

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2021/0034
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Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot B DP 316404, 231 Whale Beach Road WHALE BEACH NSW 2107
Proposed Development:	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
Zoning:	B1 Neighbourhood Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Leslie Anthony Cassar Diana Nancy Cassar
Applicant:	Leslie Anthony Cassar

Application Lodged:	31/08/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	25/10/2021 to 08/11/2021
Advertised:	25/10/2021
Submissions Received:	84
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 16,492,961.00
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EXECUTIVE SUMMARY

The applications seeks a review of the determination of DA2020/0442, which was refused by the NBLPP on 2 December 2020. The development was refused primarily due to bulk and scale, side setbacks, view loss, landscaped treatment, driveway design and insufficient information.

In response to the refusal of DA2020/0442, the review application has been accompanied by amended plans to reduce the bulk and scale of the development compared to that previously refused, with larger

landscaped setbacks to both side boundaries. The driveway and parking area has also been redesigned, and all necessary supporting documentation and technical reports/certification have been presented. In addition to these matters, the height of the development presenting to Whale Beach Road has been reduced and the volume of excavation has been minimised.

The proposed development is of a different scale to that of surrounding dwelling houses. However, this is consistent with the provisions of PLEP 2014 and P21 DCP that anticipate development of a different typology and scale on the B1 Neighbourhood Centre zoned site, compared with that anticipated on surrounding E4 Environmental Living zoned land. Nonetheless, the proposed development is compatible with the bulk and scale of surrounding development and is a contextually appropriate response to the development of the site.

A total of 84 submissions were received in response to the notification of the application. Of these submissions, 56 were in support of the proposal, including one from the Palm Beach and Whale Beach Residents Association, and 28 were received in objection to the development. Despite the number of objections received, no matters were raised that warrant the refusal of the application or that cannot be addressed via the imposition of conditions.

Given the level of public interest, the proposal is referred to the Northern Beaches Planning Panel (NBLPP) for determination, with a recommendation of approval subject to the draft conditions attached.

PROPOSED DEVELOPMENT IN DETAIL

The application has been lodged under the provisions of section 8.3 of the EP&A Act seeking a review of the refusal of development application DA2020/0824, which sought consent for:

- the demolition of all existing site improvements
- the construction of a "five-storey" mixed use development, comprising:
 - 5 residential apartments
 - 3 retail tenancies
 - basement parking for 21 cars
- strata subdivision

Note: Whilst described in the original assessment report as a "five-storey" development, the proposal was more accurately described as a three storey development, as no part of the building reached a height of more than 3 storeys in any one place.

In response to the refusal of the application of the application, the development has been amended and consent is now sought for the following:

- the demolition of all existing site improvements
- the construction of a three-storey mixed use development comprising:
 - 5 residential apartments
 - 3 retail tenancies
 - basement parking for 14 cars
- strata subdivision

The mixed use development comprises shop top housing with additional retail premises (being those in addition to the ground floor retail premises anticipated in the definition of shop top housing). The

proposal will be commonly described as a shop top housing development throughout this report.

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

- Environmental Planning and Assessment Act 1979 - Section 8.3 -
- Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
- Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality
- Pittwater 21 Development Control Plan - B2.6 Dwelling Density and Subdivision - Shop Top Housing
- Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
- Pittwater 21 Development Control Plan - C1.3 View Sharing
- Pittwater 21 Development Control Plan - C1.5 Visual Privacy
- Pittwater 21 Development Control Plan - C2.3 Awnings
- Pittwater 21 Development Control Plan - D12.5 Front building line
- Pittwater 21 Development Control Plan - D12.6 Side and rear building line

SITE DESCRIPTION

Property Description:	Lot B DP 316404, 231 Whale Beach Road WHALE BEACH NSW 2107
Detailed Site Description:	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 ² . 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 north-west corner of the site, with access to Whale Beach Road. 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.

The site experiences a fall 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).

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.

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.

The site is zoned B1 Neighbourhood Centre and is surrounded by land zoned E4 Environmental Living. With the exception of Whale Beach Surf Club (two properties to the south), the area is characterised by dwelling houses.

Map:



SITE HISTORY

On 7 February 2019, a pre-lodgement meeting was held between the applicant and Council staff. The key advice provided in the pre-lodgement notes is summarised, as follows:

"It is critical that retail premises be maintained on both the Surf Road and Whale Beach Road ground floor levels, in order to meet the definition of shop top housing. Given the very steep slope of the site, having residential dwellings on the eastern side of the development that are at or below the Whale Beach Road level, can be supported. Should a design be lodged with no retail fronting Whale Beach Road, Council would not be in a position to support that proposal..."

On 6 May 2020, Development Application DA2020/0442 was lodged with Council.

On 23 September 2020, Council requested the withdrawal of DA2020/0442 and suggested that any amendments should be presented in a new development application. The applicant did not withdraw the application.

