

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2024/0705
<b>Responsible Officer:</b>	Anais Sarkissian
<b>Land to be developed (Address):</b>	Lot B DP 316404, 231 Whale Beach Road WHALE BEACH NSW 2107
<b>Proposed Development:</b>	Modification of Development Consent REV2021/0034 granted for Review of Determination of Application DA2020/0442 for demolition works and construction of a Mixed Use Development comprising Shop Top Housing and retail premises, with associated carparking, landscaping and strata subdivision
<b>Zoning:</b>	E1 Local Centre
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Applicant:</b>	SJB Planning Pty Ltd

<b>Application Lodged:</b>	06/01/2025
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	17/01/2025 to 31/01/2025
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	6
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### EXECUTIVE SUMMARY

This modification application seeks consent for modifications to the approved mixed-use development authorised under REV2021/0034. These modifications relate predominantly to improving amenity for the occupants of the building, to ensure compliance with relevant Australian Standards, to satisfy engineering requirements, or modify the development so that it is brought into conformity with conditions of consent.

The application is referred to the Development Determination Panel (DDP) due to the application receiving at least five submissions by way of objection.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days. Six submissions were received. Concerns raised in the objections predominantly relate to traffic and safety issues, the need for the modified proposal to be assessed as a new development application, and the acoustic impacts associated with the six proposed air conditioning condensers on the roof of the development.

The proposed modifications result in variations to some of the built form controls under the Pittwater 21 Development Control Plan (P21DCP), these being the southern side building line under Section D12.6 and the front building line to Whale Beach Road under Section D12.5. The proposal as modified, in regard to these variations, does not result in unacceptable environmental and/or amenity impacts, with the development achieving the relevant objectives of these controls.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that on balance the proposal as modified is a suitable and an acceptable development for the subject site for the reasons outlined in this report.

This report concludes with a recommendation that the DDP grant approval the modification application, subject to recommended conditions.

## **PROPOSED DEVELOPMENT IN DETAIL**

This modification application consists of 58 amendments to the approved development under REV2021/0034. Of these, 16 are design related changes improving amenity for the occupants of the building, while the remaining changes are necessitated to ensure compliance with relevant Australian Standards, to satisfy engineering requirements, or to comply with conditions of consent.

The modifications are broadly summarised as follows:

- Relocation of lifts, stairs and air conditioning condensers, including six AC units within the service area on the roof
- Adjustment of overland flow path
- Adjustment of footpath/parking bays
- New storeroom to basement, ground and level 1 at the north-western corner
- Changes to window sizes and doors
- Provision of privacy screening to Apartment 3 and 4 terraces
- Reconfiguration of sprinkler pump room and addition of underground sprinkler pump tank
- Internal reconfiguration of apartment layouts
- Extension of area of excavation adjacent to the Apartment 1 bedrooms east to the point where the excavated level meets existing ground level
- The planter boxes to the southern elevation of the terrace to Apartment 3 and 4 have been continued along the entire length of the terrace
- Reconfiguration of substation
- Widened garage door

The proposal involves additional excavation. The area of Retail 1 has also increased to 197m<sup>2</sup> from 188m<sup>2</sup> and the area of Retail 2 has decreased to 62m<sup>2</sup> from 78m<sup>2</sup>. The area of Retail 3 remains the same at 33m<sup>2</sup>.

## **ASSESSMENT INTRODUCTION**

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;

- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements

Pittwater 21 Development Control Plan - C1.6 Acoustic Privacy

Pittwater 21 Development Control Plan - C1.25 Plant, Equipment Boxes and Lift Over-Run

Pittwater 21 Development Control Plan - C2.22 Plant, Equipment Boxes and Lift Over-Run

Pittwater 21 Development Control Plan - D12.5 Front building line

Pittwater 21 Development Control Plan - D12.6 Side and rear building line

## SITE DESCRIPTION

<b>Property Description:</b>	Lot B DP 316404 , 231 Whale Beach Road WHALE BEACH NSW 2107
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment which has dual frontage to Whale Beach Road to the west and Surf Road to the north-east.</p> <p>The site is irregularly shaped, with a 30.275m wide frontage to Whale Beach Road, a 20.175m wide frontage to Surf Road and a total area of 844.7m<sup>2</sup>. The site currently contains a multi-level mixed-use development, with retail and business premises fronting Whale Beach Road and residential development fronting Surf Road. A double carport is located at the south-east corner of the site, with access to/from Surf Road. A single garage is located in the northwest corner of the site, with access to Whale Beach Road.</p> <p>The current buildings and a number of retaining walls are in a state of disrepair. The site does not contain any significant landscaping or natural features.</p> <p>The site experiences a steep fall of 12.62m from the north-west corner of the site down to the south-east corner of the site, with a slope of approximately 30%. An overland flow path runs along the southern side boundary of the site (and the northern boundary of the site to the south).</p> <p>Whale Beach Road is a two-lane local road. The portion of the public road reserve immediately adjacent to the site is paved and currently features outdoor furniture and movable landscaping elements associated with an outdoor dining licence. A significant street tree is located within the road reserve. Time restricted parking is available along the frontage of the site, inclusive of a mail zone.</p> <p>Surf Road is a two-lane local road that connects Whale Beach Road to the beach car park. The public road reserve immediately adjacent to the site is nominal, and contains retaining walls associated with the existing building at the site.</p> <p>The site is zoned E1 Local Centre under the Pittwater Local Environmental Plan 2014 and is surrounded by land zoned C4</p>

Environmental Living. With the exception of Whale Beach Surf Life Saving Club (two properties to the south), the area is characterised by dwelling houses.

Map:



## SITE HISTORY

The land has been used for residential and commercial purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

### DA2020/0442

Development Application for demolition works and construction of a mixed use development comprising shop top housing and retail premises, with associated carparking, landscaping and strata subdivision.

Refused by Northern Beaches Local Planning Panel on 2 December 2020

### REV2021/0034

Review of Determination of Application DA2020/0442 for demolition works and construction of a mixed use development comprising shop top housing and retail premises, with associated carparking, landscaping and strata subdivision.

Approved by Northern Beaches Local Planning Panel on 1 December 2021

### MOD2021/0987

s4.55(1) Modification of Development Consent REV2021/0034 granted for demolition works and construction of a mixed use development comprising shop top housing and retail premises, with associated carparking, landscaping and strata subdivision.

Approved 27 January 2022

### MOD2021/0983

Modification of Development Consent REV2021/0034 granted for demolition works and construction of a mixed use development comprising shop top housing and retail premises, with associated carparking, landscaping and strata subdivision.

Application sought modification of Condition 99 to allow an increase in patron numbers to the restaurant within Retail 1 located on the ground floor level fronting Surf Road.

Refused by Northern Beaches Local Planning Panel on 3 August 2022

Class 1 appeal filed on 4 November 2022

Approved by the Land and Environment Court on 11 April 2024

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)



The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:  
The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for REV2021/0034, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under REV2021/0034 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The proposal as modified will maintain the form and function of the approved development.</li> <li>• The proposed modifications will not materially alter the external appearance of the building, including its bulk and scale.</li> <li>• The proposed modifications relate predominantly to improving amenity for the occupants of the building, to ensure compliance with relevant Australian Standards, to satisfy engineering requirements, or to comply with conditions of consent.</li> <li>• The proposed modifications do not increase the approved building height.</li> <li>• Subject to compliance with conditions, the proposed modifications will have no adverse additional impact on the natural environment nor hazards which affect the site.</li> <li>• The proposed modifications will not result in any unreasonable additional impacts on surrounding properties or the public domain, including any overshadowing and overlooking impacts.</li> </ul>
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed	Development Application REV2021/0034 did not require concurrence from the relevant Minister, public authority or approval body.

<b>Section 4.55 (2) - Other Modifications</b>	<b>Comments</b>
to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	
(c) it has notified the application in accordance with:  (i) the regulations, if the regulations so require,  or  (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on “Notification & Submissions Received” in this report.

### **Section 4.15 Assessment**

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 (2) the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

<b>Section 4.15 'Matters for Consideration'</b>	<b>Comments</b>
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested on 7 March 2025 in relation to traffic engineering matters.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 17/01/2025 to 31/01/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 6 submission/s from:

Name:	Address:
Mr Jeremy Wade Cleaver	206 Whale Beach Road WHALE BEACH NSW 2107
Mrs Virginia Lizelle Stack	202 Whale Beach Road WHALE BEACH NSW 2107
Mr Catherine Naito	229 Whale Beach Road WHALE BEACH NSW 2107
Steven Craig Smith	233 Whale Beach Road WHALE BEACH NSW 2107
Friends Of Whale Beach	Address Unknown
Mr Van Vien Luong	200 Whale Beach Road WHALE BEACH NSW 2107

The issues raised within the submissions are summarised and addressed as follows:

- **Extent of modifications made**

*The submissions raised concerns that the plans proposed under this application are substantially different to the approved development as a result of incremental modifications. It was suggested that this be treated as a new development application as the amendments relate to material changes and the development as modified is now too far from the original development.*

Comment:

The modifications relate predominantly to improving amenity for the occupants of the building, to ensure compliance with relevant Australian Standards, to satisfy engineering requirements, or to comply with conditions of consent. The proposed development as modified is considered to be substantially the same development as that approved and therefore the changes proposed do not necessitate a new DA.

