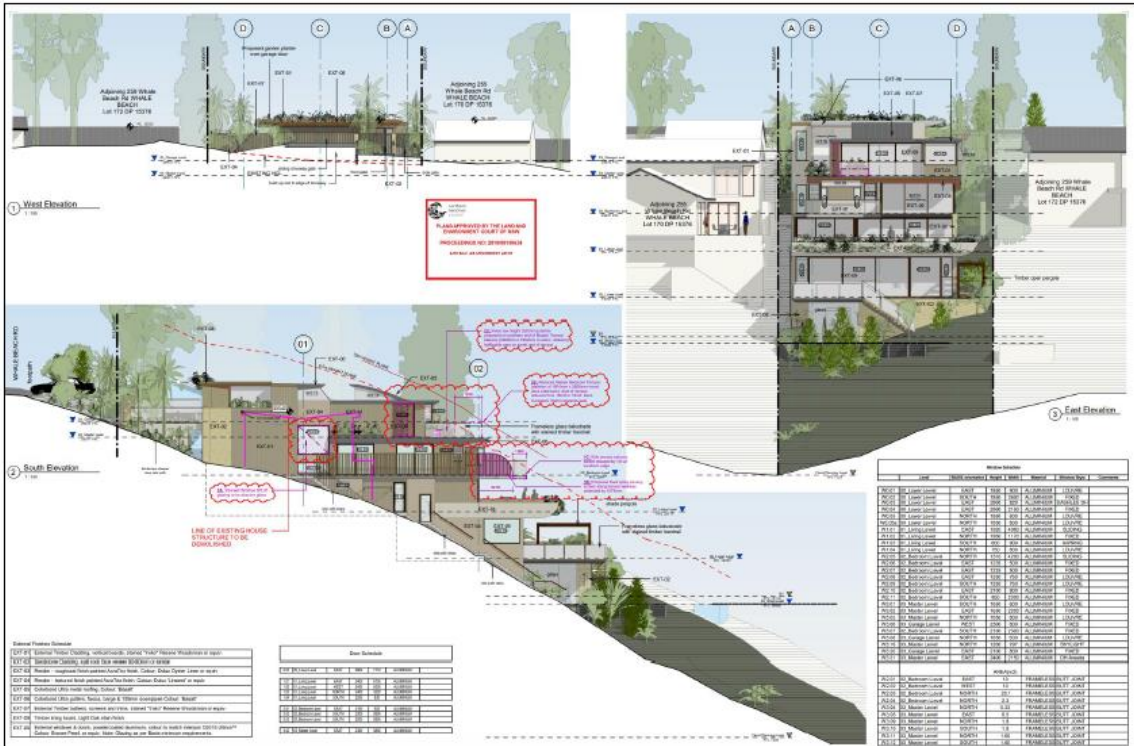
northern beaches council
THIS PLAN IS TO BE READ IN CONJUNCTION WITH THE CONDITIONS OF DEVELOPMENT CONSENT
 DA2019/0913

Source: Shaun Lockyer Architects 2019



Source: Shaun Lockyer Architects 2019

- 257 Whale Beach Road, Whale Beach (DA2019/00150634) – 8.5m height breach and significant bulk and scale that has not been successfully mitigated, presents as 6 stories from Whale Beach.



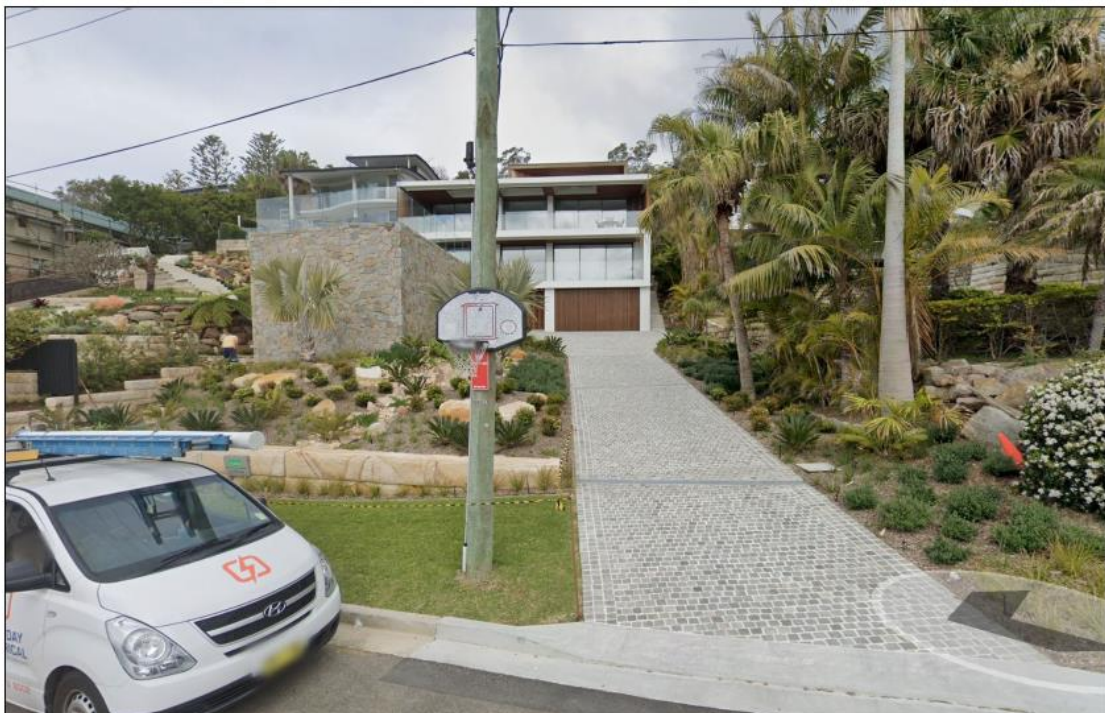
Source: Walter Baroda Design 2019

- 223 Whale Beach Road, Whale Beach (N0082/12/S96/1) – significant bulk and scale that does not respect the topography of the site.



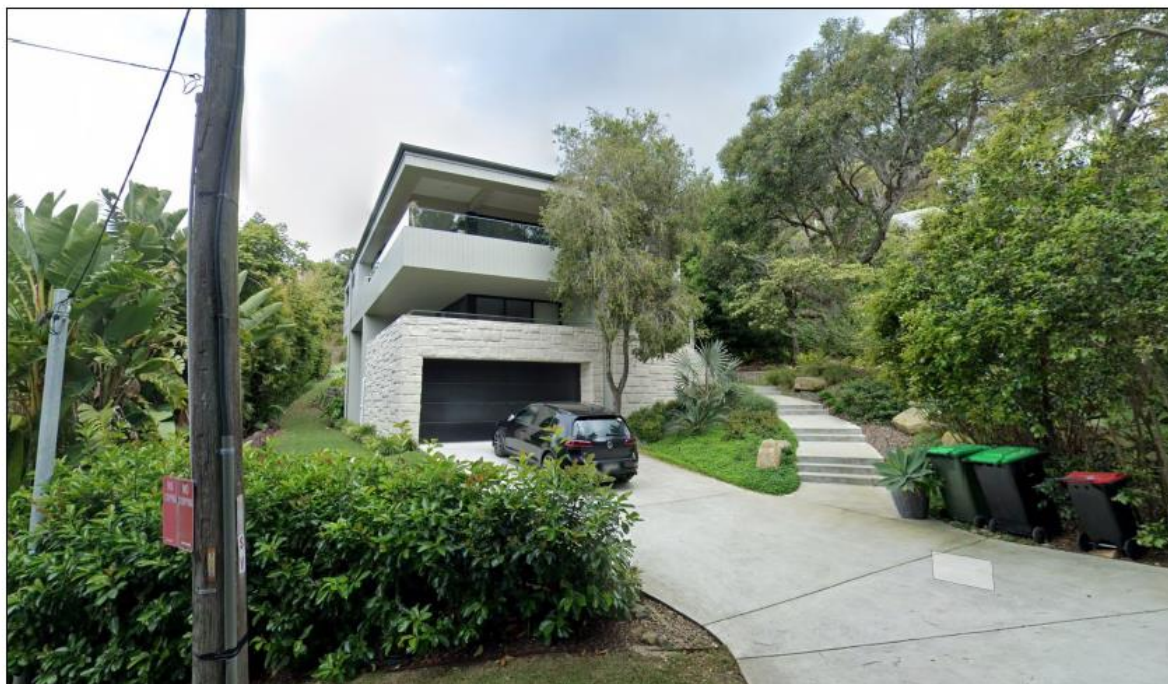
Source: Richard Cole Architecture 2020

- 13 Malo Road, Whale Beach (MOD2019/0225) – significant bulk and scale that does not attempt to step down with the topography of the site.



Source: Richard Cole Architecture 2020

- 1 Malo Road, Whale Beach (N0496/15) – no attempt has been made to mitigate the bulk and scale of the dwelling.



Source: Richard Cole Architecture 2020

4. The proposed development is inconsistent with the provisions of Clause C1.3 View Sharing of the Pittwater 21 Development Control Plan.