On 2 December 2020, development application DA2020/0442 was reported to the NBLPP with a recommendation of refusal. The NBLPP endorsed the recommendation, refusing DA2020/0442 for the following reasons:

1. *Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy 65 - Design Quality of Residential Flat Development and its associated Apartment Design Guide.*
2. *Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.7 Geotechnical hazards of the Pittwater Local Environmental Plan 2014.*
3. *Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the proposed development is not consistent with the Desired Future Character of the location and is an over-development of the site.*
4. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.3 View Sharing of the Pittwater 21 Development Control Plan.*
5. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.1 Character as viewed from a public place of the Pittwater 21 Development Control Plan.*
6. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.6 Side and rear building line of the Pittwater 21 Development Control Plan.*
7. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.14 Scenic Protection Category One Areas of the Pittwater 21 Development Control Plan.*

Following the determination of DA2020/0442, a number of meetings were held between the applicant and Council staff to resolve outstanding issues. Council's Urban Designer provided the following feedback in relation to the amended proposal:

Following several meetings with the applicant to address varying concerns raised regarding the development the applicant has submitted revised plans. The overall design and architectural intent of the development has demonstrated a merit worthy response to the site context and locality, notwithstanding the constraints of the topographic challenges of the site.

The overall form as it reads from Whale Beach Road presents a restrained and considered architectural resolution, responding to its unique locality. Material selections demonstrating a well-

considered and limited 'natural' palette work to reduce the bulk and scale of the project to provide a holistic response to sustainable material selection representing what will be a reduced maintenance regime over time for the 'whole of life' of the building. Similarly, the architectural form (bulk and scale) response to the Surf Road frontage has somewhat reduced the impacts on the streetscape through considered reduction of elements; floor plate (balcony) geometries that serve to soften and minimise the bulk and scale when viewed from the street(s).

Generally the proposed development is well considered and represents a calculable improvement to the immediate context and broader urban enclave.

On 25 August 2021, the review application was lodged with Council. At the time of lodgement, the driveway extended further to the east of the site, encroaching within the adjacent Council reserve.

On 8 October 2021, amended plans were received to relocate the driveway to be maintained within the property boundaries.

On 11 October 2021, amended plans were received to reduce the extent of the awning over the upper floor eastern terrace.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential and commercial purposes for an extended period of time. The proposed development retains the residential and commercial use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Section 4.15 Matters for Consideration	Comments
	<p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may be 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) Environmental Impact 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) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact 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.

Section 8.3 Application for and conduct of review

In accordance with Section 8.3 of the EP&A Act, an applicant may request a review of a determination of a development application. As the development application was determined within the 'prescribed period', the review must be lodged and determined within 12 months of the date of determination of the development application. The prescribed period is the period commencing on 25 March 2020 and ending on 25 March 2022, which was included in the *COVID-19 Legislation Amendment (Emergency Measures - Miscellaneous) Bill 2020* to provide additional measures to

mitigate the impacts of the current pandemic. To meet this requirement, noting that the Notice of Determination was issued on 3 December 2020, the subject review application must be determined before 3 December 2021.

Section 8.3(3) provides that whilst the applicant may amend the proposal, the consent authority must be satisfied that the amended proposal presented in the review application remains substantially the same as that considered in the original development application. The applicant has made changes to the development, including a reduction to the volume of excavation and increased side setbacks. The proposal is considered to remain essentially and materially the same as that previously proposed, and thus Council can be satisfied in this regard.

Furthermore, the relevant amendments are considered to address the reasons for refusal, as follows:

1. *Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy 65 - Design Quality of Residential Flat Development and its associated Apartment Design Guide.*

Comment: The primary issues raised in the SEPP 65 discussion of the original assessment relate to character, bulk and scale, setbacks, landscaped treatment and vehicular access.

To address concerns regarding character, bulk and scale, the size of development has been reduced, with increased setbacks to both side boundaries. The Whale Beach facade has also been refined, to enhance the legibility of the "steps" in the building and to reduce the dominance of the upper floor and balcony. The height of the upper floor has also been reduced, removing the larger plant area from the Whale Beach Road facade. Council's Urban Designers are supportive of the revised scheme in this regard.

It is noted that significant weight was placed on an alleged inconsistency with the two storey height limit prescribed. However, it is important to note that the reference to two storeys both within the desired future character statement and the clause D12.1 of P21 DCP is only made with respect to dwelling houses.

Concerns regarding landscaping were tied with the concerns raised in relation to side setbacks, with comments from Council's Landscape Architect suggesting that the side setbacks and the extent of excavation within the setbacks removed the opportunity for appropriate planting, commensurate with the height and bulk of the development. The increased setbacks and the reduction to excavation along the boundaries has satisfied Council's Landscape Officer in this regard.

Vehicular access issues have also been addressed in the amended proposal, to the satisfaction of Council's Development Engineer and Traffic Engineer.

2. *Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.7 Geotechnical hazards of the Pittwater Local Environmental Plan 2014.*

Comment: The geotechnical report provided for DA2020/0442 was not supported by Forms 1 and 1a, as required by Council's *Geotechnical Risk Management Policy for Development in Pittwater*. These forms have now been submitted.