- **Air conditioning units**

*The submissions raised concerns that the air conditioning condensers proposed on the roof will impact on acoustic and visual privacy for adjoining neighbours.*

Comment:

The project's mechanical engineer was unable to design a system that worked effectively with all of the air conditioning condensers located in the basement due to the cumulative heat load. As such, six air conditioning condensers have been located within the service area on the roof and aluminium framed ventilation screens have been integrated into the walls of the service area. Condition 96 of REV2021/0034 requires noise from all plant equipment including roof top mechanical plant rooms/equipment, mechanical ventilation for car parks or commercial premises, extraction units and exhaust fans, air conditioning units and any motors of other equipment associated with the building to not generate noise above 5dBA at the property boundary and not be audible within habitable rooms of units within the complex and surrounding premises including when doors and windows to those rooms are open. Condition 73 also requires the acoustic engineer to certify that noise level emissions from external plant meet the required noise levels prior to the issue of any occupation certificate. These conditions are to be retained as part of this modification application. The height of the proposed mechanical plant to the rooftop is unchanged from the approved DA. A condition has also been included within this consent requiring an acoustic engineer to review the chosen location for any external noise sources such as air

conditioning units and provide appropriate design/acoustic treatment advice to be implemented into the construction.

- **Use of a fixed crane**

*The submissions raised concerns over the use of a fixed crane during construction of the development and suggested that a mobile crane would be more appropriate and less likely to negatively impact the community.*

Comment:

The type of crane used during construction is a separate matter to this modification application. It is noted that the Applicant will need to submit a Crane Airspace Approval application to operate the crane. If any part of the crane is proposed to overhang, lift, swing, vane, luff or slew over private land, the Applicant will need to obtain their own Access Agreement (written approval) with each affected landowner over which the device will operate or swing over. Council does not play a role in obtaining these agreements affecting private land. A copy of the Access Agreement(s) from each affected landowner will need to be submitted before a Crane Airspace Permit can be issued. Any concerns or requirements raised by the affected party must be resolved or accommodated prior to use of the crane. In this way, the Applicant would be unable to obtain a Crane Airspace Permit for crane usage over private land if the owner of that land has not consented to it. It is noted that this issue is otherwise unrelated to the modification application.

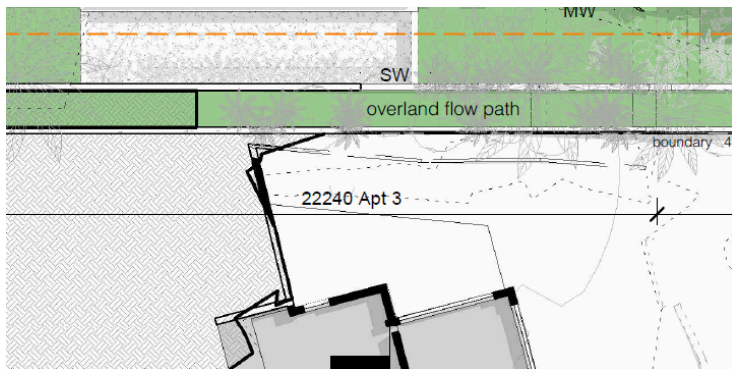
- **Overland flow path**

*The submissions raised concerns over the reduction in the width of the overland flow path from 1m to 0.6m and that it will not be adequate, resulting in water pouring over to the neighbouring property. Concern is also raised over the impacts of this change on the health of the neighbouring hibiscus tree to the south.*

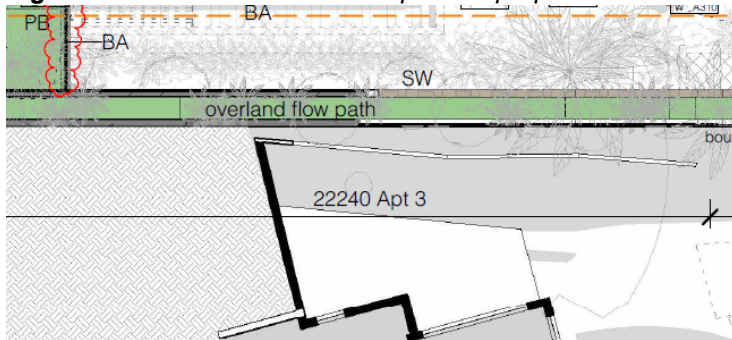
Comment:

The changes to the overland flow path have been assessed by Council's Development Engineer, who is satisfied that the width of the overland flow path is consistent with the design plans submitted by the Civil Engineer and is acceptable (refer Figures 1 and 2 below). The overland flow path was adjusted in width to comply with Condition 19 of consent REV2021/0034, requiring the width of the overland flow path to be reduced from 1m to 0.6m, and the setback between the overland flow path and the southern elevation to be increased by 0.4m. Condition 26 also requires the perimeter walls of the overland flow path to be watertight to ensure no flows enter the site or adjoining property. As such, Council's Development Engineer has advised that the modified design will be less likely to result in overland flows onto the neighbouring property than the previous design. The Project Architect confirmed that the levels of the overland flow path have not changed. Council's Landscape Officer has reviewed the modified plans with respect to the neighbouring tree in question and advised that the impact to the southern neighbouring trees were assessed by the Arborist at the boundary line in 2021 and therefore no further impact is foreseen. Condition 36 has been amended as part of this consent to require the Project Arborist to supervise the construction of the overland flow path along the southern boundary, including any associated retaining walls, within the tree protection zones of any neighbouring trees. It is noted that the Arboricultural Assessment approved as part of the original application stated that the location of concrete footings for the overland flow path wall will need to allow for the low likelihood that woody roots are encountered and that an arboriculturist will need to supervise these works. The recommendations of the original Arboricultural Assessment shall remain in place and be adhered to.

**Figure 1: Overland flow path as approved**



**Figure 2: Modified overland flow path as proposed**



- **Footpath/parking bay**

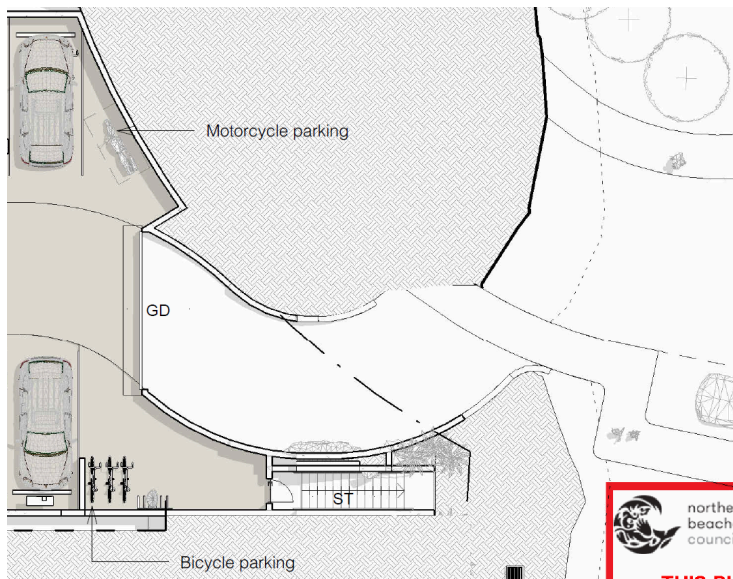
*The submissions raised concerns that the change to the footpath/parking bays forces pedestrians further towards traffic on Surf Road, increasing the likelihood of an accident. The submissions note that the Loading Zone should remain where it was originally approved just east of the driveway, and that placing it on the west of the driveway would obstruct the line of sight of drivers coming down Surf Road.*

Comment:

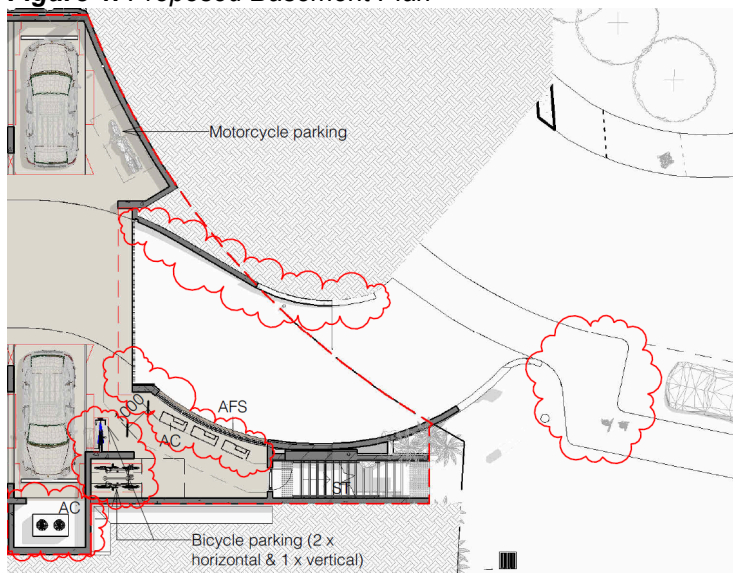
The footpath has been adjusted slightly to accommodate parking bay lengths that are compliant with Australian Standards; the changes do not force pedestrians further towards Surf Road, but rather improve safety by increasing the width of the footpath at the bend, as evident in Figures 3 and 4 below. The loading bay as approved has not changed and has always been located west of the driveway.

**Figure 3: Approved Basement Plan**





**Figure 4: Proposed Basement Plan**



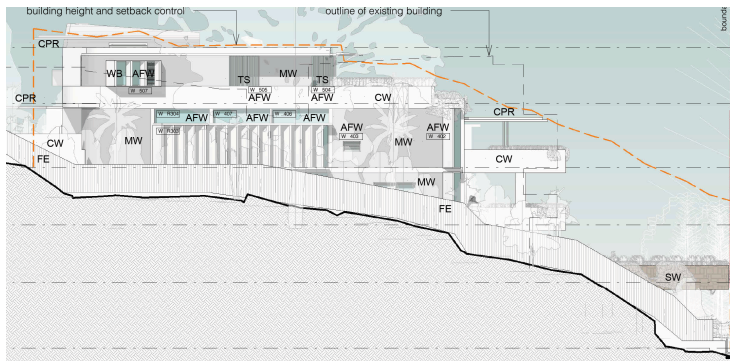
- **Changed building footprint**

*The submissions raised concerns that the whole building has been pushed closer to the southern boundary at the eastern side, further spoiling the enjoyment of the neighbouring property.*

Comment:

The setback of the building to the southern boundary is generally the same as approved in relation to the residential units. However, minor additions to the building have brought some components closer to the southern boundary - the inclusion of the AC at the basement, and lift and stairs to the outdoor seating area at the ground floor to comply with access and mobility design standards. These changes are not considered to have adverse amenity impacts due to the changes being below the existing ground level (refer Figure 5 and 6) and these components not directly interfacing the neighboring dwelling. The new sprinkler pump tank is entirely below ground and required for fire services. The area above the tank on Level 3 has replaced an entirely paved area to the boundary with a garden bed to the boundary, thereby softening the built form of the building.