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

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

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

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

It is noted on the amended plans that the Project Architect has increased the side setbacks to 4m which is 1m greater than that required by Pittwater 21 DCP. The width of sunshade bays has been reduced to the north and south elevations on all levels. It is also noted that the side setbacks to the northern and southern walls of apartment 5 have been increased to 4.6m from boundary. It is our opinion that these amendments have significantly increased the view corridors down the side setbacks. In addition to the above, associated rooftop plant has been deleted and accommodated within a single roof top element combining the lift overrun and plant. The flyover copper roof over the fire stair has been deleted. All of these elements that have been reduced or deleted have improved the impact on views from neighbouring dwellings. It is noted that a comprehensive view analysis was undertaken by Richard Cole Architect as part of the supporting documentation for the original application. The view analysis was undertaken in accordance with the NSW Land and Environment Court planning principles under *Tenacity Consulting v Warringah Council [NSWLEC 140]*. This analysis embraced the four steps that are required to assess any view loss. The analysis undertaken by Richard Cole revealed “the minor view loss impacts are considered acceptable under the relevant planning principles of the NSW Land and Environment Court, therefore there is no

justification in carrying out a further view analysis as the amended plans have substantially enhanced side setbacks and reduced or deleted structures on the roof, all of which have a direct result of improving the view corridors associated with the amended plans”.

5. The proposed development is inconsistent with the Provisions of Clause D12.1 Character as viewed from a public place of Pittwater 21 Development Control Plan.

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

The proposed development in terms of visual bulk and scale is not a considered response to the predominant scale of the existing development within the Palm Beach Locality. The proposed development is not consistent with the locality in that the scale of the development does not sufficiently step down the slope of the land and is not integrated with the natural landform. The scale of the development is uncharacteristic. The extent of site coverage and side setbacks are not compatible with the context of the character of the locality.

Comment: This matter has been thoroughly addressed in item 3 and no further justification needs to be submitted relating to both the existing and desired future character of the locality.

6. The proposed development is inconsistent with the Provisions of Clause D12.6 Side and rear building line of Pittwater 21 Development Control Plan.

Comment: The Project Architect has responded to the concerns raised by Council in the Notice of Determination and has made a substantial number of amendments to the proposed development. The amendments to the design have resulted in increased side boundary setbacks, reduction in the length of the middle level balconies and increased landscaping throughout the development where possible. The resulting development has a reduced bulk and scale as a result of the increased side boundary setbacks which has enhanced the amenity of the neighbouring properties. The increase in the side building setbacks has also improved the view corridors from neighbouring properties. The amended application therefore complies with or provides greater setbacks than as prescribed under Council’s DCP.

It is also important to acknowledge that the side setbacks to the basement and ground floors are 2.5m to the south and vary from 0.13m to 9.4m to the north. These setbacks allowed for the basement parking to be compliant and represent a significant increase in setbacks from the original application.

7. The proposed development is inconsistent with the provisions of Clause D12.14 Scenic Protection Category One Areas of Pittwater 21 Development Control Plan.

Comment: Further review of Council’s assessment report has revealed that there is no explanation for assessment comments on why this matter has been listed as an issue and included as a reason for refusal. The amended proposal results in a significant increase to the softening of the building by way of a reduction in bulk and scale and an increase in landscaping. It is submitted that the proposal, as amended, has addressed the relevant controls specified under this clause in the following manner:

- Increase side boundary setbacks has resulted in extensive planting to the landscaped podium and to balconies on each level.
- Canopy trees have been provided to the side setbacks and to the landscaped podium.
- The proposal does not require the removal of any existing significant vegetation.
- The landscaping design has incorporated the requirement of native planting.
- No canopy trees will be removed along ridges or upper slopes as the proposal does not require the removal of any trees from the site.
- The proposed colours for external surfaces have been designed to be compliant with non-reflective materials and natural colours.
- The proposal is based upon the use of colours being neutral, dark and earthy.

7 PITTWATER DEVELOPMENT CONTROL PLAN 21

Tomasy Planning, in preparing the planning report to accompany the Section 8.2 Review to Council, has made comments, where relevant, to the DCP; however, it is noted that the DCP was comprehensively addressed in the SoEE which accompanied the original application.

Set out below are the relevant general controls considered applicable to this planning report:

| Compliance Table Pittwater 21 Development Control Plan | | | |
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| Control | Controls | Proposal | Compliance |
| Part A: Shaping Development in Pittwater | | | |
| <p>A4 Localities: A4.12 Palm Beach Locality</p> | <p><u>Desired Character</u> The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in 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 occupancy dwellings will be located on the lowlands and lower slopes that have 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.</p> <p>Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.</p> <p>Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form. 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.</p> <p>The design, scale and treatment of future development within the commercial centres will reflect a 'seaside-village' character through building design, signage and landscaping, and will reflect principles of good urban design. Landscaping will be incorporated into building design. Outdoor cafe seating will be encouraged.</p> <p>A balance will be achieved between</p> | <p>The amended proposal has been skilfully designed by the project architects to retain the desired character of Whale Beach while accommodating a new development that provides for the area in terms of commercial and residential needs. The development has been designed with regard to adjoining sites and has been stepped to flow with the slope of the land. The proposed development remains compliant with the height controls of Pittwater LEP2014.</p> <p>The proposed development includes commercial uses including a café and additional retail spaces to cater for the needs of the community and activate the area adjacent to Whale Beach, outdoor seating is provided to Whale Beach Road and Surf Road frontages.</p> <p>The proposed development is compliant with relevant height controls and has minimised the bulk and scale by increasing side boundary setbacks. The site is supported by adequate existing infrastructure, and stormwater management is proposed to be upgraded as required.</p> <p>The materials and finishes of the proposed building will be consistent with the existing buildings in the immediate area and will complement the coastal locality in which it is located. The proposal is sufficiently modulated and articulated to reduce any bulk and scale impacts and provide visual interest from Surf Road.</p> <p>The proposed development will not adversely impact public egress to Whale Beach and will enhance and activate the existing site for public and private use.</p> <p>The site is not an item of heritage significance, nor it is located in a heritage conservation area.</p> | <p>Complies.</p> |

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| | <p>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, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.</p> <p>Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved.</p> <p>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.</p> <p>Palm Beach will remain an important link to the offshore communities.</p> | | |
| Part B: General Controls | | | |
| B2: Density Controls | | | |
| B2.3 Subdivision – Business Zoned Land | <p>Any lot (or lots) to be created by a subdivision of an existing lot (or lots) shall be accessible from a public road or street.</p> <p>Any lot (or lots) are to be capable of providing for the construction of a building which is safe from hazards, does not unreasonably impact on the natural environment, does not adversely affect heritage, and can be provided with adequate and safe access and services.</p> <p>The re-subdivision of individual or groups of shops or office units subsequent to development consent may be carried out by any method of subdivision including Strata Subdivision, Community Title Subdivision, or Torrens Title Subdivision. Parking spaces, loading bays, and space for any other purpose forming a part of a sole occupancy unit are to be allocated to the unit. Landscaped areas, access areas and signage not forming part of an individual unit must be included as common property.</p> | <p>The amended plans do not change the concept as originally submitted to Council regarding subdivision of business zoned land.</p> <p>The development proposes the strata subdivision of the development into eight (8) individual lots. These lots separate the three (3) commercial tenancies and the five (5) residential apartments proposed and allocates specific parking to each lot.</p> <p>Common property areas are provided where appropriate.</p> <p>The strata subdivision of the proposed development will not limit the ability for each lot to access a public road or street.</p> | Complies. |
| B2.6 Dwelling Density and Subdivision – Shop Top Housing | <p>The commercial/retail component of the development must be a minimum of 25% of the gross floor area of the building.</p> <p>The re-subdivision of individual or groups of dwellings subsequent to development consent may be carried out by any method of subdivision including Strata Subdivision, Community Title Subdivision, or Torrens Title Subdivision. Parking spaces, loading bays, and space for any other purpose forming a part of a sole occupancy unit are to be allocated to the dwelling. Landscaped areas, access areas and signage not forming part of an individual dwelling must be included as common property.</p> | <p>Total GFA: 1213sqm Proposed retail GFA: 299sqm = 25%</p> <p>The proposed retail component of the premises accounts for 25% of the total GFA of the premises and therefore complies.</p> | Complies |