3. *Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the proposed development is not consistent with the Desired Future Character of the location and is*

an over-development of the site.

Comment: The previous assessment found the development to be inconsistent with the desired future character statement for development within the Palm Beach Locality. As discussed in detail with regard to clause A4.12 of P21 DCP, the amended development the subject of the review application is considered to satisfactorily respond to the desired future character of the locality.

4. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.3 View Sharing of the Pittwater 21 Development Control Plan.*

Comment: Clause C1.3 of P21 DCP was not discussed in the original assessment report. However, based on the discussion in responses to submissions, it appears that the primary concern in relation to views was any impact associated with the side elevations, which were said to be located too close to the side boundaries. As discussed with regard to clause C1.3 of P21 DCP further in this report, the proposed development does not result in any unreasonable impacts upon views, particularly with respect to the side setbacks of the proposal.

5. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.1 Character as viewed from a public place of the Pittwater 21 Development Control Plan.*

Comment: The form, massing and height of the development has been reduced and refined, such that the presentation of the development to both Whale Beach Road and Surf Road is acceptable. The proposal is consistent with the requirements of clause D12.1 of P21 DCP, particularly noting that the controls and outcomes for shop top housing development are markedly different from those that relate to dwelling houses.

6. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.6 Side and rear building line of the Pittwater 21 Development Control Plan.*

Comment: The side setbacks have been increased by 1m on both sides, to allow for adequate spatial separation between buildings and the incorporation of landscaping along the side setbacks. The proposal generally exceeds the side setbacks prescribed by this control, and as discussed with regard to clause D12.6 of P21 DCP, the outcomes of the control are achieved.

7. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.14 Scenic Protection Category One Areas of the Pittwater 21 Development Control Plan.*

Comment: Clause D12.14 of P21 DCP is not discussed in the original assessment report. It is assumed that the concerns relate to landscaping, noting that the control aims to ensure that development is appropriately softened by landscaping. As above, Council's Landscape Officer is satisfied that the amendments to the setbacks and extent of excavation within the setback areas will now facilitate/provide an appropriate landscaped treatment for the site.

Section 8.3(5) prescribes that an application to review a decision by a local planning panel must also be determined by the local planning panel. As such, the application is referred to the NBLPP for determination.

Overall, the review application is consistent with the provisions of section 8.3 of the EP&A Act, subject to the matter being determined before 3 December 2021.

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 development application has been publicly exhibited from 25/10/2021 to 08/11/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 84 submission/s from:

Name:	Address:
Ross Clarke	9 A Morella Road WHALE BEACH NSW 2107
Annabelle Ewen	Address Unknown
Catherine Treweeke Lawyer	11A Avenue Road MOSMAN NSW 2088
Stephanie Fegan	31 Attunga Road NEWPORT NSW 2106
Leigh Brian Clapham	2 The Circle BILGOLA PLATEAU NSW 2107
Mrs Valda Jean Ewen	2 Iluka Road PALM BEACH NSW 2108
Mr Barry Garth Brown	4 Welch Street NORTH MANLY NSW 2100
Karen Esmore	7 Norma Road PALM BEACH NSW 2108
Mr Andrew Francis Goldsmith	18 Norma Road PALM BEACH NSW 2108
Benjamin James Isaac	5 Bibbenluke Avenue DUFFYS FOREST NSW 2084
Andrew Morrow	5/21 Baden Road KURRABA POINT NSW 2089
Simon Fox	13 Walter Street BONDI JUNCTION NSW 2022
Mr Glenn Raymond Moore	30 Prince Alfred Parade NEWPORT NSW 2106
Mr Jonathon Allan Isaac	72 Lagoon Street NARRABEEN NSW 2101
Alberto Cubeddu	Address Unknown
Mr Jeremy Colin Hassall	283 Whale Beach Road WHALE BEACH NSW 2107
Mr Harley Joseph Groot	12 Amelia Place NORTH NARRABEEN NSW 2101
Mr Michael Brendon Ian Moss	133 Whale Beach Road AVALON BEACH NSW 2107
Mr Bryan Christie Webster	194 Whale Beach Road WHALE BEACH NSW 2107
Sierra Chamberlain	Address Unknown
Mr Samuel David Watson	2 / 33 Elaine Avenue AVALON BEACH NSW 2107
Mrs Helen Mary Hamilton	31 Attunga Road NEWPORT NSW 2106
David Holman	20 Burrawong Road AVALON BEACH NSW 2107
Ms Monique John	1 / 53 George Street AVALON BEACH NSW 2107
Mrs Shane Lisa Daghish	20 Albert Road AVALON BEACH NSW 2107