**Figure 5: Approved southern elevation at boundary**



**Figure 6: Proposed southern elevation at boundary**



- **Reduced parking**

*The submissions raised concerns over the Retail 1 space being given additional space by removing the two ground floor parking spaces where public parking is a genuine problem.*

Comment:

The Retail 1 space has only been changed due to a reconfigured Fire Sprinkler Pump Room, with changes required by the fire engineer. The area of Retail 1 has increased to 197m<sup>2</sup> from 188m<sup>2</sup> and the area of Retail 2 has decreased to 62m<sup>2</sup> from 78m<sup>2</sup>. The area of Retail 3 remains the same at 33m<sup>2</sup>. As per the new area, the total number of car parking spaces required for Retail 1 is 7 spaces (previously required 6 spaces) and the total spaces required for Retail 2 is 2 spaces (previously required 3 spaces). Therefore, the proposed changes in the area of Retail shops do not affect the car parking requirements. Notwithstanding, the proposed development as modified does not seek to remove parking spaces; the basement has always accommodated 14 parking spaces, including one disability space, and the parking bay area at the front of the development has always accommodated 4 spaces. It is also important to note that Condition 98 of REV2021/0034 requires the development to maintain the following parking allocation for the life of the development:

- o 10 x residential parking spaces, with 2 spaces per unit,
- o 1 x disabled visitor space
- o 3 x retail parking spaces

- **Excavation**

*The submissions raised concerns that the area that was previously landscaped by a planter bed will now be excavated, pushed closer to the southern boundary and made into an occupied area, further interfering with the amenity, privacy and enjoyment of the neighbouring property to the south.*

Comment:

Condition 19 of REV2021/0034 required that the proposed area of excavation adjacent to the bedrooms

of Apartment 1 be continued through to the east, extending to the point where the proposed excavated level meets existing ground level. As such, the modifications have been made to comply with the imposed condition of consent. As evident from Figure 6 above, the changes are below existing ground level and would have a minimal amenity impact on the neighbouring property to the south.

- **Changes to windows**

*The submissions raised concerns that the sill levels of window W A103, A104 and A105 have been lowered to ground level and a new paved area looks directly into the garden of the neighbouring dwelling to the south. Concern was also raised over the new outdoor area off the laundry to Apartment 3.*

Comment:

The top of windows A103-105 sit well below the natural ground level and are between 3.2m and 3.8m below the level of the top of the adjacent southern boundary fence. As such, there would be no overlooking facilitated from these windows to the neighbouring property, as evident from Figure 6 above. Windows A303 and A304 to the rumpus room and laundry have a sill height of 1.7m and the top of the windows sit approximately 1.0m below the level of the top of the adjacent southern boundary fence. This area is therefore not visible from the neighbouring property due to the level differences as evident in Figure 6. The changes to these bedroom windows facilitates level access to landscaped areas, a clothesline and private open space and provide increased cross ventilation and natural light.

- **Removal of bathroom to Retail 3**

*The submissions raised concerns that the removal of the bathroom in Retail 3 will limit the potential uses for Retail 3, which will in turn reduce the number of local businesses that will have the opportunity to make use of Retail 3.*

Comment:

The layout of Level 3 has simply been reconfigured such that a bathroom is still provided off the entryway via the lobby. In this way, there is a larger usable retail floor area, while still allowing users of both Retail 2 and Retail 3 to have access to a bathroom.

## REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	<p><b>Supported, without additional conditions</b></p> <p><b>General Comments</b></p> <p>Existing conditions to remain.</p> <p><b>Recommendation</b></p> <p>APPROVAL - no conditions</p>
Environmental Health (Food Premises, Skin Pen.)	<p><b>Supported, without additional conditions</b></p> <p><b>General Comments</b></p> <p>Existing conditions to remain</p> <p><b>Recommendation</b></p>

Internal Referral Body	Comments
	APPROVAL - no conditions
Landscape Officer	<p><b><i>Supported, subject to conditions</i></b></p> <p>The application is for modification to development consent REV2021/0034.</p> <p><u>Further Information 10/04/25:</u>  Upon a detailed review of the original Arboricultural Impact Assessment (AIA) by Urban Forestry Australia (dated July 2021) it is noted this report remains relevant to the protection of the neighbouring trees (which were supported for retention) and as such will need to remain included in the approved plans and supporting documentation. The impact to the southern neighbouring trees were assessed by the Arborist at the boundary line therefore no further impact is foreseen compared with approved REV2021/0034. The recommendations <i>"The boundary wall should be designed to avoid any conflict between tree roots and the location of the wall in the event roots greater than 30mm diameter are encountered during the PA's supervision. The PA is to assist with any redesign, ensuring the efficacy of the overland flow path is not compromised"</i> and <i>"The PA or other AQF5 arborist is to directly supervise excavation for a minimum 6m radius of the tree and ensure initial excavation to a depth of 700mm is undertaken using hand tools..."</i> outlined by Urban Forestry Australia (July 2021) shall be adhered to.</p> <p>It is noted a new AIA report has been provided in the modification application confirming retention of the neighbouring trees. All recommendations, in both Arboricultural Impact Assessments, shall be adopted by the Project Arborist to ensure protection of neighbouring trees. The Project Arborist condition shall be updated to include both reports to ensure tree protection measures are adopted for all trees and there is no confusion as to which report remains relevant.</p> <p>Note to planner:</p> <ul style="list-style-type: none"> <li>• Conditions amended - 36 Project Arborist, 44 Protection of Existing Street Trees, 45 - Tree and Vegetation Protection, and 63 Landscape Completion,</li> <li>• Conditions deleted - 62 Required Planting.</li> </ul> <p><u>Additional Comment 09/04/25:</u>  Landscape referral has been made aware of section 5 drawing CW1.02 by Barrenjoey Consulting Engineers revision 2 dated 22/02/24 which shows a significant design change for the overland flow path along the southern boundary approved under REV2021/0034. As shown in section 5, the new overland flow path design will require excavation along the southern boundary and the Arborist will need to provide comment on this with regard to the impact to neighbouring trees, which must be retained and protected. The Arboricultural Impact Assessment outlines the plans used for assessment under section 1.1.5 and the new overland flow path design has not been reviewed by the Arborist.</p> <p><u>Additional Comment 31/03/25:</u>  Condition 36 Project Arborist is amended to ensure the protection of neighbouring vegetation.</p>

Internal Referral Body	Comments
	<p><u>Original Comment:</u>  The updated Arboricultural Impact Assessment states "There are no trees on site and none of the documented trees will be directly affected by either the currently approved or currently proposed Section 4.55 application to modify this" and as such no concerns are raised with the proposed modifications in regard to trees. Condition 36 Project Arborist shall be amended as part of this modification application.</p> <p>The landscape outcomes approved under REV2021/0034 generally remain as approved noting some reconfiguration of landscaped areas. Condition 62 Required Planting shall be deleted as part of this modification application and condition 63 Landscape Completion shall be amended as part of this modification application. All other conditions remain.</p> <p>All public domain works shall be approved under the relevant pathway and in accordance with the imposed conditions.</p>
NECC (Coast and Catchments)	<p><b>Supported, subject to conditions</b></p> <p>The proposed modifications are extensive in nature and additional conditions from the coastal perspective have been added.</p> <p>Other than that, the proposal remains supported.</p>
NECC (Development Engineering)	<p><b>Supported, without additional conditions</b></p> <p>The proposed modifications include a minor change to the overland flow path within the footpath to accommodate the electrical kiosk which is acceptable. The width of the overland flow path is consistent with the design plans submitted by the Civil Engineer. The minor amendments to the footpath and driveway access are acceptable. The letter from the Geotechnical Engineer satisfies the requirements of the DCP.</p> <p>Development Engineering supports the proposed modification with no additional or modified conditions of consent recommended.</p>
NECC (Flooding)	<p><b>Supported, without additional conditions</b></p> <p>The proposal is for modification of existing Development Consent REV2021/0034, granted for Review of Determination of Application DA2020/0442. The proposal includes additional excavation, an increase in floor area, revised landscape design, reconfiguration of the internal layout.</p> <p>The proposal is located outside of the Medium Flood Risk Precinct and as such is not subject to any flood related development controls.</p> <p>The proposal generally complies with Section B3.11 of the Pittwater DCP and with Clause 5.21 of the Pittwater LEP.</p>