| B3: Hazard Controls | | | |
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| B3.1 Landslip Hazard | <p>All development on land to which this control applies must comply with the requirements of the Geotechnical Risk Management Policy for Pittwater (see Appendix 5).</p> <p>Development must be designed and constructed to ensure that every reasonable and practical means available is used to remove risk to an acceptable level as defined by the Geotechnical Risk Management Policy for Pittwater (see Appendix 5) for the life of the development.</p> <p>The development must not adversely affect or be adversely affected by geotechnical processes nor must it increase the level of risk for any people, assets and infrastructure in the vicinity due to geotechnical hazards.</p> | <p>A Geotechnical Report has been prepared by Douglas Partners in respect to the amended plans. The Geotechnical Report addresses all relevant controls of the Geotechnical Risk Management Policy for Pittwater.</p> <p>The proposed development will not cause any adverse impact to the site or neighbouring properties. All reasonable and practical measures will be implemented to ensure no negative geotechnical processes occur.</p> | Complies. |
| B3.6 Contaminated Land and Potentially Contaminated Land | <p>Council shall not consent to the carrying out of any development on land unless it has considered State Environmental Planning Policy No. 55 Remediation of Land.</p> <p>In particular Council shall consider:</p> <p>i) Whether the land is contaminated; and ii) 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 iii) if the land requires remediation, whether the land will be remediated before the land is used for that purpose.</p> | <p>A Geotechnical Report has been submitted to accompany the planning report and will comply with the requirements of SEPPNo. 55 (Remediation of Land).</p> <p>The land is not identified as a site that has potential contamination that needs to be considered.</p> | Complies. |
| B3.11 Flood Prone Land | <p>The purpose of this Part is to guide development in accordance with the objectives and processes set out in the NSW Government's Flood Prone Land Policy as outlined in the NSW Government, Floodplain Development Manual, 2005.</p> <p>Development to which this Part applies must comply with the performance criteria set out in clause 1.1.</p> <p>Form A and A1 (Attachment A of Northern Beaches Council's Guidelines for preparing a Flood Management Report) is to be completed and submitted to Council</p> | <p>The site is identified as land of a partial flood risk. This flood risk is due to the existing stormwater drainage on the site.</p> <p>The development proposes to relocate the existing stormwater pipe. The relocation of the existing stormwater facilities will substantially reduce any potential flooding impacts.</p> <p>Refer to Stormwater documentation prepared by JHA Consulting Engineers and Barrenjoey Consulting Engineers.</p> | Complies. |
| B3.13 Flood Hazard – Flood Emergency | <p>Areas of the Pittwater LGA potentially impacted by flash flooding or overland flow or lagoon flooding or a combination of</p> | <p>As expressed above, the development proposes the relocation of the existing stormwater facilities and will</p> | Complies. |
| Response Planning | <p>flooding are to ensure development is undertaken in a way that is reflective of the flood risk.</p> | <p>substantially decrease the risk of flooding on the site. Furthermore, the site has a significant slope from west to east toward Whale Beach, further reducing any flooding impacts.</p> <p>Refer to Stormwater documentation prepared by JHA Consulting Engineers and Barrenjoey Consulting Engineers.</p> | |

| B5: Water Management | | | |
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| B5.1 Water Management Plan | A water management approach must be undertaken on all land subject to development for the effective water management of all water on the site including: i) rainwater ii) stormwater iii) greywater, and iv) wastewater | Stormwater and water management documentation has been prepared by JHA Consulting Engineers and Barrenjoey Consulting Engineers. The submitted documentation addresses the effective water management on the site. | Complies. |
| B5.10 Stormwater Discharge into Public Drainage System | <p><u>General</u></p> <p>All drainage structures and measures are to be designed to be visually unobtrusive and sympathetic with the environment.</p> <p>All outlet connections into watercourses, estuary or lagoons shall be designed according to the design principles in <i>Controlled Activities on Waterfront Land: Guideline for outlet structures on waterfront land</i> (NSW Office of Water, July 2012).</p> <p>A Water Management Plan to a minimum scale of 1:200 including survey contours to AHD must demonstrate the feasibility of the proposed drainage system within the site and connection to a public drainage system.</p> <p>Adequate overflow paths to the public drainage system must be provided to cater for major storm events (up to the 1% AEP storm event) or blockages within the drainage system serving the development.</p> | Stormwater and water management documentation has been prepared by JHA Consulting Engineers and Barrenjoey Consulting Engineers. The submitted documentation addresses the effective water management on the site. | Complies. |
| B6: Access and Parking | | | |
| B6.1: Access Driveways and Works on the Public Road Reserve | <p>General Requirements</p> <p>Access Driveways include the driveway pavements, gutter crossings, supporting retaining walls, suspended slabs and related structures located on the public road reserve between the road edge and property boundary as illustrated in Appendix 10 -Driveway Profiles.</p> <p>An Access Driveway to the standards as set out below must be provided for:</p> <ul style="list-style-type: none"> ● any new development; ● any alterations and additions where the sum of the additional Gross Floor Area (GFA) of the dwelling exceeds 30 m²; and ● where additional car parking spaces and/or garages are proposed. <p>Where there is an existing driveway and the applicant proposes to retain the existing driveway, the applicant will be required to demonstrate compliance with this control.</p> | Refer to the Traffic and Parking Assessment has been prepared by TEF Consulting. | Complies. |

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| <p>B6.3: Off-Street Vehicle Parking Requirements</p> | <p>The onsite parking requirements for multi-dwelling housing, residential flat buildings and shop top housing is as follows:</p> <p>1-bedroom dwelling = 1 space per dwelling</p> <p>2 or more bedroom dwellings = 2 spaces per dwellings</p> <p>Retail premises (incl. cafes and restaurants) = 1/30sqm GFA</p> <p>Adaptable housing in accordance with control C1.9 of the PDCP21 = 1 space per dwelling</p> <p>The provision of parking for people with disabilities must be provided at a rate of 3% of the required parking spaces, excluding parking required for adaptable housing</p> <p>Separate visitor parking is to be provided at a rate of 1 space per 3 dwellings rounded up.</p> <p>Provision must be made for garbage collection, removalist vans and emergency vehicles.</p> | <p>A Traffic and Parking Assessment that was previously undertaken by TEF Consulting.</p> <p>Required: Apartments (5x 2 or more bedrooms each) = 10 car spaces Visitors = 2 car spaces Retail (299sqm) = 10 car spaces</p> <p>TOTAL = 22 car spaces</p> <p>Proposed: Apartments = 10 car spaces Visitors = 2 car spaces Retail = 6 car spaces</p> <p>TOTAL = 18 car spaces</p> <p>The development proposes a shortfall of 4 car parking spaces for the retail component of the development. The proposal ensures compliance with the residential car parking requirements.</p> <p>Due to the constraints of the site, the proposal aims to limit the amount of excavation proposed as part of the development and, hence, not all parking spaces could be provided.</p> <p>The site's proximity to Whale Beach and its location within a residential area means that the majority of patrons will walk to the development. The surrounding area has sufficient car parking from on-street parking and car parking provided at Whale Beach. The proposed minor-non-compliance will have no adverse impact on the functioning of the proposed commercial uses and will have no adverse impact on the immediate area.</p> <p>Refer to the amended Traffic and Parking Assessment Report for further justification of the minor non-compliance and evidence of compliance with other relevant controls.</p> | <p>Minor non-compliance.</p> |
| <p>B6.7 Transport and Traffic Management</p> | <p><u>Transport and Traffic Planning</u></p> <p>Where development generates pedestrian, cyclist, traffic and transport requirements in excess of the capacity of the existing road and transport network, the capacity of the surrounding public infrastructure and transport network is required to be upgraded to at least match the additional</p> | <p>A Traffic and Parking Assessment Report has been prepared by TEF Consulting.</p> <p>The proposed development will not result in a traffic flow that exceeds the capacity of the existing road network.</p> | <p>Complies.</p> |

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| | <p>demands generated by the development.</p> <p>Any improvement works external to the development site, required to ensure the development complies with this control, must be provided as part of the development at the full cost to the applicant.</p> <p>All traffic assessments are to be undertaken in accordance with the Roads and Maritime Services <i>Guidelines for Traffic Generating Developments</i> or similar guidelines.</p> <p>All proposed traffic facilities must comply with the Roads and Maritime Services and/or relevant Australian Standards.</p> <p>An assessment of the impact of traffic generated by the proposed development on the local street system must be undertaken.</p> <p>Adequate vehicular entrances to and exits from the site are to be provided so that vehicles using those entrances and exits will not endanger persons using adjoining roads.</p> <p>Adequate space is to be provided within the site of the building or development for the loading, unloading or fueling of vehicles, and for the picking up and setting down of passengers.</p> <p><u>Traffic and Transport Facilities and Public Utilities Costs</u></p> <p>The cost for traffic and transport facilities and adjustment of any utility service is the responsibility of the Applicant.</p> | <p>An assessment of any potential traffic impacts is provided throughout the traffic report. The report concludes that there will be negligible impact from the proposed development and the existing road network is suitable to cater for the minor increase in vehicular traffic.</p> <p>Loading and unloading and retail waste collection will occur from Whale Beach Road, as existing.</p> <p>Ground level retail and all residential waste will be collected by a small rigid vehicle adjacent to the entrance into the carparking facilities from Surf Road.</p> | |
| B8: Site Works Management | | | |
| <p>B8.1 Construction and Demolition - Excavation and Landfill</p> | <p>Excavation and landfill on any site that includes the following:</p> <ul style="list-style-type: none"> • 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; • Any excavation greater than 1.5 metres deep below the existing surface; • Any excavation that has the potential to destabilize a tree capable of collapsing in a way that any part of the tree could fall onto adjoining structures (proposed or existing) or adjoining property; • Any landfill greater than 1.0 metres in height; and/or • Any works that may be affected by geotechnical processes or which may impact on geotechnical processes including but not limited to constructions on sites with low bearing capacity soils, | <p>A Geotechnical Report has been prepared by Douglas Partners and a Construction Management Plan has been prepared by Auswide Consulting.</p> <p>The abovementioned reports outline management processes to ensure there are no adverse impacts to the site or neighbouring properties during and after the excavation and construction process and the proposal will not result in any landslip and subsidence as a result of excavation.</p> | <p>Complies.</p> |