Name:	Address:
Ms Jacqueline Anne Green	1 Coral Close AVALON BEACH NSW 2107
Ms Amanda Jane Brodie	10 Riverview Road AVALON BEACH NSW 2107
John Pantaleo	Address Unknown
Jack Robert Webster	11 / 19 Clarke Street NARRABEEN NSW 2101
Mr Brett Ashley Robinson	260 Whale Beach Road WHALE BEACH NSW 2107
Ellie Keft	4 Ironside Street WESTON NSW 2611
Brita Benjamin	169 Whale Beach Road WHALE BEACH NSW 2107
Emily Carruthers	104 Harbord Road FRESHWATER NSW 2096
Andrew Ellis	10 Walker Avenue EDGECLIFF NSW 2027
Mr Jeremy Wade Cleaver	206 Whale Beach Road WHALE BEACH NSW 2107
Mrs Maria Salome Munoz Jimenez	11 Burrawong Road AVALON BEACH NSW 2107
Mr Eric Oliver Jiminez	11 Burrawong Road AVALON BEACH NSW 2107
Morgan Webster	22 Rayner Road WHALE BEACH NSW 2107
Shane Conwell	194 Whale Beach Road WHALE BEACH NSW 2107
Clare Julia Crawford	8 Gunjulla Place AVALON BEACH NSW 2107
Richard West	87 Florida Road PALM BEACH NSW 2108
Mrs Tegan Kate Murdoch	3 / 14 Cove Avenue MANLY NSW 2095
Chris Pick	31/244 Alison Road RANDWICK NSW 2031
Mr Daniel Franklin Hofbauer	22 Gilliver Avenue VAUCLUSE NSW 2030
Mr Vien Van Luong Ms Uyen Doan Le	200 Whale Beach Road WHALE BEACH NSW 2107
Tia Collings	9 Daisy Street NORTH BALGOWLAH NSW 2093
Pauline Ryan	40/267 Miller Street NORTH SYDNEY NSW 2060
Ms Janette Ailsa Davie	887 Barrenjoey Road PALM BEACH NSW 2108
Belinda Mainprize	Address Unknown
Mr John Charles Gorman	17 Prince Edward Parade HUNTERS HILL NSW 2110
Ms John R Molyneux	Level 1 63 William Street EAST SYDNEY NSW 2010
Col Hughes	20 Eastbourne Road DARLING POINT NSW 2027
Design Collaborative Pty Ltd	Suite 304 105 Pitt Street SYDNEY NSW 2000
Mr Robyn Lee Jarvis	3 Queens Avenue VAUCLUSE NSW 2030
Ms Molly Loloma Treweeke	41 Gurney Crescent SEAFORTH NSW 2092
Mr Michael Urban Roger Crivelli	167 Whale Beach Road WHALE BEACH NSW 2107
Mrs Virginia Lizelle Stack	5 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Mrs Kalinda Anne Hawson	60 Whale Beach Road AVALON BEACH NSW 2107
Mr William Lindsay White	14 Crane Lodge Place PALM BEACH NSW 2108
Mr Jacqueline Susan Rees	1 Boanbong Road PALM BEACH NSW 2108
Lorenzo Crepaldi	Address Unknown
Mr Denis George Pierce	10 Etival Street PALM BEACH NSW 2108
Tess Lazareff	22 / 52 - 58 Howard Avenue DEE WHY NSW 2099

Name:	Address:
Mr Ian William Lothringer	112 Whale Beach Road WHALE BEACH NSW 2107
Mrs Dorothy Margaret Mary Kamaker	158 A Whale Beach Road WHALE BEACH NSW 2107
Ratu Rimartini	112 Whale Beach Road WHALE BEACH NSW 2107
Ms Kaylee Gail Falkner	610 Barrenjoey Road AVALON BEACH NSW 2107
The Palm Beach & Whale Beach Association Inc	Palm Beach/Whale Beach Areas AB Dummy For Daba Notification WARRIEWOOD NSW 2102
Mr Catherine Naito	229 Whale Beach Road WHALE BEACH NSW 2107
Mr Bill Tulloch	9 Barrabooka Street CLONTARF NSW 2093
William Chamberlain	792 Barrenjoey Road PALM BEACH NSW 2108
Mr John Warburton	106 Whale Beach Road AVALON BEACH NSW 2107
Alan Joseph Joyce	Quadrant Building 4201/129 Harrington Street THE ROCKS NSW 2000
Mr Roger Dominic Byrne	5 Robert Street FRESHWATER NSW 2096
Steven Craig Smith	233 Whale Beach Road WHALE BEACH NSW 2107
Mark Azzopardi	Address Unknown
Mr Wallace Macarthur King	41 The Point Road WOOLWICH NSW 2110
Mr Richard Hugh West	87 Florida Road PALM BEACH NSW 2108
Mr Julian Patrick Dibbs	4 Brighton Street CURL CURL NSW 2096
Mr Julian Edward Bloomfield	38 Surf Road NORTH CURL CURL NSW 2099
Mr Owen Leo Coughlan	868 Barrenjoey Road PALM BEACH NSW 2108
Hon. Sandra Christine Nori	19 Raymond Road BILGOLA PLATEAU NSW 2107
Geoff Dixon	Address Unknown
Mr Rowan William Millar	23 Ross Street NORTH CURL CURL NSW 2099

Of the submissions received, 28 are in objection to the proposal, with the remaining in support of the proposal, including the submission received from the Palm Beach and Whale Beach Residents Association.