Internal Referral Body	Comments
Parks, reserves, beaches, foreshore	<p><b><i>Supported, without additional conditions</i></b></p> <p>The application proposes modification to development consent REV2021/0034.</p> <p>Parks, Reserves and Foreshores raise no concerns. All conditions imposed in REV2021/0034 remain.</p>
Strategic and Place Planning (Urban Design)	<p><b><i>Supported, without additional conditions</i></b></p> <p>This advice is provided as an internal referral from the Urban Design Unit to the Development Assessment Officer for consideration and coordination with the overall assessment.</p> <p>The application seeks consent to modify the existing consent REV2021/0034. The proposed modifications result in a built form that is substantially the same development as that for which consent was originally granted.</p> <p>Urban Design raises no objection to the proposed development.</p> <p><b>Please note:</b> Regarding any view impacts and any impacts on solar amenity and overshadowing, these matters will be dealt with under the evaluation of Council Planning Officer. Any impacts of non-compliances regarding heritage will be dealt with under the evaluation of Council Heritage Officer, and any Landscape non-compliances will be dealt with under the evaluation of Council Landscape Officer.</p>
Traffic Engineer	<p><b><i>Supported, subject to conditions</i></b></p> <p><b>Additional comments - 26/3/2025:</b></p> <p>The applicant's response (dated 25 March 2025) to Council's request for further information and the accompanying revised plans has been reviewed. The response to the request for further information has highlighted that the consent granted for Rev2021/0034 has required the provision of the loading bay and indented parking bays and that the changes requested in the initial traffic referral comments (dated 5 March 2025) do not relate to the works proposed under the modification. On this basis the traffic team no longer wishes to press the request for a change to the location of the loading bay and for the additional indented parking bays on the west side of The Strand. It is noted that condition 21 of the consent for Rev2021/0034 requires the submission of plans for a Roads Act approval for works including the indented service bay and parking bays on Surf Road. Any sightline and road safety issues associated with the works on the road reserve would be considered in conjunction with the required Local Traffic Committee approvals for these changes when the Roads Act approval plans are under review.</p> <p>It is noted that revised details for the bicycle parking have been made on the amended plans.</p> <p>On the basis of the above comments there are no traffic engineering issues with approval of the modification subject to existing condition No.15 being amended as outlined below with all other traffic engineering conditions relating to Rev2021/0034 remaining in place. An additional condition relating to pedestrian sightlines is also recommended</p> <p><b>Original comments - 5/3/2025:</b></p>



Internal Referral Body	Comments
	<p data-bbox="526 304 1436 465">Proposal Description: Modification of Development Consent REV2021/0034 granted for Review of Determination of Application DA2020/0442 for demolition works and construction of a Mixed Use Development comprising Shop Top Housing and retail premises, with associated carparking, landscaping and strata subdivision</p> <p data-bbox="526 465 1182 499">The traffic team has reviewed the following documents:</p> <ul data-bbox="558 521 1412 779" style="list-style-type: none"> <li>Plans - Master set, prepared by Richard Cole Architecture, dated May 2024</li> <li>Traffic Letter prepared by TEF Consulting, dated 28 September 2024.</li> <li>Statement of Environmental Effects (SEE) report, prepared by SJB Planning, dated 10 December 2024 ( Ref: 0066).</li> <li>Schedule of Amendments Report, prepared by Richard Cole Architecture, dated 6 December 2024</li> </ul> <p data-bbox="526 806 667 840"><b>Comments</b></p> <ul data-bbox="558 862 1436 2114" style="list-style-type: none"> <li>The proposal is for a modification to the approved consent including but not limited to minor increase in floor area, revised landscape design etc. The SEE report mentions that there are 58 amendments in the proposal, of which 16 are design amendments and the rest are design changes as required by the conditions of consent in REV2021/0034.</li> <li>It is understood that the area of Retail 1 is increased to 197 sqm from 188 sqm and area of retail 2 is decreased to 62 sqm from 78 sqm. The area of Retail 3 remains the same as 33 sqm. As per the new area, the total number of car parking spaces required for retail 1 is 7 spaces (previously required 6 spaces ) and total spaces required for Retail 2 is 2 spaces (previously required 3 spaces). Therefore, the proposed changes in the area of Retail shops do not affect in the car parking requirements.</li> <li>It is noted that there is a wall proposed next to the bicycle parking spaces, as the bicycle bay rails have not been shown on the plans and the area is not dimensioned it is unclear how the wall will impact the parking of bicycles. The previously approved 3 bicycle parking spaces must be shown in the plans and demonstrated to have been designed in accordance with AS2890.3:2015.</li> <li>It is noted that a traffic letter has been provided. The traffic letter states that the amended plans and amended design of the car parking areas meet the requirements of AS 2890.1, AS2890.6. The traffic letter contains swept path analysis demonstrating satisfactory access to/from critically located off-street parking spaces for a B85 vehicle with swept path analysis also provided for egress from the driveway by a B99 vehicle. It is noted that the B99 vehicle egressing the driveway encroaches on the wrong side of the Surf Road and concern is raised regarding the safety of this manoeuvre particularly if the proposed service bay is occupied by a delivery truck. Drivers proceeding down Surf Road would, under such circumstances be unable to see the egressing vehicle and a collision may occur. The service bay should therefore be deleted from its current location and shifted to the east of the driveway where the sightline impacts will be less significant. The footpath should be extended to the west throughout the length of the current service bay, terminating at the western end of the current service bay. The indented parking bay should therefore be reconfigured to provide for a service bay catering for an 8.8m MRV and two car parking spaces. In</li> </ul>

Internal Referral Body	Comments
	<p>conjunction with this redesign the 90 degree dog leg in the footpath east of the driveway should be smoothed to provide a 45 degree angled transition for enhanced pedestrian access and to facilitate ease of access to/from the service bay. Finally, formalisation of parallel parking on the west side of The Strand south of Surf Road to provide for 3 x indented parking bays is also required to offset the loss of the two parallel parking bays from Surf Road. These spaces should be paved and kerb and guttered. Dimensions for all of the proposed indented parking bays including the service bay will be required to confirm that all spaces are sized in consistency with AS2890.5:2020 and AS2890.2. In addition, swept path plots will also be required to confirm independent ingress and egress from the service bay by a MRV with the adjacent parking bay occupied.</p> <ul style="list-style-type: none"> <li>• A ground clearance/headroom clearance check has also been provided confirming by the applicant's traffic consultant confirming that access is feasible for a B99 vehicle to the off-street parking area.</li> <li>• A swept path clearance check for a Medium Rigid Vehicle and a B99 vehicle turning around the proposed indented parking bays on Surf Road has been provided. However, concern is raised about the close proximity of the indent to The Strand, The changes outlined above should shift the eastern end of the indent slightly further to the west which would be a more satisfactory outcome.</li> </ul> <p><b>Conclusion</b> While the proposed modifications to the approved DA (REV2021/0034) are not opposed as outlined above additional details are required to enable the modified plans to be supported by the traffic team.</p>
Waste Officer	<p><b>Supported, subject to conditions</b></p> <p>Supported with conditions as imposed per Consent Annexure B to Judgement - Consolidated Conditions for MOD 2021/0983</p> <p>Construction Management Plan dated February 2020, Waste Management Plan dated 23/4/2020 and updated plans registered 6/12/2024</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><b>Supported, subject to conditions</b></p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>

#### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application

hereunder.

## **State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)**

### **SEPP (Sustainable Buildings) 2022**

#### **2.1 Standards for BASIX development and BASIX optional development**

A BASIX certificate has been submitted with the application (see Certificate No. 1048605M\_06 dated 9 December 2024).

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

#### **3.1 Application of Chapter**

- (1) This Chapter applies to development, other than development for the purposes of residential accommodation, that involves—
- (a) *the erection of a new building \$5 million, or*
  - (b) *alterations, enlargement or extension of an existing building, if the development has a capital investment value of \$10 million or more.*

Comment: This chapter is not applicable as the development other than for the purpose of residential accommodation does not involve the erection of a new building with an estimated development cost of \$5 million or more, or alterations, enlargement or extension of an existing building with a capital investment value of \$10 million or more.

### **SEPP (Transport and Infrastructure) 2021**

#### Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

#### Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

### **SEPP (Resilience and Hazards) 2021**

#### **Chapter 2 – Coastal Management**

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

## **Division 1 Coastal Wetlands and littoral rainforest area**

### **2.7 Development on certain land within coastal wetlands and littoral rainforests area**

- 1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:
  - a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,
  - b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,
  - c) the carrying out of any of the following:
    - i) earthworks (including the depositing of material on land),
    - ii) constructing a levee,
    - iii) draining the land,
    - iv) environmental protection works,
  - d) any other development

#### Comment:

The site is not identified as 'coastal wetlands' or 'littoral rainforests', and therefore this clause is not applicable.

### **2.8 Development on land in proximity to coastal wetlands or littoral rainforest**

- 1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
  - a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
  - b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

#### Comment:

The site not identified as as 'proximity area for coastal wetlands' or 'proximity area for littoral rainforest', and therefore this clause is not applicable.

## **Division 2 Coastal Vulnerability Area**

### **2.9 Development on land within the coastal vulnerability area**

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- b) the proposed development:
  - i) is not likely to alter coastal processes to the detriment of the natural environment or other land,
  - ii) and
  - iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

#### Comment:

The site is not identified as a 'coastal vulnerability area' and therefore this clause is not applicable.

### **Division 3 Coastal environment area**

#### **2.10 Development on land within the coastal environment area**

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
  - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
  - b) coastal environmental values and natural coastal processes,
  - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
  - d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
  - e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
  - f) Aboriginal cultural heritage, practices and places,
  - g) the use of the surf zone.

Comment:

The site is not identified as a 'coastal environment area' and therefore this clause is not applicable.

- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
  - a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
  - b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
  - c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The site is not identified as a 'coastal environment area' and therefore this clause is not applicable.

### **Division 4 Coastal use area**

#### **2.11 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
    - ii) members of the public, including persons with a disability,
    - iii) overshadowing, wind funnelling and the loss of views from public places to
    - iv) foreshores,
    - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, 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
    - ii) referred to in paragraph (a), or
    - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or  
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.

**Comment:**

The site is identified within the 'coastal use area'; however, development consent has already been granted to development on the land. The proposed modifications have been supported by Council's Coastal Officer. The proposal is therefore considered to comply with the requirements of this clause.

**Division 5 General**

**2.12 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 proposal as modified has been supported by Council's Coastal Officer. It can therefore be satisfied that the proposed development as modified is not likely to cause increased risk of coastal hazards on the land or other land.

**2.13 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:**

No certified coastal management program applies to the land.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

**Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential and commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential and retail land use.