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| | <p>must comply with the requirements of the Geotechnical Risk Management Policy for Pittwater (see Appendix 5) as adopted by Council and details submitted and certified by a Geotechnical Engineer and/or Structural Engineer with the detail design for the Construction Certificate.</p> | | |
| <p>B8.2 Construction and Demolition - Erosion and Sediment Management</p> | <p><i>Erosion and Sediment Management</i></p> <p>Erosion and sedimentation prevention measures must be installed on all sites to prevent the migration of sediment off the site into any waterway, drainage systems, public reserves, road reserve or adjoining private lands.</p> <p>Erosion and sedimentation prevention measures must be installed in accordance with Managing Urban Stormwater: Soils and Construction (Landcom 2004) on the downstream side of any works undertaken on the boundary of the site or on public lands adjoining the site to prevent the migration of sediment off the site into any waterway, drainage systems, public reserves, road reserve or adjoining private lands.</p> <p>Appropriate devices are to be in place at all times to prevent the migration of sediment off the site.</p> | <p>An erosion and sedimentation control plan has been addressed as part of the Construction Management Plan prepared by Auswide Consulting. Refer to the CMP for details of compliance with the relevant controls.</p> | <p>Complies.</p> |
| <p>B8.3 Construction and Demolition - Waste Minimisation</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>Refer to Construction Management Plan prepared by Auswide Consulting. Waste materials will be recycled and reused where possible and the remaining waste will be disposed of appropriately.</p> | <p>Complies.</p> |
| <p>B8.4 Construction and Demolition - Site Fencing and Security</p> | <p>All sites are to be protected by site fencing for the duration of the works.</p> <p>Where building construction is undertaken adjacent to the public domain, pedestrian and vehicular facilities are to be protected by a Hoarding in accordance with Section 126(1) of the <i>Roads Act 1993</i>.</p> | <p>The site will remain fenced for the duration of construction. Refer to Construction Management Plan prepared by Auswide Consulting.</p> | <p>Complies.</p> |
| <p>B8.5 Construction and Demolition - Works in the Public Domain</p> | <p>All works undertaken within the public road reserve must be protected in a manner to ensure pedestrian and vehicular safety at all times.</p> <p>All works undertaken on site or in the public road reserve must make provision for pedestrian and traffic flow and not adverse nuisance.</p> <p>All works undertaken on a site or in the public road reserve must make good any damage or disruption to the public infrastructure.</p> | <p>Refer to Construction Management Plan prepared by Auswide Consulting for details of compliance with this provision.</p> | <p>Complies.</p> |
| <p>B8.6 Construction and Demolition - Traffic Management Plan</p> | <p>For all development where either excavated materials to be transported from the site or the importation of fill material to the site is 100m³ or greater, a Construction Traffic Management Plan indicating truck movements, and truck routes is to be provided and approved by Council prior to the commencement of works.</p> <p>All transport works must not cause adverse disruption or nuisance to</p> | <p>The Construction Management Plan prepared by Auswide Consulting addresses traffic management during the construction phase.</p> <p>Potential impacts from construction will be mitigated as much as possible through compliance with the CMP prepared.</p> | <p>Complies.</p> |

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| | adjoining residences, businesses or the street system. | | |
| Section C Development Type Controls | | | |
| C1: Design Criteria for Residential Development | | | |
| C1.1 Landscaping | All canopy trees, and a majority (more than 50%) of other vegetation, shall be locally native species. Species selection and area of landscape to be locally native species is determined by extent of existing native vegetation and presence of an Endangered Ecological Community. Note if the land is within an Endangered Ecological Community there will be a Development Control specifically covering the requirements for Landscaping in an Endangered Ecological Community. | The amended proposal includes only local indigenous canopy trees. Proposed species include: <i>Livistona Australis</i> , <i>Banksia Intergrifolia</i> and <i>banksia Serrata</i> . Refer to landscape plans prepared by Trish Dobson Landscape Architecture for details of species. | Complies. |
| | In all development a range of low-lying shrubs, medium-high shrubs and canopy trees shall be retained or provided to soften the built form. | The proposal includes a mix of low and medium shrubs and canopy trees along all site boundaries to soften the built form and scale of the building. | Complies. |
| | At least 2 canopy trees in the front yard and 1 canopy tree in the rear yard are to be provided on site. Where there are existing canopy trees, but no natural tree regeneration, tree species are to be planted to ensure that the canopy is retained over the long-term. Where there are no canopy trees the trees to be planted are to be of sufficient scale to immediately add to the tree canopy of Pittwater and soften the built form. | Canopy trees are located within the front setback, side setback and rear setback of the proposed development. | Complies. |
| | Each tree planted is to have a minimum area of 3 metres x 3 metres and a minimum 8m ³ within this area to ensure growth is not restricted. | Complies. | Complies. |
| | The following soil depths are required in order to be counted as landscaping: <ul style="list-style-type: none"> • 300mm for lawn • 600mm for shrubs • 1metre for trees | Complies. | Complies. |
| | The front of buildings (between the front boundary and any built structures) shall be landscaped to screen those buildings from the street as follows: <ul style="list-style-type: none"> • A planter or landscaped area with minimum dimensions of 4m² for shop top housing developments, • 60% for a single dwelling house, secondary dwelling, rural workers' dwellings, or dual occupancy, and • 50% for all other forms of residential development. | The proposed development for shop top house includes sufficient landscaping to Whale Beach Road and Surf Road as required. The proposed planting will soften the view of the building from the street and reduce any bulk and scale impacts from the proposed development. The increase in side boundary setbacks has result in additional landscaping. | Complies. |
| | Screening shall be of vegetation (not built items), and shall be calculated when viewed directly onto the site. | Screen planting is provided on all site boundaries. | Complies. |
| | In bushfire prone areas, species shall be appropriate to the bushfire hazard. | Not applicable. | N/A. |
| | Landscaping shall not unreasonably obstruct driver and pedestrian visibility | The proposed landscaping will have no adverse impact on pedestrian and vehicular safety and will not impact sightlines. | Complies. |
| | Development shall provide for the reasonable retention and protection of existing significant trees, especially near | Where possible, vegetation has been retained. | Complies. |

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| | property boundaries, and retention of natural features such as rock outcrops. | | |
| | Canopy trees are to be located a minimum of 5 metres from existing and proposed built structures, or minimum of 3 metres where pier and beam footings are used. | Complies. | Complies. |
| | Noxious and undesirable plants must be removed from the site | Undesirable plants will be removed from the site. | Complies. |
| | For development containing 3 or more dwellings, permanent seating is to be provided in the landscaped area. | Refer to Landscape Plan DA34 which shows a seat adjacent to the stairs fronting Whale Beach Road. | Complies. |
| | For residential flat buildings and multi dwelling housing, a communal area for children's play is to be provided. | Not applicable. | N/A. |
| | For shop top housing, a minimum landscaped area of 20% of the site area, or 35m ² per dwelling, whichever is the greater, shall be provided. | The development complies with the requirement for 35sqm of landscaped area per dwelling (5x35 = 175sqm). The development proposes 289.29sqm (34.3%) of landscaped area on the site (844sqm). | Complies. |
| | Above ground gardens are to be incorporated into each dwelling at all levels (other than ground floor). | Each apartment features a large terrace for private use and includes landscaping. | Complies. |
| | For shop top housing, a minimum 4m ² planter or landscaped area is to be provided as a feature at the ground level of the front building facade. | The proposal exceeds the requirement for a landscaped area of minimum of 4sqm. | Complies. |
| | For shop top housing development landscaping is to be provided at the front and rear of the development. | Landscaping is provided at the front and rear of the proposed development. | Complies. |
| C1.4 Solar Access | <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>Solar collectors for hot water or electricity shall receive at least 6 hours of sunshine between 8.00am and 4.00pm during mid winter.</p> <p>Developments should maximise sunshine to clothes drying areas of the proposed development or adjoining dwellings.</p> <p>The proposal must demonstrate that appropriate solar access is achieved through the application of the Land and</p> | <p>The proposed living areas and private open space areas of each apartment in the proposed development will receive a minimum of 2 hours of sunlight between 9am and 3pm on June 21st. The proposed apartment buildings will receive direct sunlight between 8am-11am, achieving the objective of the zone to have 3 hours of direct sunlight.</p> | Complies. |

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| | Environment Court planning principle for solar access. | | |
| C1.5 Visual Privacy | 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). | The proposed private open space areas and living rooms of the development are sufficiently setback from the adjoining properties to the north and south. The proposal will have no adverse impacts in terms of privacy and overlooking. Privacy screening is provided on the terraced areas. The private open space areas and the primary living areas are orientated toward Whale Beach (east) and are not orientated towards neighbouring properties, further reducing any potential overlooking impacts. | Complies. |
| | Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building | The terraced areas are located at the rear of the site and includes appropriate screen planting on each terrace and on ground level. | Complies. |
| | Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below. | The proposed upper level terraces are not able to view more than 50% of a lower level terraced area. | Complies. |
| C1.6 Acoustic Privacy | 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. 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>). Noise generating plants including pool/spa motors, air conditioning units and the like shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary. Developments must comply in all respects with the Protection of the Environment Operations Act 1997 , and other relevant legislation. | The development is not located adjacent to a main road or a source of high noise. The design of the proposed apartments is such that the bedrooms are located away from the terraced private open space and the primary living area. The proposed development will comply with all relevant Australian Standards and is supported by an Acoustic Report prepared by JHA Consulting Engineers. The Acoustic Report suggests mitigation and noise control measures to be implemented to ensure compliance with Australian Standards and ensure there are no adverse acoustic amenity impacts. | Complies. |
| C1.7 Private Open Space | <u>c) All other residential development:-</u> Minimum area of 15% of the floor area of the dwelling (not including the floor area of garages or internal laundries), with no dimension less than 2.5 metres and a grade no steeper than 1 in 10 (10%). Dwellings are to be designed so that private open space is directly accessible from living areas enabling it to function as an extension of internal living areas. Ground floor units are to have a minimum area of private open space of 30sq.m and with no dimension less than 4 metres. Private open space areas are to have good solar orientation (i.e. orientated to the north-east or north-west where | The private open space area proposed for each dwelling is a minimum of 15% of the proposed floor area and has a gradient less than 10%. Due to the curved design of the terraced areas, some areas of the private open space have dimensions less than 2.5m. This is considered acceptable due to the size of the private open space and the modulation and articulation required for a building of this size to reduce the bulk and scale. The curved shape does not result in any unusable space and will not adversely impact residents. | Complies. |