The matters raised in the objections are considered, as follows:

- **Bulk and scale**

Submissions have been received in objection to the bulk and scale of the development, stating that the proposal should be refused as it is inconsistent with the bulk and scale of surrounding low density residential development. The proposal is undeniably larger than surrounding dwellings, however this is a consequence of the zoning of the site and the type of development proposed.

The subject site is the only property zoned B1 Neighbourhood Centre throughout the entire suburb of Whale Beach, and is one of only a handful of sites zoned for commercial purposes north of the Avalon Town Centre. The site is predominantly surrounded by single dwellings on land zoned E4 Environmental Living, which have a distinctly different bulk and scale as a consequence of the development that is permitted and the controls that are applicable to the land. The expectation that the bulk and scale of a shop top housing development on land zoned B1 Neighbourhood Centre will be the same as that of surrounding dwellings on land zoned E4

Environmental Living is somewhat unrealistic.

Rather, the aim should be to achieve a development that is compatible with surrounding development. As discussed with regard to the 'Context and neighbourhood character' and 'Built form and scale' Design Principles of SEPP 65, the proposed development is compatible with the bulk and scale of development in the surrounding locality.

- **Character**

Submissions have been received in objection to the development on the basis that it is inconsistent with the character of the low density area. As above, the character of the types of development permitted on the site are innately different from what is permitted on surrounding low-density residential land, and as such, the expectation for any development on the site to be consistent with the character of surrounding dwelling houses is considered to be unreasonable.

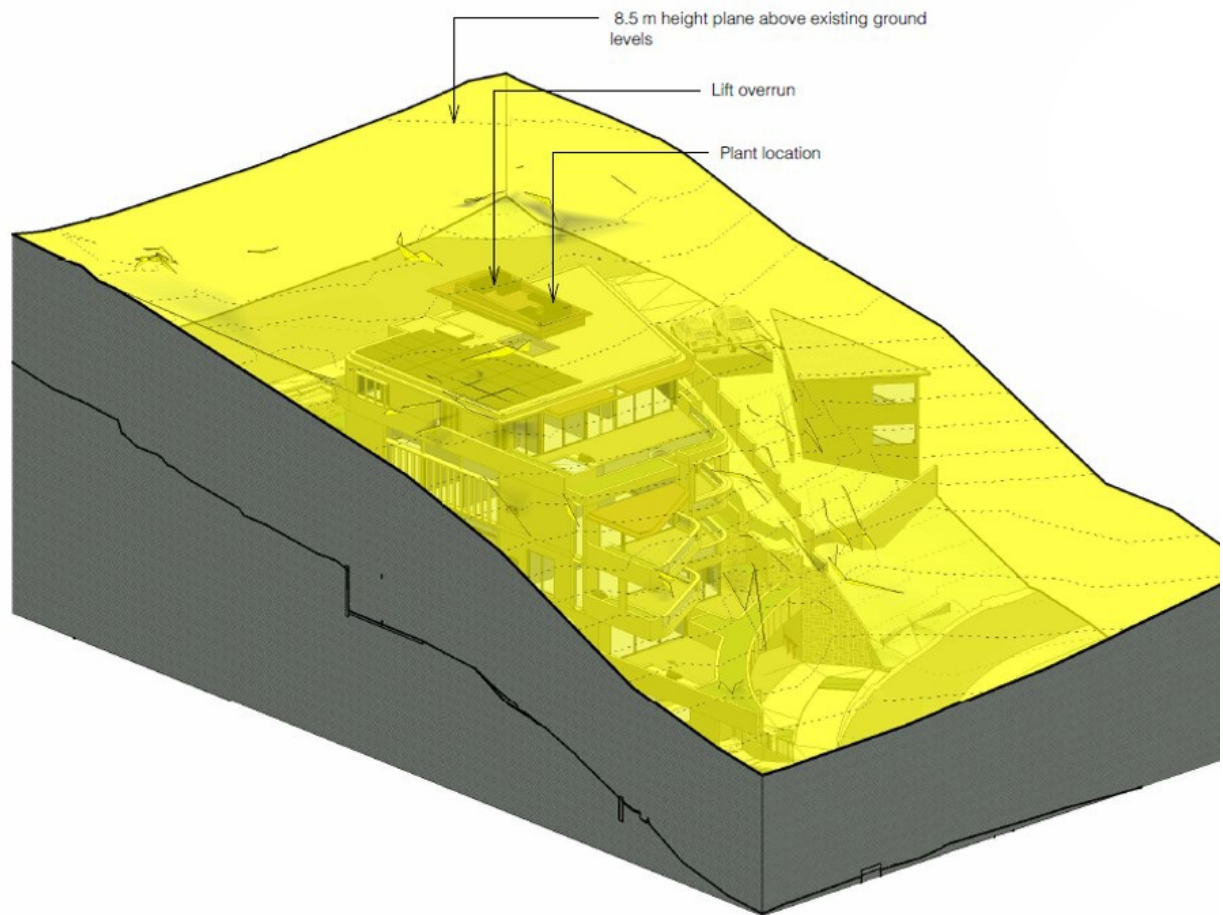
However, that does not mean that a development should not respond to the desired future character statement. As discussed with regard to the desired future character statement in clause A4.12 of P21 DCP, the proposal is considered to appropriately respond to the desired future character for the locality, in light of the zoning of the land.