**Pittwater Local Environmental Plan 2014**

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

**Principal Development Standards**

Development Standard	Requirement	Approved	Proposed	Complies
Height of Buildings:	8.5m	8.5m	8.5m	Yes



#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

#### Pittwater 21 Development Control Plan

##### Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	Whale Beach Road: 3.5m	3.5m	0.3m (sprinkler pump tank)	No
	Surf Road: 3.5m	Nil	Unaltered	Yes
Side building line	North: 3.0m	<u>Basement</u> : Nil - 4.5m <u>Ground</u> : 1.2m - 4.5m <u>Levels 1-3</u> : 4.0m <u>Level 4</u> : 4.6m	<u>Basement</u> : Nil - 4.0m <u>Ground</u> : Nil - 4.0m (nil as approved) <u>Levels 1-3</u> : Nil - 4.0m (as approved) <u>Level 4</u> : 4.0m (as approved)	Yes
	South: 3.0m	<u>Basement</u> : 2.5m <u>Ground</u> : 2.5m <u>Levels 1-3</u> : 4.0m <u>Level 4</u> : 4.6m	<u>Basement</u> : 0.7m - 2.5m <u>Ground</u> : 0.8m - 2.5m <u>Levels 1-3</u> : 3.2m - 4.0m (as approved) <u>Level 4</u> : 4.0m (as approved)	No
Retail percentage	Min. 25% of GFA (338.5m <sup>2</sup> )	24.5% (332.4m <sup>2</sup> )	25.5% (317m <sup>2</sup> )	Yes

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B2.6 Dwelling Density and Subdivision - Shop Top Housing	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	No	Yes
C2 Design Criteria for Business Development	Yes	Yes
C2.1 Landscaping	Yes	Yes
C2.2 Safety and Security	Yes	Yes
C2.3 Awnings	Yes	Yes
C2.5 View Sharing	Yes	Yes
C2.6 Adaptable Housing and Accessibility	Yes	Yes
C2.7 Building Facades	Yes	Yes
C2.8 Energy and Water Conservation	Yes	Yes
C2.9 Waste and Recycling Facilities	Yes	Yes
C2.10 Pollution Control	Yes	Yes
C2.12 Protection of Residential Amenity	Yes	Yes
C2.16 Undergrounding of Utility Services	Yes	Yes
C2.20 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C2.21 Food Premises Design Standards	Yes	Yes
C2.22 Plant, Equipment Boxes and Lift Over-Run	No	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	No	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

### **B6.3 Off-Street Vehicle Parking Requirements**

The area of Retail 1 has increased to 197m<sup>2</sup> from 188m<sup>2</sup> and the area of Retail 2 has reduced to 62m<sup>2</sup> from 78m<sup>2</sup>. The area of Retail 3 remains the same at 33m<sup>2</sup>. Parking is to be provided at a rate of 1 space per 30m<sup>2</sup> of Gross Lettable Area. As such, the total number of car parking spaces required for Retail 1 is 7 spaces (previously required 6 spaces) and the total spaces required for Retail 2 is 2 spaces (previously required 3 spaces). Therefore, the proposed changes in the area of retail shops do not affect the car parking requirement of 10 spaces for the retail premises. Additionally, the number of residential units has not changed. There is no change to the approved 14 parking spaces provided within the basement level.

### **C1.6 Acoustic Privacy**

Section C1.6 of the Pittwater 21 Development Control Plan requires noise generating plants including pool/spa motors, air conditioning units and the like to not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

A condition to this effect was included as part of REV2021/0034 and is to be retained to ensure the proposed air conditioning units do not produce an unreasonable level of noise.

### **C1.25 Plant, Equipment Boxes and Lift Over-Run**

#### Description of non-compliance

Section C1.25 of the Pittwater 21 Development Control Plan stipulates that where provided, plant and equipment boxes, air conditioning units and lift over-runs are to be integrated internally into the design fabric of the built form of the building. Council does not encourage air conditioning units on the roof of residential flat buildings and multi dwelling housing. 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, are to be located and designed to protect the acoustic privacy of workers, residents and neighbours. However, subject to achievement of the outcomes of this control, consideration may be given to the location of plant, equipment boxes 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. 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.

The project's mechanical engineer was unable to design a system that worked effectively with all of the air conditioning condensers located in the basement due to the cumulative heat load. As such, six air conditioning condensers have been located within the service area on the roof and aluminium framed ventilation screens have been integrated into the walls of the service area. However, these do not result in any built form non-compliances in relation to building height or envelope. The height of the proposed mechanical plant to the rooftop is unchanged from the approved DA.

Condition 96 of REV2021/0034 requires noise from all plant equipment including roof top mechanical plant rooms/equipment, mechanical ventilation for car parks or commercial premises, extraction units and exhaust fans, air conditioning units and any motors of other equipment associated with the building to not generate noise above 5dBA at the property boundary and not be audible within habitable rooms of units within the complex and surrounding premises including when doors and windows to those rooms are open. Condition 73 also requires the acoustic engineer to certify that noise level emissions from external plant meet the required noise levels prior to the issue of any occupation certificate. These conditions are to be retained as part of this modification application. A condition has also been included within this consent requiring an acoustic engineer to review the chosen location for any external noise sources such as air conditioning units and provide appropriate design/acoustic treatment advice to be implemented into the construction.

It is important to note that Condition 00 of REV2021/0034 does not permit plant equipment on the roof or in a location that is visible from the public domain, apart from the flush-mounted solar panels and the plant equipment shown on the approved plans within the portion of the upper floor roof bound in copper sheeting.

On balance of the above, the location of air conditioning condensers on the roof is supported.

Merit consideration

With regard to the proposed variation, the development is considered against the underlying outcomes of the Control as follows:

- ***To achieve the desired future character of the Locality.***

Comment:

The proposal as modified will continue to achieve the desired future character of the locality by maintaining a building height limit below the tree canopy and minimising bulk and scale.

- ***The bulk and scale of the built form is minimised.***

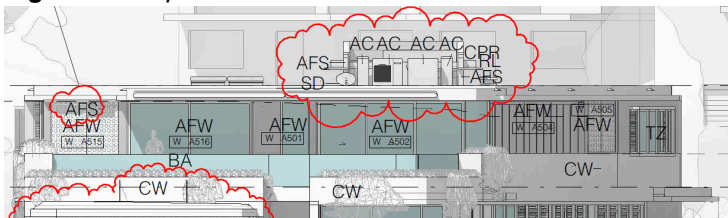
Comment:

The proposed roof top air conditioning units do not add significant bulk and scale to the approved development as they are contained within the screened area on the roof, as evident from Figures 7 and 8 below.

**Figure 7: Approved eastern elevation**



**Figure 8: Proposed eastern elevation**



- ***Equitable preservation of views and vistas to and/or from public/private places.***

Comment:

The proposed air conditioning units will not result in view loss impacts to and/or from public/private places as they are contained within the screened area on the roof, as evident from Figures 7 and 8 above.

- ***To achieve reduction in visual clutter.***

Comment:

The proposed air conditioning units do not result in an unreasonable level of visual clutter.

- ***The appropriate location and design of noise generating equipment.***

Comment:

While the proposed air conditioning units are not ideally located, the conditions included as part of the original application and this modification application will ensure an unreasonable noise level is not

produced.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

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

Refer to discussion under Section C1.25 of this assessment report.

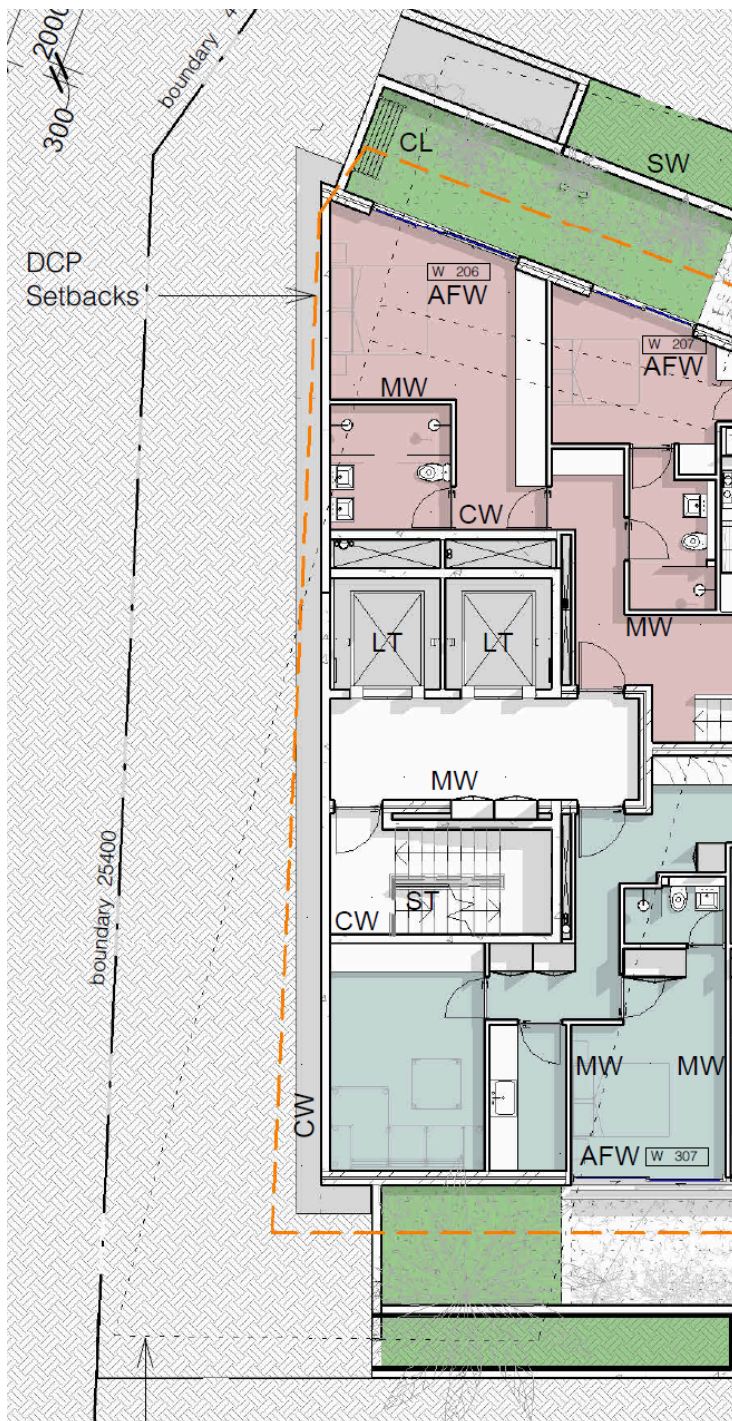
## **D12.5 Front building line**

### Detailed description of development

Pursuant to Section D12.5 of the Pittwater 21 Development Control Plan, on land zoned E1 Local Centre, built structures, other than driveways, fences and retaining walls shall have a minimum front building line of 3.5m. Rainwater tanks are permitted within the front building line provided that they do not exceed 1m in height above existing ground level (existing).