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| | <p>possible). Where site or slope constrains this orientation, the private open space area must have access to some direct sunlight throughout the year (see Solar Access and Natural Light).</p> <p>Walled enclosure of private open space is prohibited. Such areas shall not be modified to be incorporated into the dwelling.</p> <p>Private open space areas should include provision of clothes drying facilities, screened from the street or a public place. Shared clothes drying facilities are acceptable.</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 10m² and a minimum width of 2.4 metres). First floor balconies along the side boundary must be designed to limit overlooking and maintain privacy of adjoining residences. Balconies are prohibited from overhanging public property.</p> | <p>The proposed private open space is located directly adjacent to the primary living area and has views to Whale Beach. The orientation of the private open space areas are toward the view of Whale Beach (east) to enhance visual amenity, solar access requirements will be complied with. Clothes drying facilities are located on the terraced areas of each apartment. No shared facilities are provided.</p> <p>Private terraces are provided for each apartment at the rear of the site toward Surf Road. The terraces are of a sufficient size and shape to be usable for recreational and entertaining purposes and will not result in any overlooking to neighbouring properties. The terraces proposed do not overhang public property.</p> | |
| C1.9 Adaptable Housing and Accessibility | <p>The design of residential development shall meet the criteria of Australian Standards AS 4299:1995 Adaptable Housing as follows:</p> <p>Shop Top Housing – 20%</p> | Apartment 5 and the lower level of apartment 2 have been designed as adaptable units. | Complies. |
| C1.10 Building Facades | <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> | No services will be visible from a public place. | Complies. |
| | <p>For multi dwelling housing, residential flat buildings or seniors housing and similar development that includes multiple dwellings with multiple letterboxes, where possible mailboxes should be orientated obliquely to the street to reduce visual clutter and the perception of multiple dwellings.</p> | Mailboxes will be located adjacent to the main entrance and will not overpower the front façade of the building. | Complies. |
| C1.12 Waste and Recycling Facilities | 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 | A Waste Management Plan prepared by the applicant has been prepared using Northern Beaches Council's Waste Management Plan template. | Complies. |
| C1.15 Storage Facilities | A lockable storage area of minimum 8 cubic metres per dwelling shall be provided. This may form part of a carport or garage. | Storage areas are provided in the basement/car parking areas. | Complies. |
| C1.18 Car/Vehicle/ Boat Wash Bays | A designated wash bay is to be incorporated on the site where developments have more than ten units. | Not applicable. | N/A. |
| | The wash bay must be designed and constructed so as to not allow polluted | Not applicable. | N/A |

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| | waters to enter the stormwater drain and stormwaters do no enter the sewer. | | |
| C1.23 Eaves | <p>Dwellings shall incorporate eaves on all elevations. Eaves must be a minimum of 450mm in width, excluding any fascia/barge boards and gutters.</p> <p>Variations Council may consider a variation to this control where the development is shop top housing, residential flat buildings or multi dwelling housing.</p> | Eaves have been provided on elevations where appropriate. Articulation and sun shading has been provided by awning structures and fixed sunshades to windows. | Complies. |
| C2: Design Criteria for Business Development | | | |
| C2.1 Landscaping | <p>Canopy trees are to be located a minimum of five metres from any footing walls of the actual built structure of the development. Closer proximity can be accommodated through the use of pier and beam footings and will be assessed on a risk to structure basis. A range of ground covers shrubs and trees shall be provided to soften the built form from the street.</p> <p>For bed and breakfast accommodation and rural industry, landscape elements both hard and soft should dominate the built form and be incorporated into the building fabric and design through the use of setback and modulation incorporating such landscape elements.</p> <p>For shop top housing, a planter or landscaped area with minimum area of 4m² is to be provided as a feature at the ground floor of the front building facade. This feature is to be positioned to soften any hard edges of the building including any ramps, podiums or changes in levels.</p> <p>Planter areas are to be a minimum area of 4m² and where canopy trees are proposed a minimum soil volume of 8m³ is required. Provision of available root volume may need to incorporate the use of structural soils.</p> <p>All plant material is to be of a super advanced nature given the difficulty of establishing plant material in heavily used urban areas. Minimum plant sizes are to be as follows:-</p> <ul style="list-style-type: none"> ● Ground covers 5 litre (200) mm pot ● Shrubs 35 litre ● Trees 400 litre <p>A minimum depth of 500mm of garden mix (ANL Botany Mix or equivalent) must be provided to all garden areas with 150mm hardwood chip mulch to cover all garden areas. Plants are to be arranged and spaced, so that at completion of works, they present as a grown completed landscape. Plant material should be arranged through pre-order plant contracts to achieve required advanced sizes.</p> <p>Tree species to include indigenous smaller rainforest and creekline species such as:-</p> | <p>The proposed landscaping includes a diverse range of native plant species of different sizes.</p> <p>The proposed landscaping will be used to provide screen planting and soften the built form of the shop top housing development.</p> <p>Sufficient landscaped area (exceeding 4sqm) is provided at ground floor level of Whale Beach Road and Surf Road respectively.</p> <p>Sufficient landscaping is provided for the number of proposed apartments.</p> <p>Refer to C1.1 Landscaping for further details of compliance and refer to landscape plans provided for further details of proposed plant species, soil depth and area of landscapes space.</p> | Complies. |

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| | <ul style="list-style-type: none"> • Tristania Laurina - Watergum • Hymenosporous flavum - Native Frangipani • Cupaniopsis arachanoides - Tuckeroo • Syzigium Jambos - Syzigium • Banksia Intergrifolia/Serrata - Banksia <p>Tree species selection needs to understand root growth and location and impact upon utility services such as wires/cables/pipes both overhead and underground and generally match the existing character of the street.</p> <p>All garden areas containing proposed trees are to have root barriers installed to all edges. Such barriers are preferred 100mm thick concrete to a 300 mm depth.</p> <p>All garden areas to include a drip irrigation system based on station timer and be maintained by the proposed strata body of the subject building.</p> <p>For shop top housing, a minimum landscaped area (at ground floor level) of 20% of the site area, or 35m² per dwelling, whichever is the greater, shall be provided.</p> <p>In bushfire prone areas, species shall be appropriate to the bushfire hazard.</p> <p>Noxious and undesirable plants must be removed from the site.</p> <p>Landscaping is to be provided at the front and rear of shop top housing developments.</p> | | |
| <p>C2.2 Safety and Security</p> | <p>There are four Crime Prevention through Environmental Design (CPTED) principles that need to be used in the assessment of development applications to minimise the opportunity for crime they include the following:</p> <p><u>1. Surveillance</u></p> <p>Building design should allow visitors who approach the front door to be seen without the need to open the door.</p> <p>Buildings and the public domain are to be designed to allow occupants to overlook public places (streets, parking, open space etc) and communal areas to maximise casual surveillance.</p> <p>Development design and design of the public domain (including landscaping) is to minimise opportunities for concealment and avoid blind corners.</p> <p>Adequate lighting must be provided according to the intended use of the development. Lighting must be designed and located so that it minimises the possibility of vandalism or damage. Security lighting must meet Australian Standard AS4282-1997: <i>The control of the obtrusive effects of outdoor lighting</i>.</p> | <p>Surveillance</p> <p>The proposed terraces allow residents to overlook the public spaces at the rear of the property to maximise casual surveillance.</p> <p>The proposed landscaping and overall building design does not allow for concealment or blind corners.</p> <p>Lighting will be provided in communal spaces, in particular the hallway/walkway and surrounding the commercial areas when not in use.</p> <p>Lighting will meeting the required Australian Standards while not causing any adverse visual impacts to residents or neighbouring properties.</p> | <p>Complies.</p> |