- **Building height**

Submissions have been received in objection to the height of the building, specifically in relation to impacts upon views. As discussed separately, the proposal will not result in any unreasonable impacts upon existing views.

Two submissions have also been received challenging whether the height of the building complies with the 8.5m height limit. When the roof plan is superimposed onto the detailed survey, the consent authority can be satisfied that no part of the upper roof form (at RL26.45m AHD) is above the 8.5m height plane (ie: no part of the roof form overlaps with a spot height or contour of RL17.95m ADH or less).

There is a natural depression along the southern side boundary that generally aligns with the overland flow path. At the time of lodgement, the upper level awning projected slightly over this area, resulting in a minor non-compliance with the height plane. To ensure that the development is maintained below the 8.5m height limit, the awning has been pulled away from the southern side boundary and the natural occurring depression. The awning is now maintained within the footprint of the existing building, and the application has been supported by an interpolated height blanket based on survey data that confirms compliance in this regard.



- **View loss**

Submissions have been received from adjacent and nearby property owners raising concerns in relation to the potential loss of views arising from the proposed development. The impacts upon existing views have been assessed in accordance with the provisions of clause C1.3 of P21 DCP and the View Sharing planning principal developed by the NSW Land and Environment Court. The proposal does not result in any unreasonable impacts upon existing views, and in some instances, views may be somewhat improved.

- **Visual impact**

Submissions have been received from and on behalf of the two immediately adjoining property owners raising concern with regard to the visual impact of the proposal. The height of the proposed development is not dissimilar to the existing structure on the site, yet the bulk and scale is considerably reduced by virtue of the high degree of modulation, increased side setbacks and enhanced landscaping. The side facades feature varied materials and finishes to further reduce the apparent size/scale of the proposal. The proposal is not considered to result in an unacceptable visual impact as seen from adjoining properties.

- **Visual privacy**

Concern has been raised by and on behalf of the two immediately adjoining property owners in relation to visual privacy. The proposal currently includes balconies and windows that are located in close proximity to the side boundaries that provide opportunity to overlook the adjoining properties. As discussed with regard to clause C1.5 of P21 DCP, it is considered that conditions of consent can address areas of concern. Subject to these conditions, the proposal will result in an acceptable privacy outcome between neighbouring properties.

- **Acoustic privacy**

Submissions have been received in objection to the noise associated with the on-going use of the proposed development, including garbage collection, plant equipment, outdoor dining, live music, and potential use of the premises for functions.

Residential waste will be collected by Council contractors at the same time as surrounding residential development and is not considered to present an unreasonable nuisance to adjoining properties. Commercial waste is to be managed separately on the site. Should the application be approved, conditions of consent are recommended to require a Plan of Management for the site, inclusive of a requirement for commercial waste to be collected during the day after 7am and before 7pm.

Council's Health Officer supports the conclusions of the Acoustic Report that confirm that the noise levels associated with proposed plant equipment and the proposed retail tenancies, including outdoor dining areas, are acceptable. Further conditions of consent are recommended to ensure compliance with the recommendations of the Acoustic Report, including the following limitations:

- No background music in the ground floor retail space or the associated outdoor dining area.
- The capacity of the ground floor premises is limited to 44 indoor patrons, 20 outdoor patrons and 6 staff members.
- Trading hours are limited to 7am to 10pm, 7 days.

Further submissions were received from the property owners of the dwelling to the south, raising concern in relation to the noise associated with the use of the sunken terraces along the southern side boundary. The areas in question are landscaped planters, and are not proposed or designed for use as terraces or the like.

- **Trading hours**

Submissions have been received which question the intended trading hours of the retail premises proposed. The application seeks consent for the retail premises to trade between being 7am to 10pm, daily. As above, these hours are supported by Council's Health Officer.

- **Traffic**

Objection has been raised in regards to the additional traffic generated by the proposed development and the impact upon the existing street network, both during construction and over the life of the development. Particular concern is raised in relation to the Christmas holiday period, when the beach is at its busiest. The traffic generation associated with the proposed development is not dissimilar to that of the existing building, and will not result in any unreasonable impacts upon the local road network.

Given the weight capacity of the surrounding local road network and the access constraints associated with the site, a condition of consent is recommended to require the production of a Construction Traffic Management Plan to be adhered to during construction.

- **Parking**

The proposed retail parking shortfall is a key issue highlighted in the objections received. With 3 retail spaces and one accessible visitor space (which may be shared with the retail component), the proposal is non-compliant with the provisions of clause B6.3 of P21 DCP that prescribes the need for 10 retail parking spaces based on the area of GFA proposed.