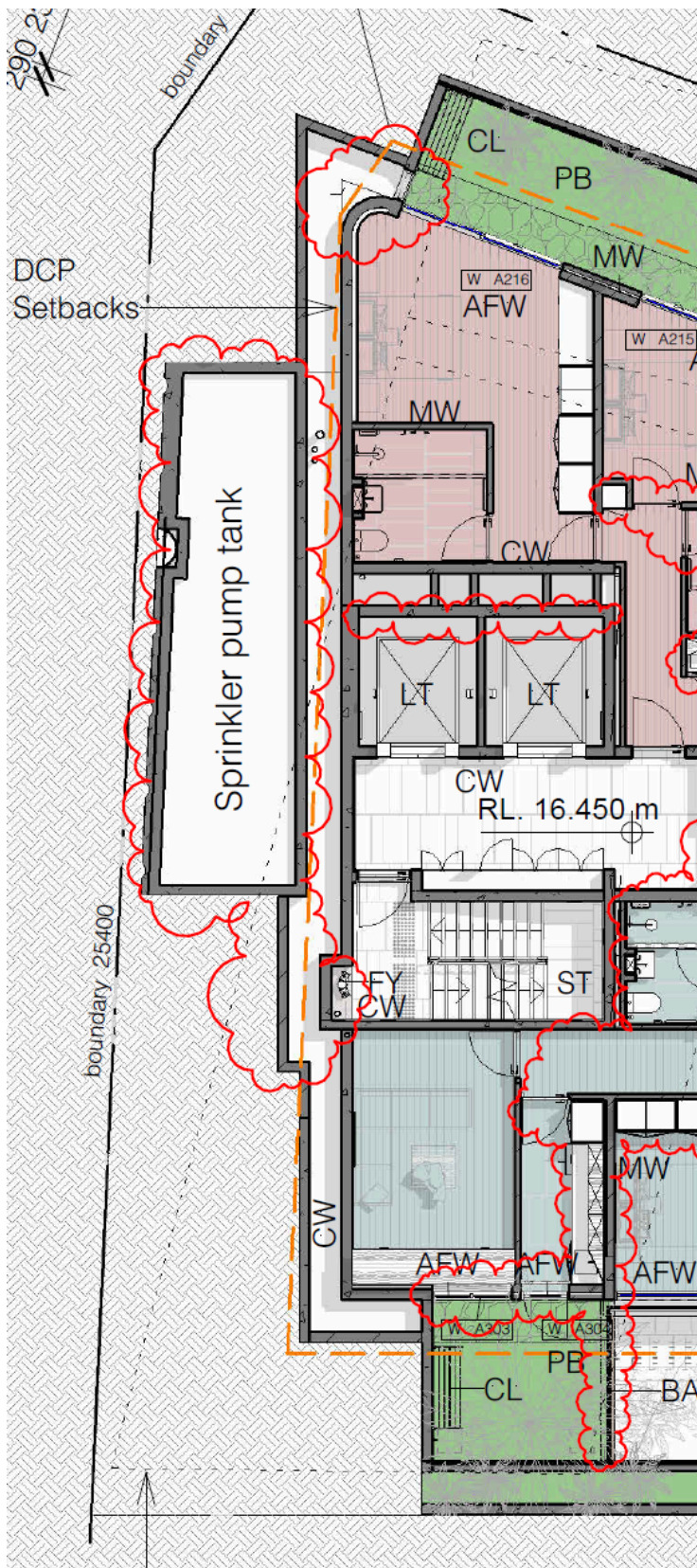
The proposed modifications include a sprinkler pump tank that is set back 0.3m from Whale Beach Road. It is important to note that the proposed sprinkler tank sits below existing ground level and is therefore not visible from the streetscape. The setback of the face of the development to Whale Beach Road remains unchanged. Refer Figures 9-11 below.

**Figure 9: Approved Level 3 Plan**

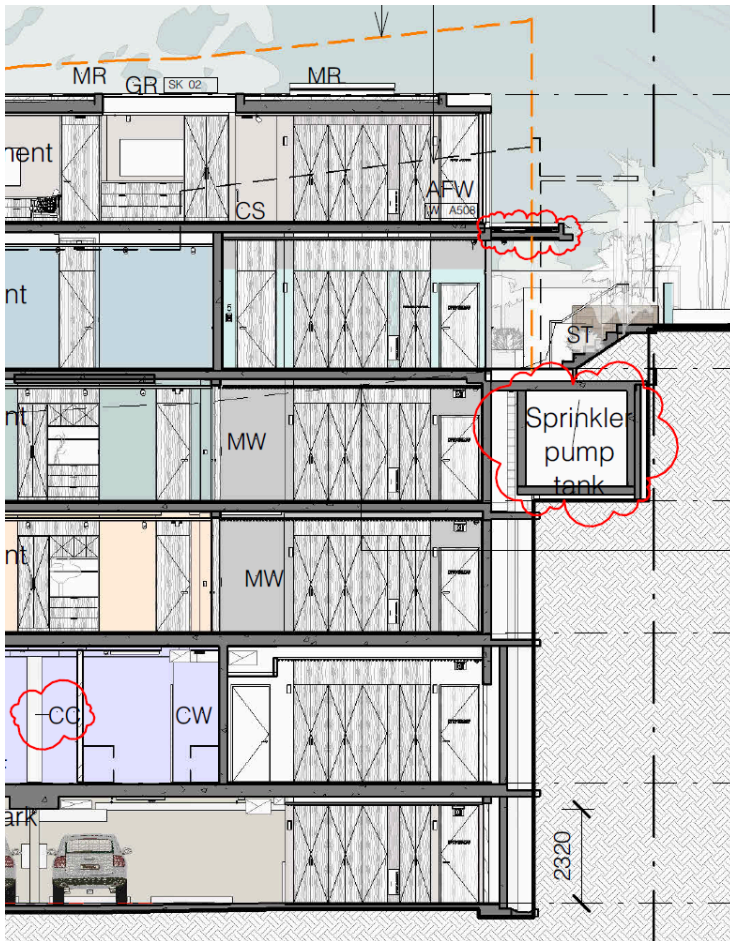


**Figure 10: Proposed Level 3 Plan**





**Figure 11: Proposed Section Plan**



#### Merit consideration

With regard to the consideration of a variation, the proposed development is considered against the underlying outcomes of the control as follows:

- ***Achieve the desired future character of the Locality.***

#### Comment:

The proposed development as modified will continue to achieve the desired future character of the locality by maintaining the stepped form of the development down the slope.

- ***Equitable preservation of views and vistas to and/or from public/private places.***

#### Comment:

The proposed modifications will not result in additional view impacts.

- ***The amenity of residential development adjoining a main road is maintained.***

#### Comment:

The proposal has been designed to maintain amenity for the occupants of the dwelling.

- ***Vegetation is retained and enhanced to visually reduce the built form.***

#### Comment:

No trees are located on the site and therefore no trees are proposed to be removed as part of the development works. The proposed development includes provision of new plantings to visually reduce the built form.

- ***Vehicle manoeuvring in a forward direction is facilitated.***

Comment:

Vehicle manoeuvring in a forward direction is facilitated off Surf Road.

- ***To preserve and enhance the rural and bushland character of the locality.***

Comment:

The proposal does not involve the removal of any trees and provides for planting of several new canopy trees, shrubs and groundcovers in planters and around the perimeter of the development, thereby enhancing the bushland character of the locality.

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

Comment:

The proposed development as modified enhances the existing streetscape along Whale Beach Road and is of a scale and density that is in keeping with the height of the natural environment, as evident in Figure 12 below.

**Figure 12: 3D Perspective from Whale Beach Road**



- ***To encourage attractive street frontages and improve pedestrian amenity.***

Comment:

The proposed development provides an attractive street frontage from Whale Beach Road and will improve pedestrian amenity by providing an active streetscape with retail premises at the street level.

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

Comment:

The proposed development sensitively relates to the spatial characteristics of the existing urban environment by stepping down the built form to follow the slope of the land and maintaining a two storey built form at the Whale Beach Road frontage, consistent with the scale of development along Whale Beach Road.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the P21DCP and the objectives specified in s1.3 of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is supported in this particular



circumstance.

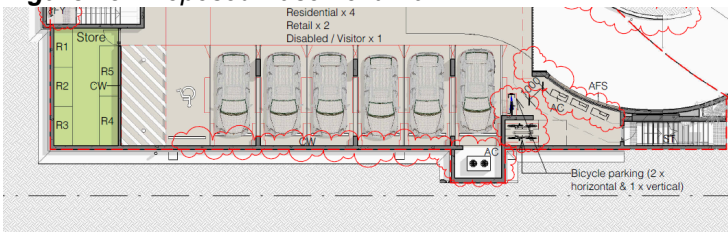
## D12.6 Side and rear building line

### Detailed description of non-compliance

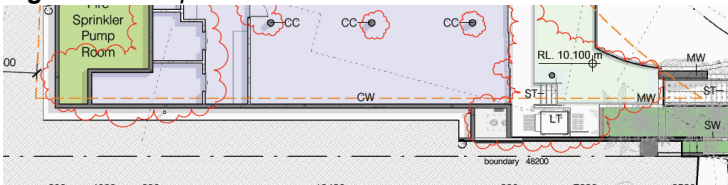
Pursuant to Section D12.6 of the Pittwater 21 Development Control Plan, the minimum side and rear building line for built structures including parking structures, other than driveways, fences and retaining walls on land zoned E1 Local Centre is 3m.