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| | <p>Lighting is to be designed to minimise electricity consumption, and to minimise annoyance to neighbours.</p> <p>Where provided, public facilities (toilets, telephone, ATMs, etc) are to be located so as to have direct access and to be clearly visible from well-trafficked public spaces.</p> <p>Design landscaping and materials around dwellings and buildings, so that when it is mature it does not unreasonably restrict views of pathways, parking and open space areas.</p> <p><u>2. Access Control</u></p> <p>Shared entries must be able to be locked and incorporate an intercom system or the like to allow visitors to gain entry. Building entrances are to be clearly visible from the street, easily identifiable and appropriately lit.</p> <p>Where provided, pedestrian access through a site and through the public domain is to be clearly defined, signposted, appropriately lit, visible and give direct access to building from parking and other areas likely to be used at night.</p> <p>The street number of the property is to be clearly identifiable.</p> <p>Pedestrian access along the street frontage shall not be impeded by landscaping, street furniture or other restrictions.</p> <p><u>3. Territorial reinforcement</u></p> <p>Walkways and landscaping should be used to delineate site boundaries and direct visitors to the correct entrance and away from private areas.</p> <p>Where a retail/commercial use and residential dwellings are provided in the same development, separate entries for the different uses are to be provided.</p> <p>Blank walls along all public places (streets, open space etc) shall be minimised.</p> <p><u>4. Space Management</u></p> <p>Popular public space is often attractive, well maintained and a well used space. Linked to the principle of territorial reinforcement, space management ensures that space is appropriately utilised and well cared for.</p> <p>Space management strategies include activity coordination, site cleanliness, rapid repair of vandalism and graffiti, the replacement of burned out pedestrian and car park lighting and the removal or refurbishment of decayed physical elements.</p> <p>A crime risk assessment is a systematic evaluation of the potential for crime in an area. It provides an indication of both the likely magnitude of crime and likely crime</p> | <p>Access Control</p> <p>The street number of the property will be clearly identifiable.</p> <p>Pedestrian movement throughout the site has been made a priority throughout the design process.</p> <p>Territorial Reinforcement</p> <p>The proposed landscaping will assist in ensuring the boundary of the site is clearly defined and direct public movement through the thoroughfare and around the retail tenancies.</p> <p>Individual entrances are provided for each retail tenancy and apartment.</p> <p>The proposal does not include any blank walls.</p> <p>Space Management</p> <p>The proposed mixed use development will be appropriately maintained, cleaned and landscaped on a regular basis.</p> <p>Any graffiti or vandalism will be removed immediately and any lighting or signage will be replaced as needed.</p> <p>A crime risk assessment is not required for the proposed development. The development is not identified as a contentious use and the site is not located in a area with a high crime rate.</p> <p>Security Devices</p> <p>The proposed security gate to close the walkway after business hours will be of an open grille design to allow for passive surveillance and ventilation. The proposed gate will complement the design and character of the existing building.</p> | |
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| | <p>type. The consideration of these dimensions (crime amount and type) will determine the choice and approximate mix of Crime Prevention through Environmental Design (CPTED) strategies.</p> <p><u>5. Security Devices</u></p> <p>Solid roller shutters are not permitted as security devices on shop fronts (windows and doors). Open grille security devices, if considered necessary, are to be unobtrusive and sympathetic to the character of the building and the streetscape, with a minimum transparency of 65%.</p> | | |
| C.2.3 Awnings | <p>Continuous footpath awnings should be provided to the street adjoining business development for weather protection for pedestrians. Awnings shall be constructed of any suitable and durable material, excluding glass, Perspex and the like due to heat transmission.</p> <p>Awnings should be compatible in scale and height to adjoining awnings. Awnings shall not impact on street trees. Awnings are to comply with the relevant adopted Masterplan for the area. Where there is no Masterplan, new buildings shall provide awnings setback 3.5m from the face of the street kerb.</p> | <p>Awnings will be provided along the Whale Beach frontage and at the ground floor level of the Surf Road frontage.</p> <p>The proposed awnings complement the design of the proposed building and are of an appropriate height and scale for the proposed development, and will not impact the proposed landscaping.</p> | Complies. |
| C.2.5 View Sharing | <p>All new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties.</p> <p>The proposal must demonstrate that view sharing is achieved through the application of the Land and Environment Court's planning principles for view sharing.</p> <p>Where a view may be obstructed, built structures within the setback areas are to maximise visual access through the structure e.g. by the provision of an open structure or transparent building materials.</p> <p>Views are not to be obtained at the expense of native vegetation.</p> | Refer to Section 6 which addresses view sharing. | Complies. |

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| <p>C2.6 Adaptable Housing and Accessibility</p> | <p>Convenient and safe access for all people, including people with a disability, older people, and people with prams, must be provided to and within all buildings to which the general public have access.</p> <p>The siting and design of a building to which the general public has access shall comply with Australian Standard AS 1428-2009.1: <i>Design for access and mobility – General requirements for access – New building work</i>, and shall incorporate the following:</p> <ul style="list-style-type: none"> i. continuous accessible path of travel to all areas that the public or a section of the public is entitled or allowed to enter or use; and ii. walkways, ramps and landings at a reasonable gradient and width, with handrails and kerbs provided on all ramps, and slip-resistant materials on all floor surfaces; and iii. accessible toilet facilities, tactile ground surface indicators, effective signage and illumination, and adequate circulation space through passageways and doorways; and iv. carparking for people with a disability. <p>This clause applies to development that involves:</p> <ul style="list-style-type: none"> a. a new building to which the general public has access; b. major alterations and additions to an existing building to which the general public has access; and c. alterations to the shopfront/entrance of an existing building to which the general public has access. <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>Development shall include design and construction of the footpath, cycleway, kerb and guttering, drainage facilities, street furniture, street lighting and landscaping and make good the adjacent road and pavement for the full frontage of the site to any public road at full cost to the developer.</p> | <p>The proposed development complies with all relevant Australian Standards for accessible building design.</p> <p>Lifts are provided within the building to allow for continuous accessible movement throughout the site, to all levels of the building. Accessible public toilet facilities are provided where required and will be appropriately illuminated and fitted out with handrails and ramps as needed.</p> <p>One (1) disabled car parking space is provided on the ground floor level car park.</p> <p>Access to the site from public roads will be compliant with accessibility requirements.</p> <p>A Building Code of Australia and Access Report demonstrating compliance has been prepared by MBC and Accessible Building Solutions, respectively.</p> | <p>Complies.</p> |
| | <p>The design and construction shall be in accordance with the Village Streetscape Masterplans. See Section 94 Contributions Plan.</p> <p>Development within areas subject to flooding must provide access on land within private ownership. In this regard ramps must not encroach into the public domain.</p> | | |

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| C2.7 Building Facades | 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. | No services will be visible from a public place. | Complies. |
| C2.10 Pollution Control | <p>All developments must be designed, constructed, maintained, and operated in a proper and efficient manner to prevent air, water, noise or land pollution.</p> <p>Development and business operation must comply with the Protection of the Environment Operations Act 1997, and any relevant legislation.</p> <p>Compliance with the NSW Environment Protection Authority Industrial Noise Policy (January 2000).</p> | The proposed development will operate in compliance with all relevant legislation and will ensure there is no additional air, water, noise or land pollution produced as part of the operation of the development. | Complies. |
| C2.11 Signage | <p>Wall sign (painted onto a wall of a building or attached to the wall of a building, not being a sign elsewhere listed in this table)</p> <ul style="list-style-type: none"> i. shall not extend laterally beyond the wall of the building upon which it is attached; ii. shall not cover any window or architectural projections; iii. shall not have a signage area greater than 4.5sq m; iv. where illuminated, shall not be less than 2.6m above the ground; and v. shall not project more than 300mm from the wall. | This report does not address signage. Refer to the comments in the SoEE that accompanied the original application. | Complies. |
| C2.12 Protection of Residential Amenity | <p>Where development adjoins land zoned or used for residential purposes, the following apply:</p> <p><u>Solar Access</u></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>Solar Access</p> <p>The private open space of each apartment will receive direct sunlight from 8am to 11am on 21 June. While these hours of direct sunlight are not directly in line with the requirements of this control, the objective of the control to provide 3 hours of direct sunlight is achieved. The constraints of the site limit the options for areas of private open space and principle living areas.</p> <p>Due to the skilful design of the proposed development, the proposal results in a negligible increase in overshadowing on adjoining properties and continues to allow for a minimum of 3 hours of sunlight from 9am to 3pm on 21 June.</p> | Complies. |

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| | <p>Solar collectors for hot water or electricity shall receive at least 6 hours of sunshine between 8.00am and 4.00pm during mid winter.</p> <p>Developments should maximise sunshine to clothes drying areas of the proposed development or adjoining dwellings.</p> <p><u>Privacy</u></p> <p>Private open spaces and living rooms of proposed and any existing adjoining dwellings may 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>Elevated decks, verandahs and balconies may incorporate privacy screens where necessary and should, where possible, be located at the front or rear of the building. Such areas shall not be modified to be incorporated into the dwelling.</p> <p>Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.</p> <p>Direct views of private open space or any habitable room window within 9 metres may be restricted (see diagram below) by:</p> <ul style="list-style-type: none"> • vegetation/landscaping • a window sill height 1.7 metres above floor level, or • offset windows • fixed translucent glazing in any part below 1.7 metres above floor level, or • solid translucent screens or perforated panels or trellises which have a maximum of 25% openings | <p>Dedicated clothes drying areas are provided for each apartment.</p> <p>Privacy The proposed development will not give rise to any privacy or overlooking impacts. Privacy screens are provided on the southern side of the balconies to reduce any potential overlooking and ensure privacy. The existing adjoining dwellings and proposed building are sufficiently separated and there will be no privacy impacts from the proposed development.</p> <p>The terraced areas incorporate privacy screens and are located at the rear of the property toward Surf Road. The proposed terraces also include screen planting along the boundaries of the balcony.</p> | |
| C2.16 Undergrounding of Utility Services | <p>All existing and proposed utility services within the site are to be placed underground or encapsulated within the building.</p> <p>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 frontage of the site to any public road.</p> <p>Design and construction of the undergrounding of utility services is to be at full cost to the developer.</p> | All utility services will remain underground or will be encapsulated within the building. | Complies. |
| C2.20 Public Road Reserve – Landscaping and Infrastructure | <p>B) Development located outside commercial centres</p> <p><u>Landscaping General - All Development</u></p> <p>Landscaping in the public road reserve is to include street trees planted to the road reserve frontage of the development placed at 6m centres.</p> | The proposed landscaping includes street trees to Whale Beach Road, and additional planting to Surf Road. The street trees will not obstruct pedestrian movement and will not result in view loss for neighbouring properties. | Complies. |