The basement has been designed to maximise the amount of on-site spaces whilst also providing sufficient setbacks to neighbouring properties. Whilst previous schemes incorporated car-stackers to increase the amount of parking spaces within the confined area, this resulted in an increase to excavation to a degree that was not supported by Council. Further, car stackers cannot be relied upon for retail parking. As such, it is considered that the proposal accommodates as many parking spaces as is reasonably practical within the basement level.

Whilst the retail floor space could be reduced to lessen the demand for retail car parking, the amount of retail floor space is considered appropriate for the site and the incorporation of retail floor space presenting to Surf Road is required to ensure consistency with the shop top housing definition, and in turn, the permissibility of the development. The retention of retail to Whale Beach Road is also considered to be essential with regard to the context of the site.

The allocation of parking could be redistributed to reduce the extent of retail parking non-compliance, with only one space for each unit. However, the single lane driveway to Surf Road is only supported by Council's Traffic Engineer on the basis that there is a comparably low amount of public vehicles entering the site. The change to the allocation of parking would necessitate the widening of the proposed driveway, which would remove the on-street loading area and erode the Surf Road ground floor public domain.

The proposal is considered to be the most appropriate solution to the myriad of challenges presented on this site. For the vast majority of the year, parking within the locality is readily available. It is appreciated that the area faces parking stress during the summer holidays, however, at that time, the retail premises will serve those already in the area. The demand for parking is not dissimilar to that associated with the existing building, which provides no retail on-site parking. Overall, the proposal should not result in any unreasonable impacts upon parking supply within the locality.

- **Pedestrian safety**

Concern has been raised in regards to pedestrian safety along Surf Road. The proposed development includes public domain upgrades including a footpath to connect to the public car park. Subject to conditions requiring the installation and maintenance of a pedestrian warning system, the proposal is not considered to result in an unsafe environment for pedestrians.

- **Extent of excavation**

Objections have been received in relation to the extent of excavation proposed. The volume of excavation is significant, however, not unreasonable in the circumstances. The extent of excavation is largely derived by the size and layout of the basement car park, which has been appropriately minimised, specifically in comparison to previous schemes for the site.

- **Impact to trees**

Submissions have been received from the adjoining property owner at 229 Whale Beach Road, raising concern about potential impacts to an existing mature Norfolk Island Hibiscus (an exempt species) located centrally along the common boundary with the site. The existing tree has excellent screening properties and acts as a buffer between the two sites. Whilst it is appreciated that the Arborist Report indicates that the proposed works may result in a decline in the health of the tree, the report also acknowledges that this particular species is robust and adaptable and is likely to tolerate the level of impact proposed. This position is supported by Council's Landscape Officer.

The submissions also note that the commentary in the Arborist Report has changed between the current report and the report lodged with the previous application. This is largely due to the change to the level of excavation proposed in the vicinity of the tree, noting that the side setback

of the lower levels has been increased from 1.3m to 2.5m, moving further away from the tree in question.

Whether the Arborist Report considers the works associated with the overland flow path has also been questioned in the submissions. Page 9 of the Arborist Report includes specific relating to the construction of any footings associated with overland flow path. Should the application be approved, conditions of consent are recommended to ensure that the works undertaken in accordance with the recommendations of the Arborist Report, under the supervision of the Project Arborist.

- Overshadowing

The submissions from the adjoining property to the south at 229 Whale Beach Road raise concern in relation to increased overshadowing associated with the proposed development. The proposed development will result in additional overshadowing of the adjacent property throughout the year. However, sunlight will be retained to the principal area of private open space, being the deck area facing Whale Beach, for 3 hours in midwinter and as such, the proposal is consistent with the provisions of clause C1.4 of P21 DCP.

The submissions specifically raise objection to the loss of afternoon sunlight to the front of the property. The portion of the proposed development attributing to this impact is setback 4.6m from the southern side property boundary and is maintained below the height limit. Noting that the front yard is not the principal area of private open space and noting the compliance of the built form, the resultant impact is considered to be acceptable.

- Proximity of substation

The submissions from the adjoining property owners of 229 Whale Beach Road also raise concerns in relation to the proximity of the proposed substation to the common boundary. The proposed substation is located 1.6m from the common side boundary and 12m from the adjacent dwelling. The substation is to be screened by a concrete wall and a timber fence, and the proposed design and location is supported by Ausgrid.

- Roof Finish

A submission has been received raising concern with the proposed membrane roof finish, with concerns about the colour of a membrane roof and any potential glare. A condition of consent is recommended to ensure that the roof membrane is a dark and earthy colour.