The basement and ground levels were approved with a 2.5m setback to the southern side boundary. The proposal as modified has a minimum setback of 0.7m at the basement level and 0.8m at the ground level due to the inclusion of the air conditioner and lift to the outdoor seating area to comply with AS1428.1 Design for access and mobility, as evident in Figures 13 and 14 below. The remainder of the building maintains the approved setback of 2.5m from the southern boundary at the basement and ground floor levels.

**Figure 13: Proposed Basement Plan**

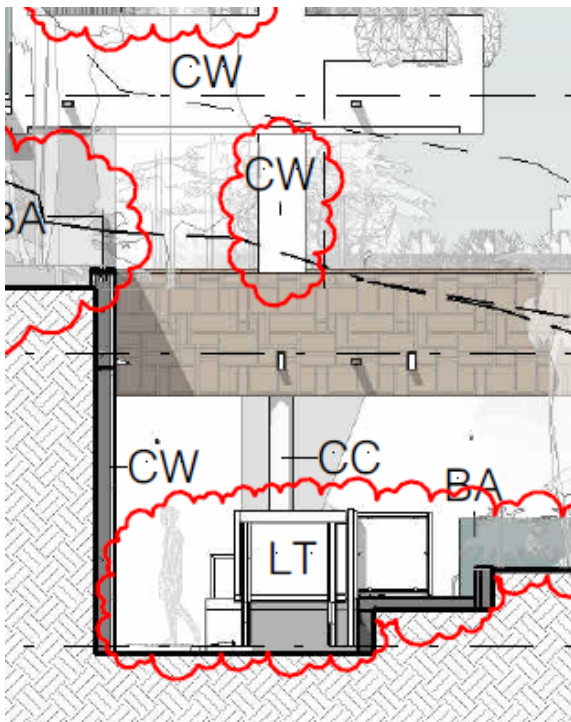


**Figure 14: Proposed Ground Floor Plan**



It is important to note that the ground floor sits approximately 5.3m below the existing ground level and 6.8m below the height of the fence, as evident in Figure 15 below. As such, these added components pose minimal amenity impacts for adjoining properties.

**Figure 15: Section Plan**



#### Merit consideration

With regard to the consideration of a variation, the proposed development is considered against the underlying outcomes of the control as follows

- ***To achieve the desired future character of the Locality.***

#### Comment:

The proposed development as modified will continue to achieve the desired future character of the locality by maintaining the stepped form of the development down the slope.

- ***The bulk and scale of the built form is minimised.***

#### Comment:

The proposed modifications to the southern side building line do not add to the bulk and scale of the approved built form.

- ***Equitable preservation of views and vistas to and/or from public/private places.***

#### Comment:

The proposed modifications will not result in additional view impacts.

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

#### Comment:

The proposed modifications will not result in additional view impacts.

- ***To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.***

#### Comment:

The proposal as modified ensures a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.

- ***Substantial landscaping, a mature tree canopy and an attractive streetscape.***

Comment:

The proposal as modified includes substantial landscaping and new plantings and will improve the attractiveness of the existing streetscapes along both Surf Road and Whale Beach Road.

- ***Flexibility in the siting of buildings and access.***

Comment:

Flexibility has been afforded in the siting of these new building components given their level below the existing ground line.

- ***Vegetation is retained and enhanced to visually reduce the built form.***

Comment:

No trees are located on the site and therefore no trees are proposed to be removed as part of the development works. The proposed development includes provision of new plantings to visually reduce the built form.

- ***To ensure a landscaped buffer between commercial and residential zones is established.***

Comment:

The proposal involves landscaping along the entire perimeter of the development to provide a landscaped buffer between commercial and residential zones.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the P21DCP and the objectives specified in s1.3 of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2024**

Section 7.12 contributions were levied on the Development Application.

## **CONCLUSION**

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;

- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

## **PLANNING CONCLUSION**

This proposal, for modification of the approved mixed-use development under REV2021/0034, has been referred to the Development Determination Panel (DDP) due to the application receiving at least five submissions by way of objection.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days. Six submissions were received. Concerns raised in the objections predominantly relate to traffic and safety issues, the need for the modified proposal to be assessed as a new development application, and the acoustic impacts associated with the six proposed air conditioning condensers on the roof of the development.

The concerns raised in the objections have been addressed and resolved through merit assessments and the inclusion of additional recommended conditions of consent.

The modifications result in some built form non-compliance in relation to setbacks, which have been assessed in detail within this report.

Overall, the modified development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

## **REASON FOR DETERMINATION**

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## **RECOMMENDATION**

THAT Council as the consent authority grant approval to Modification Application No. Mod2024/0705 for Modification of Development Consent REV2021/0034 granted for Review of Determination of Application DA2020/0442 for demolition works and construction of a Mixed Use Development comprising Shop Top Housing and retail premises, with associated carparking, landscaping and strata subdivision on land at Lot B DP 316404,231 Whale Beach Road, WHALE BEACH, subject to the conditions printed below:

## Modification Summary

The development consent is modified as follows:

### MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-496082 MOD2024/0705	The date of this notice of determination	<p>Modification of Development Consent REV2021/0034 granted for demolition works and construction of a Mixed Use Development comprising Shop Top Housing and retail premises, with associated carparking, landscaping and strata subdivision.</p> <p>Modify Condition 1 - Approved Plans and supporting documentation Modify Condition 2 - Compliance with Other Department, Authority or Service Requirements Modify Condition 14 - Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans Modify Condition 15 - Car Parking Standards Modify Condition 19 - Amendments to the Approved Plans Add Condition 35A - Erosion and Sediment Control Plan Add Condition 35B - Pedestrian sight distance at property boundary Add Condition 35C - Acoustic Treatments Modify Condition 36 - Project Arborist Modify Condition 44 - Protection of Existing Street Trees Modify Condition 45 - Tree and Vegetation Protection Modify Condition 61 - Waste/Recycling Requirements (Waste Plan Submitted) Add Condition 61A - Stockpiling Materials Delete Condition 62 - Required Planting Modify Condition 63 - Landscape Completion Add Condition 89B - Pathway, access and door requirements to bin storage room Add Condition 89C - Screening of Air Conditioning Condensers</p>
PAN-176524 MOD2021/0983	11 April 2024	<p>Modification of Development Consent REV2021/0034 granted for demolition works and construction of a Mixed Use Development comprising Shop Top Housing and retail premises, with associated carparking, landscaping and strata subdivision.</p> <p>Modify Condition 1 - Approved Plans and supporting documentation Modify Condition 3 - Approved Land Use Modify Condition 67 - Signage and Linemarking - Implementation Modify Condition 80 - Kitchen Design, Construction and Fit-out of Food Premises Certification Add Condition 89A - Green Travel Plan Modify Condition 92 - Hours of Operation Modify Condition 99 - Capacity of Ground Level Cafe or Restaurant facing Surf Road Add Condition 99A - Acoustic Recommendations</p>
PAN-180344 MOD2021/0987	27 January 2022	<p>Modification of Development Consent REV2021/0034 granted for demolition works and construction of a Mixed Use Development</p>



		comprising Shop Top Housing and retail premises, with associated carparking, landscaping and strata subdivision.
		Modify Condition 15 - Car Parking Standards Modify Condition 75 - Driveway and Parking Facility Work

### **Modified conditions**

#### **A. Modify Condition 1 - Approved Plans and supporting documentation, to read as follows:**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

##### **a) Approved Plans**

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA01 Site Plan, Revision OO	6 December 2024	Richard Cole Architecture
DA03 Basement Plan, Revision OO	6 December 2024	Richard Cole Architecture
DA04 Ground Floor Plan, Revision OO	6 December 2024	Richard Cole Architecture
DA05 Level 1 Plan, Revision OO	6 December 2024	Richard Cole Architecture
DA06 Level 2 Plan, Revision OO	6 December 2024	Richard Cole Architecture
DA07 Level 3 Plan, Revision OO	6 December 2024	Richard Cole Architecture
DA08 Level 4 Plan, Revision OO	6 December 2024	Richard Cole Architecture
DA09 Roof Plan, Revision OO	6 December 2024	Richard Cole Architecture
DA10 Elevations, Revision OO	6 December 2024	Richard Cole Architecture
DA11 Elevations, Revision OO	6 December 2024	Richard Cole Architecture
DA12 Boundary Elevations, Revision OO	6 December 2024	Richard Cole Architecture
DA13 Section, Revision OO	6 December 2024	Richard Cole Architecture
DA14 Section, Revision OO	6 December 2024	Richard Cole Architecture
DA35 Finishes Board - Surf Road, Revision OO	6 December 2024	Richard Cole Architecture
DA36 Finishes Board - Whale Beach Road, Revision OO	6 December 2024	Richard Cole Architecture

<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
23058/07 Proposed Car Park Layout, Revision C	27 September 2024	TEF Consulting