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| | <p>Street trees are to be planted so as not to obstruct the free passage of pedestrians along the road verge and not interfere with existing power lines.</p> <p>Tree species are to be a minimum 400 litre size with 1m x1m hole and backfilled with planting medium. Trees are to be staked with 2/50mm x 50mm stakes with hessian ties.</p> <p>All existing trees over 3m in height and native vegetation and trees within the road reserve areas are to be retained where practical. Such trees are to be protected through perimeter 1.8m high temporary fencing during the construction of works.</p> <p>Selected species are to as per the existing adjacent street trees or native species to the area.</p> <p>Council encourages the use of local endemic native species according to the list of local native species in Pittwater http://www.pittwater.nsw.gov.au/environment/plants_and_animals/native_plants/species_lists</p> <p>Grassed areas are to be turfed with Couch species (weed free) and even grade to a maximum 4% grade.</p> <ol style="list-style-type: none"> 1. Development up to 1000sq m Gross Floor Area- Landscaping and Infrastructure <ul style="list-style-type: none"> ○ Development with frontage to a public road reserve requires the design and construction of a footpath 1.5m wide (2.1m wide where a multi-use pathway is required to be installed), kerb and gutter and landscaping for the full width of the development site on the public road reserve frontage to the development. 2. Development greater than 1000sq m Gross Floor Area- Landscaping and Infrastructure <ul style="list-style-type: none"> ○ Development with frontage to a public road reserve requires the design and construction of a footpath 1.5m wide (2.1m wide where a multi-use pathway is required to be installed), kerb and gutter, the making good of the road pavement from the kerb and gutter to the road centre line, street lighting and landscaping for the | <p>The chosen plant species are consistent with native plants from the area and will complement the landscaping of neighbouring properties.</p> <p>The pedestrian path on Whale Beach Road will be replaced and designed to complement the proposed development.</p> | |
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| | <p>full width of the development site on the public road reserve frontage to the development.</p> <p>Making good of the road pavement shall be to the following engineering standard Asphaltic Concrete finish:</p> <ul style="list-style-type: none"> ● Sub-arterial road: 4 x106 ESA's ● Collector road 2 x106 ESA's ● Local road 6 x105 ESA's ● Access road 1 x105 ESA's | | |
| C2.21 Food Premises Design Standards | <p>Compliance with Australia New Zealand Food Standards Code 3.2.3 (Food Premises and Equipment).</p> <p>Compliance with Australia Standard AS 4674-2004: <i>Construction and fit-out of food premises</i></p> <p>Mechanical Ventilation systems are to be designed, manufactured, installed, operated and maintained in accordance with:</p> <ol style="list-style-type: none"> i. Australian Standard AS 1668.1:1998 <i>The use of ventilation and air conditioning in buildings Part 1 - Fire and smoke control in multicompartment buildings</i> ii. Australian Standard AS 1668.2:2012 <i>The use of mechanical ventilation and air conditioning in buildings Part 2 - Mechanical ventilation in buildings.</i> <p>Mechanical Ventilators or other air conditioning equipment shall be screened from view from public and private domain to avoid clutter on the side, front and rear walls of development in the Elanora Heights Village Centre.</p> <p>Food businesses must ensure that the premises are provided with the necessary services of water waste disposal, light ventilation, cleaning and personal hygiene facilities, storage space and access to toilets.</p> | <p>The proposed retail premises, likely to be used for cafes, will be constructed to all relevant Australian Standards for food and drink premises.</p> <p>Mechanical ventilation systems will be designed in accordance with relevant Australian Standards and the recommendations provided in the Acoustic Report prepared by JHA Consulting Engineers.</p> | Complies. |
| C2.22 Plant, Equipment Boxes and Lift Over-run | <p>Where provided, plant and equipment boxes and lift over-runs are to be integrated internally into the design fabric of the built form of the building.</p> <p>Locate and design all noise generating equipment such as mechanical plant rooms, mechanical equipment, air conditioning units, mechanical ventilation from car parks, driveway entry shutters, garbage collection areas or similar to protect the acoustic privacy of workers, residents and neighbours.</p> <p>Variations Subject to achievement of the outcomes of this control, consideration may be given to the location of plant, equipment boxes</p> | <p>The proposed plant equipment and lift overrun has been appropriately located to reduce any potential impact on existing views and reduce any potential impacts on residents of the building.</p> <p>The amended plans show the rooftop plant has been deleted and accommodated within a single roof top element combining the lift overrun and plant.</p> | Complies. |

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| | <p>and lift over-runs on the roof a building where it can be shown that there will not be a non-compliance with Council's built form controls including building height and building envelope.</p> <p>Where located on the roof any plant, equipment boxes and lift over-runs are to be adequately screened from view from adjoining properties and the public domain.</p> | <p>An acoustic report prepared by JHA Consulting Engineers outlines recommendations for mitigating any potential acoustic impact on residents or neighbouring properties.</p> | |
| Part D: Locality Specific Development Controls | | | |
| D12 Palm Beach Locality | | | |
| <p>D12.1 Character as viewed from a public place</p> | <p>Buildings which front the street must have a street presence and incorporate design elements (such as roof forms, textures, materials, the arrangement of windows, modulation, spatial separation, landscaping etc) that are compatible with any design themes for the locality. Blank street frontage facades without windows shall not be permitted.</p> <p>Walls without articulation shall not have a length greater than 8 metres to any street frontage.</p> <p>Any building facade to a public place must incorporate at least two of the following design features:</p> <ul style="list-style-type: none"> i. entry feature or portico; ii. awnings or other features over windows; iii. verandahs, balconies or window box treatment to any first floor element; iv. recessing or projecting architectural elements; v. open, deep verandahs; or vi. verandahs, pergolas or similar features above garage doors. <p>The bulk and scale of buildings must be minimised.</p> <p>Garages, carports and other parking structures including hardstand areas must not be the dominant site feature when viewed from a public place. Parking structures should be located behind the front building line, preferably set back further than the primary building, and be no greater in width than 50% of the lot frontage, or 7.5 metres, whichever is the lesser.</p> <p>Landscaping is to be integrated with the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation.</p> <p>Television antennas, satellite dishes and other telecommunications equipment must be minimised and screened as far as possible from public view.</p> <p>General service facilities must be located underground.</p> | <p>Refer to comments in section 6.</p> | <p>Complies.</p> |

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| | <p>Attempts should be made to conceal all electrical cabling and the like. No conduit or sanitary plumbing is allowed on facades of buildings visible from a public space.</p> | | |
| D12.2 Scenic Protection – General | <p>Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.</p> | Refer to comments in section 6. | Complies. |
| D12.3 Building Colours and Materials | <p>External colours and materials shall be dark and earthy tones</p> <p>Limited use of corporate colours may be permitted within Business zoned land.</p> <p>Finishes are to be of a low reflectivity.</p> <p>Applications in commercial areas shall use the three elements of stone, timber and landscaping as feature elements to any facade presenting to the street.</p> | Refer to comments in section 6. | Complies. |
| D12.5 Front Building Line | <p>The minimum front building line shall be in accordance with the following table:</p> <p>Land zoned B1 Neighbourhood Centre or B2 Local Centre: 3.5m or established building line, whichever is the greater</p> <p>Built structures, other than driveways, fences and retaining walls are not permitted within the front building setback. Fences shall be setback 3 metres from the front property boundary on land zoned Residential adjoining the western side of Iluka Road.</p> <p>Where new streets or accessways are proposed in residential flat buildings and multi dwelling housing, a minimum front setback of 3 metres must be provided between the carriageway and dwellings.</p> | <p>The orange line utilised on all architectural plans prepared by Richard Cole Architecture delineates the required setbacks (and maximum building height) for the development as per the DCP controls.</p> <p>The development proposes a 3.5m setback that is consistent with the DCP control. There is no established building line along Whale Beach Road.</p> <p>The awning for the proposed building is located within the front setback but remains within the boundary of the property and will not dominate the front faced of the proposed building.</p> <p>A zero setback is proposed to Surf Road to the first floor landscaped terraces, which provides an appropriate integration with the levels of the adjacent topography. The</p> | Complies. |

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| | | ground floor walls and higher terraces are setback to the required front boundary setback on this boundary. The street setbacks provide improved public area and amenity to both roads. | |
| D12.6 Side and Rear Building Line | <p>The minimum side and rear building line for built structures including pools and parking structures, other than driveways, fences and retaining walls, shall be in accordance with the following table:</p> <p>Land zoned B1 Neighbourhood Centre or B2 Local Centre adjoining land zoned R2 Low Density Residential, E4 Environmental Living, RE1 Public Recreation, or E2 Environmental Conservation: 3m along that adjoining side or rear boundary</p> | Refer to Section 6. | Complies |
| D12.11 Fences - General | <p><u>a. Front fences and side fences (within the front building setback)</u></p> <p>Front fences and side fences (within the front building setback) shall:</p> <ul style="list-style-type: none"> not exceed a maximum height of 1 metre above existing ground level, be compatible with the streetscape character, and not obstruct views available from the road. <p>Fences are to be constructed of open, see-through, dark-coloured materials.</p> <p>Landscaping is to screen the fence on the road side. Such landscaping is to be trimmed to ensure clear view of pedestrians and vehicles travelling along the roadway, for vehicles and pedestrians exiting the site.</p> <p>Original stone fences or stone fence posts shall be conserved.</p> <p>Front fences and side fences (within the front building setback) on the western side of Iluka Road shall be setback 3 metres from the front boundary.</p> <p>Properties fronting Ocean Road (south of Palm Beach Road) may be permitted to construct a front fence consistent with adjoining properties, to a maximum height of 1.8 metres and to be constructed of brushwood or natural timber.</p> <p>Properties fronting the western side of Waratah Road, may be permitted to construct a front fence consistent with adjoining properties, to a maximum height of 1.8 metres and to be constructed of</p> | <p>Walls are required along the side boundaries of the property for both privacy and stability purposes. The walls on the side of the property will be of the same colour and materiality as the primary building material. The proposed walls will not obstruct any views and will be compatible with the proposed building and the streetscape of Whale Beach Road and Surf Road.</p> <p>Screen planting is provided within the side boundary to lessen the appearance of the boundary walls and provide additional privacy for residents of the shop top housing development or neighbouring properties.</p> <p>No fencing or boundary walls are provided on the front or rear boundary due to the proposed use of these areas for outdoor seating for cafes and associated uses.</p> <p>The site is not located in a high flood risk area.</p> | Complies. |

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| | <p>brush wood or natural timber, and to be integrated into the landscaping provided on-site.</p> <p>Any proposed fences in the Sunrise Hill and Florida Road Conservation Areas require development consent and must be compatible with the style and characteristics of fencing from the particular architectural period.</p> <p><u>b. Rear fences and side fences (to the front building line)</u></p> <p>Fencing is permitted along the rear and side boundaries (other than within the front building setback) to a maximum height of 1.8 metres.</p> <p><u>f. Fencing on land on Council's Flood Hazard Maps</u></p> <p>No masonry fences will be permitted on land identified in High Flood Hazard Areas or on land within a Floodway.</p> <p>All fences in High Flood Hazard Areas or within a Floodway are to be constructed in 'open' materials, for the full height of the fence, to allow for the passage of floodwaters through the fence.</p> <p><u>Corner lots or lots with more than one frontage</u></p> <p>Provided the outcomes of this clause are achieved, Council may consider allowing a maximum fence height of 1.8 metres and to reduce setbacks based on merits.</p> <p>Provided the outcomes of this control are achieved, where fencing exceeds more than 1m in height and abuts a public road, a boundary setback less than the height of the fence may be considered based on merits.</p> | | |
| <p>D12.13 Construction, Retaining Walls, Terracing and Undercroft Areas</p> | <p>Lightweight construction and pier and beam footings should be used in environmentally sensitive areas.</p> <p>Where retaining walls and terracing are visible from a public place, preference is given to the use of sandstone or sandstone like materials.</p> <p>In the provision of outdoor entertaining areas, preference is given to timber decks rather than cut/fill, retaining walls and/or terracing.</p> <p>Undercroft areas shall be limited to a maximum height of 3.5 metres. Adequate landscaping shall be provided to screen undercroft areas.</p> <p>Where retaining walls (for vehicular access) have been erected on the eastern side of Barrenjoey Road, a consistent treatment needs to be adopted (e.g., cement blocks or sandstone walling), to help lessen the impact of these walls. The area between the wall and the road shall</p> | <p>The topography of the site results in substantial excavation works and partial terracing of the site. The development is supported by a Geotechnical Report prepared by Douglas Partners that supports the proposed design from a structural point of view.</p> <p>The boundary walls used for privacy and stability are adequately screened with landscaping. Landscaping is also used to screen parts of the building that are required to be excavated – such as the ground floor level.</p> <p>Appropriate safety measures will be implemented during and after construction.</p> | <p>Complies.</p> |

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| | <p>be suitably landscaped to help screen it from view without limiting site lines to the street.</p> <p>Where guardrails have been erected around carparking or roof top structures on the western side of Barrenjoey Road, these should be painted green or brown, with reflector strips used to delineate the edges at night.</p> | | |
| D12.14 Scenic Protection Category One Areas | <p>To achieve the desired future character of the Locality.</p> <p>To preserve and enhance the visual significance of district and local views of Pittwater's natural topographical features such as, ridges, upper slopes and the waterfront.</p> | The amended proposal achieves the desired future character of the locality – refer to comments in section 6. | Complies. |
| | <p>Maintenance and enhancement of the tree canopy.</p> <p>Colours and materials recede into a well vegetated natural environment.</p> <p>To maintain and enhance the natural environment of Pittwater as the predominant feature of the landscape with built form being a secondary component.</p> | | |
| | <p>To preserve and enhance district and local views which reinforce and protect the Pittwater's bushland landscape and urban form to enhance legibility.</p> <p>To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.</p> | | |
| | <p>To ensure sites are designed in scale with Pittwater's bushland setting and encourages visual integration and connectivity to natural environment.</p> | | |
| | <p>Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.</p> | | |

8 CONCLUSIONS

This planning report, that supports the 8.2 Review, has given due consideration to the relevant Provisions of Section 8.2 of the EP&A Act 1979 (as amended). The review has considered Council's reasons for the refusal of the Development Application and has had particular regard to Section 8.2 and also Section 4.15 of the EP&A Act 1979 (as amended). The review has examined the grounds for refusal, as set out in the Notice of Determination of 3 December 2020, and the responses that have now been prepared by the Project Architect in relation to the grounds that led to the refusal and based on discussions with senior planning staff at Council.

It is considered that the amended plans and supporting documentation that form part of the Section 8.2 are worthy of approval by Council as there are no valid grounds as to why the subject proposal could be refused. This is supported by the following comments:

- The Project Architect has appropriately responded to the issues and sufficiently justified the bulk and scale of the proposed development which includes increases to the side boundary setbacks, along with additional landscaping to mitigate any impacts.
- The building will represent a high standard of architectural design and will provide a development that will contribute in a positive means to the general public with additional housing and retail opportunities to a site that is capable of providing this form and scale of shop top housing.
- The proposal complies with the relevant Local and State planning policies. The proposal complies with the applicable clauses of Pittwater Local Environmental Plan 2014 and will achieve a high level of consistency with the key planning controls of Pittwater 21 Development Control Plan.
- The merits of the proposal include:

A scheme consistent with the nine (9) principles defined under SEPP 65, which include the following:

- Context and neighbourhood character
- Built form and scale
- Density
- Sustainability
- Landscape
- Amenity
- Safety
- Housing Diversity and Social interaction
- Aesthetics

Each of the above principles have been addressed by the project architect who has certified that the project has been designed to provide a development that is respectful of local planning and design controls and that responds to the best practice design principles of SEPP65.

- The development is in keeping with the desired future character of the site and is consistent with the zoning objectives of the B1 Neighbourhood Centre in that it provides a range of small-scale retail activities that serve the needs of the people who live or work in the surrounding neighbourhood. The development also provides for an attractive, vibrant and safe neighbourhood centre which blends in with the existing locality including residential dwellings, retail premises and the surf lifesaving club and function centre.
- The development replaces a dilapidated and outdated building with a modern architectural design that successfully responds to the topographical characteristics of the site.
- The proposal has been the subject of a comprehensive view analysis that accompanied the

original application, and the amended plans significantly enhance view corridors by way of increased side boundary setbacks, additional landscaping and modifications to any plant that was previously located on the roof structure.

- The development contributes to a sustainable and vibrant residential community that will reflect equal and integrated consideration of social, economic and design issues by providing a development with improved visual and built form outcomes.
- The proposal will not give rise to any significant traffic impacts on existing or future residents within this precinct.
- The provision of an exceptionally high standard of residential amenity for future residents in terms of solar access, privacy, natural ventilation, acoustics and landscaped environment. The development is considered to be a right neighbourhood fit for this locality.
- The proposed development adopts a built form and scale in response to its immediate context providing a highly sculptured building form with balconies that are orientated towards ocean views to the east while creating visual interest within the immediate context. The forms respond carefully to the need for privacy as well as outlook. This is also designed in a way that it would not have any adverse impacts on the streetscape and, in fact, substantially enhances the present streetscape, particularly on the Whale Beach Road frontage.
- There are significant community benefits associated with the amended proposal in terms of the following:
 - Increased pedestrian safety, both in Whale Beach Road and Surf Road;
 - Expanded retail facilities in close proximity to Whale Beach which is considered to be a popular outdoor recreation area, particularly during the summer months;
 - Retail facilities provided to both street frontages with improved services and amenities;
 - Disabled access throughout the building and public areas;
 - Increased intensity of landscaping which provides for a more attractive and less bulky building;
 - A building which now responds more sensitively to the topography and steps down the site with improved amenity for future occupants without impacting upon adjoining residential development;
 - A development that is supported by adequate infrastructure including roads, water and sewage facilities;
 - Geotechnical stabilisation of the topography which has been an ongoing issue for some time;
 - Improved stormwater services to Whale Beach Road reducing the risk of localised flooding;
 - The development of an under-utilised parcel of land in close proximity to recreation facilities (outdoor) that represents sound urban consolidation principles and in-fill development on a site that is zoned B1 Neighbourhood Centre;
 - A service bay for more efficient and safer deliveries and collection of waste to both Surf Road and Whale Beach Road;
 - Improved traffic safety with a wider road to Surf Road;
 - A single driveway rather than multiple driveways to both Surf and Whale Beach Road frontages;
 - Provision of 18 parking spaces which is an additional 16 parking spaces for the locality;
 - Improved streetscape with additional street planting.

It is undeniable that the proposed development is an overall improvement for the site and will have a positive impact on the scenic landscape and the existing built form that prevail in this precinct; therefore, there are no valid grounds for Council to refuse this application.