SW2.00 Stormwater Infrastructure Works, Revision 05	21 November 2024	Barrenjoey Consulting Engineers
SW2.01 Stormwater Part Plans, Revision 04	9 October 2024	Barrenjoey Consulting Engineers
SW2.02 Longitudinal Sections, Revision 03	21 November 2024	Barrenjoey Consulting Engineers
SW2.03 Longitudinal Sections, Revision 04	21 November 2024	Barrenjoey Consulting Engineers
SW2.04 General Stormwater Infrastructure Details, Revision 02	22 February 2024	Barrenjoey Consulting Engineers
SW2.05 Stormwater Pit Details Sheet 2, Revision 02	22 February 2024	Barrenjoey Consulting Engineers
SW2.06 Stormwater Pit Details Sheet 3, Revision 02	22 February 2024	Barrenjoey Consulting Engineers
SW2.07 Stormwater Pit Details Sheet 4, Revision 02	22 February 2024	Barrenjoey Consulting Engineers
SW2.08 Stormwater Pit Details Sheet 5, Revision 02	22 February 2024	Barrenjoey Consulting Engineers
SW2.09 Stormwater Pit Details Sheet 6, Revision 03	9 October 2024	Barrenjoey Consulting Engineers
CW1.00 Public Domain Infrastructure Works Plan, Revision 04	9 October 2024	Barrenjoey Consulting Engineers
CW1.01 Infrastructure Works Part Plans, Revision 04	9 October 2024	Barrenjoey Consulting Engineers
CW1.02 Infrastructure Works Details Sheet 1, Revision 02	22 February 2024	Barrenjoey Consulting Engineers
CW1.03 Infrastructure Works Details Sheet 2, Revision 02	22 February 2024	Barrenjoey Consulting Engineers
CW1.04 Infrastructure Works Details Sheet 3, Revision 03	9 October 2024	Barrenjoey Consulting Engineers
CW1.05 Infrastructure Works Details Sheet 4, Revision 03	9 October 2024	Barrenjoey Consulting Engineers

Reports / Documentation - All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By

Access Report	14 May 2024	Accessible Building Solutions
Acoustic Report for Development Application, Revision E	28 September 2023	JHA Services
Acoustic Report, Revision B, Project No: 190351 only Part 5.1 - Roof top Mechanical Plan Recommendations	5 February 2020	JHA Services
Geotechnical Report; Project 45636.02, R.001.Rev0	3 November 2023	Douglas Partners Pty Ltd
Geotechnical Forms 1 and 1a	9 April 2025	Douglas Partners Pty Ltd
Geotechnical Statement; Project 45636.02, R.012.Rev2	11 April 2025	Douglas Partners Pty Ltd
Coastline Risk Management Report	7 October 2021	Cardno (NSW/ACT) Pty Ltd
Coastline Risk Management Form 1	7 October 2021	Cardno (NSW/ACT) Pty Ltd
Arboricultural Impact Assessment	July 2021	Urban Forestry Australia
Arboricultural Impact Assessment and Management Plan	July 2024	Botanics Tree Wise People Pty Ltd
BCA Design Compliance Report, Revision 03	21 August 2024	MBC Group
SCA Design Compliance Report	2 August 2021	Modern Building Certifiers
Stormwater Asset Relocation Investigation & Report, Revision A	October 2020	Barrenjoey Consulting Engineers Pty Ltd
Plan of Management	14 March 2024	SJB Planning
Construction Management Plan	February 2020	AusWide Consulting
BASIX Certificate - 1048605M_06	9 December 2024	Bonnefin Consulting Pty Ltd

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
CC-L01A Landscape Site Plan	23 October 2024	Trish Dobson
CC-L02A Tree Retention Plan	23 October 2024	Trish Dobson
CC-L03A Public Domain Landscape Plan	23 October 2024	Trish Dobson
CC-L04A Perimeter Planting Plan	23 October 2024	Trish Dobson
CC-L05A Terrace Planters	23 October 2024	Trish Dobson
CC-L06A Planting Schedule + Specifications	23 October 2024	Trish Dobson
CC-L07A Landscape Details	23 October 2024	Trish Dobson

<b>Waste Management Plan</b>		
<b>Drawing No. / Title</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plan	23 April 2020	Diane Cassar and Leslie Cassar

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

**B. Modify Condition 2 - Compliance with Other Department, Authority or Service Requirements, to read as follows:**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	16 January 2025

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

**C. Modify Condition 14 - Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans, to read as follows:**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Douglas Partners dated 3 November 2023 (Project 45636.02; R.001.Rev0) are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

**D. Modify Condition 15 - Car Parking Standards, to read as follows:**

The car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 – Parking facilities – Off-street car parking and AS/NZ 2890.3 2015. The driveway/access ramp grades and access must comply with Drawing 23058/07 Proposed Car Park Layout, Revision C dated 27 September 2024 prepared by TEF Consulting.

Details demonstrating compliance with this condition are to be submitted to the Certifying Authority prior to the issue of a construction certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of bicycles and vehicles.

**E. Modify Condition 19 - Amendments to the Approved Plans, to read as follows:**

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

- Excavation: The proposed area of excavation adjacent to the bedrooms of Apartment 1 is to be continued through to the east, extending to the point where the proposed excavated level meets existing ground level.

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

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure the development achieves appropriate internal amenity.

#### **F. Add Condition 35A - Erosion and Sediment Control Plan, to read as follows:**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities);
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls;
- North point and scale.

Details demonstrating compliance are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

#### **G. Add Condition 35B - Pedestrian sight distance at property boundary, to read as follows:**

A pedestrian sight triangle of 2.0m by 2.5m, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property and where internal circulation roadways intersect with footpaths or other pedestrian access areas.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: To maintain pedestrian safety.

#### **H. Add Condition 35C - Acoustic Treatments, to read as follows:**

Prior to the issue of any Construction Certificate, an acoustic engineer is to review the chosen location for any

external noise sources such as air conditioning units and provide appropriate design/acoustic treatment advise to be implemented into the construction.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure potential noise sources have been considered and effectively managed.

**I. Modify Condition 36 - Project Arborist, to read as follows:**

a) A Project Arborist, with minimum AQF Level 5 in arboriculture, shall be engaged to provide tree protection measures in accordance with the Arboricultural Impact Assessment dated July 2021 prepared by Urban Forestry Australia (and any relevant protection measures outlined in the Arboricultural Impact Assessment dated July 2024 prepared by George Palmer, Botanics P/L) and Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection and ground protection.

b) The Project Arborist is to supervise all demolition, excavation and construction works near all trees to be retained including construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works unless approved by the Project Arborist. The Project Arborist shall supervise the construction of the overland flow path along the southern boundary, including any associated retaining walls, within the tree protection zones of any neighbouring trees and in accordance with the recommendations outlined in the Arboricultural Impact Assessment dated July 2021 prepared by Urban Forestry Australia (particularly sections 5.2.4 and 5.3).

c) Existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by the Project Arborist.

d) All tree protection measures specified must:

- i) be in place before work commences on the site, and
- ii) be maintained in good condition during the construction period, and
- ii) remain in place for the duration of the construction works.

e) The Project Arborist shall provide certification to the Certifier that all recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded including at commencement, during the works and at completion.

Note:

- i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.
- ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

**J. Modify Condition 44 - Protection of Existing Street Trees, to read as follows:**

a) all existing street trees in the vicinity of the works shall be retained during all construction stages, and the street tree(s) fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of AS 4970-2009 Protection of trees on development sites. As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides and in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

b) all street trees within the road verge are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree(s) is prohibited. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

Reason: Street tree protection.

**K. Modify Condition 45 - Tree and Vegetation Protection, to read as follows:**

a) existing trees and vegetation shall be retained and protected, including:

- i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve.

b) tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS 4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS 4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: be in place before work commences on the site, be maintained in good condition during the construction period, and remain in place for the duration of the construction works.

c) the Principal Certifier must ensure that:

- i) If activated, the arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as compliant to AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

**L. Modify Condition 61 - Waste/Recycling Requirements (Waste Plan Submitted), to read as follows:**

During demolition and/or construction the proposal/works shall be generally consistent with the approved Waste Management Plan and Construction Management Plan referenced in Condition 1 of this consent.

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided.

**M. Add Condition 61A - Stockpiling Materials, to read as follows:**

During construction, all material associated with works is to be contained at source, covered and must be within the construction area. All material is to be removed off site and disposed of according to local regulations. The property is to be kept clean and any building debris removed as frequently as required to ensure no debris enters receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

**N. Delete Condition 62 - Required Planting - a) Trees shrubs and groundcovers shall be planted in accordance with the Site Planting Plan Dwg No. DA-L02C dated 9.8.21 and Planting Schedule Dwg No. DA-L07C 24.4.20 Prepared by Trish Dobson; b) Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.**

Deleted.

**O. Modify Condition 63 - Landscape Completion, to read as follows:**

a) landscape works are to be implemented in accordance with the approved Landscape Plans (drawings CC-L03A, CC-L04A, CC-L05A, CC-L06A by Trish Dobson dated 23/10/24), and inclusive of the following conditions:

- i) landscape works are to be contained within the legal property boundaries,
- ii) planting shall be installed as indicated on the approved Landscape Plan(s) unless otherwise imposed by any conditions,
- iii) all tree planting shall be planted into a prepared planting hole, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and located either within garden bed or within a prepared bed within lawn,
- iv) mass planting shall be installed in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
- v) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

b) prior to the issue of an Occupation Certificate, details (from a landscape architect, landscape designer or qualified horticulturalist) shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

**P. Add Condition 89B - Pathway, access and door requirements to bin storage room, to read as follows:**

The pathway and access between the Waste Storage Area and Collection Point will be:

- a) Solid, concrete, continuous, non-slip and clear of any obstructions and steps.
- b) A maximum ramp gradient of 1 in 8.
- c) Hazard free and not via a pathway with vehicular traffic.
- d) A minimum width of 1200mm.

Any doors fitted on the Waste Storage Area, pathway and access will be:

- e) A minimum width of 1200mm.
- f) Able to be latched in an open position.
- g) Unobstructed by any locks and security devices.
- h) Openable in an outward direction.

Reason: To ensure clear and unobstructed access to the bin storage room for service requirements.

**Q. Add Condition 89C - Screening of Air Conditioning Condensers, to read as follows:**



Prior to the issue of the Occupation Certificate, the Principal Certifier shall be satisfied that the air conditioning units located on the roof of the development are screened at the eastern elevation with a style and design to complement and integrate into the appearance of the building.

Reason: To ensure that the air conditioning units are not visually dominant.