Subject to the imposition of conditions of consent, none of the matters raised in objections warrant the refusal of the proposed development.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	<p>No objection, with conditions.</p> <p><i>Review of the proposed changes to the development reveal no significant difference in outcomes for Environmental Health's areas of focus. We have no objections, subject to a condition.</i></p>
Environmental Health (Food Premises, Skin Pen.)	<p>No objection, with conditions.</p> <p><i>Review of the proposed changes to the development reveal no significant difference in outcomes for food premises. We have no</i></p>

Internal Referral Body	Comments
	<p><i>objections, subject to the application of a number of conditions similar to the original proposal.</i></p>
<p>Landscape Officer</p>	<p>No objection, with conditions.</p> <p><i>Council's Landscape Referral is assessed against State Environmental Planning Policy No. 65 Design Quality for Residential Apartment Development, Pittwater LEP Zone B1 Neighbourhood Centre, and the following Pittwater 21 DCP Controls: B4.22 Preservation of Trees and Bushland Vegetation; C2.1 Landscaping; C2.20 Public Road Reserve - Landscaping and Infrastructure; and D12 Palm Beach Locality, including D12.1 Character as viewed from a public place.</i></p> <p><i>The SEPP 65 Design quality principles included in Schedule 1 that are relevant to the landscape outcomes of the proposal include: Principle 1: Context and neighbourhood character; Principle 4: Sustainability; and Principle 5: Landscape. In addition, under SEPP 65, the following provisions are to be considered: 3E: Deep Soil Zones; 3D: Communal Open Space; and 3F: Visual Privacy.</i></p> <p><i>The Review of Determination incorporates amended Landscape Plans by Trish Dobson and amended Arborist's Report by Urban Forestry Australia.</i></p> <p><i>Review of the amendments proposed indicate that existing street trees are to be retained and improved landscape outcomes are provided to address the planning controls.</i></p> <p><i>Some landscape works are included in the proposed works within the road reserves. Whilst not objected to in principle, approval of such works will be subject to a separate application under the Roads Act. Conditions have been included to address this aspect of the proposal.</i></p> <p><i>Subject to specific conditions regarding tree protection and completion and ongoing maintenance of landscape works, the proposal is considered satisfactory in consideration of the relevant controls.</i></p>
<p>NECC (Coast and Catchments)</p>	<p>No objection, no conditions.</p> <p><i>The development proposal is for demolition works and construction of a mixed use development comprising shop top housing and retail premises, with associated carparking, landscaping and strata subdivision at 231 Whale Beach Road, Whale Beach.</i></p> <p><u><i>Coastal Management Act 2016 and State Environmental Planning Policy (Coastal Management) 2018</i></u></p> <p><i>The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to the proposed development. The subject site is included on the 'Coastal Use Area' map under State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP) and the provisions of Clauses 14 and 15 of the CM SEPP are relevant to the proposed development.</i></p>

Internal Referral Body	Comments
	<p><i>While the subject site is not included on the Pittwater Coastal Risk Planning Map in Pittwater LEP 2014, as a consequence of the relatively low crest level (about 7.2m AHD) of the vehicle access ramp to the proposed basement carpark and the direction the driveway faces, there is potential for coastal hazards (in particular coastal inundation) to impact the proposed development over its design life. Coastal hazards may therefore constitute a risk to life and property if the basement carpark is inundated as a result of wave run-up during extreme, but rare, ocean storm events. In this regard, clause 15 of the CM SEPP states that:</i></p> <p>15 Development in coastal zone generally—development not to increase risk of coastal hazards Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.</p> <p><i>In order for Council to assess the proposed development in accordance with the requirements of clause 15 of the CM SEPP, a coastal risk management report should be lodged in support of the application. For guidance, the Coastline Risk Management Policy for Development in Pittwater (Appendix 6, Pittwater 21 DCP) outlines the requirements of a coastal risk management report.</i></p> <p><i>The report must be prepared by a specialist coastal engineer who is a registered professional engineer with chartered professional status (CP Eng) and with coastal engineering as a core competency and who has an appropriate level of professional indemnity insurance.</i></p> <p><i>The additional Coastal Engineering Advice has been received and contains the necessary information. The proposal is supported without conditions.</i></p>
NECC (Development Engineering)	<p>No objection, with conditions.</p> <p><u><i>Vehicular Access</i></u> <i>The proposal includes the provision of a new driveway crossing off Surf Rd to gain access to the basement parking area. The driveway has been modified to ensure no portion of the driveway burdens Council's property at Lot 10 DP 11067. The width of the modified driveway limits vehicular access to one a single lane. This issue must be addressed by Council's Traffic Engineers as it is contrary to the original proposal. The revised driveway grades provided by the applicant's Traffic consultant including swept paths are considered acceptable.</i></p> <p><u><i>Civil Works in Road Reserve</i></u> <i>The civil works in the public domain have been reviewed by Council's Landscape Architect and Traffic Team and are acceptable subject to conditions. The proposed stormwater diversion and overland flow path are also acceptable subject to conditions.</i></p>

Internal Referral Body	Comments
	<p><u>Geotechnical Report</u> <i>The Geotechnical report addresses the relevant DCP controls.</i></p> <p><i>Development Engineering support the application, subject to conditions as recommended.</i></p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>No objection, no conditions.</p> <p><i>The site is located outside the 1% AEP flood extent and as such, the provisions of clause 5.21 of PLEP 2014 and clause B3.11 of P21 DCP are not applicable in this instance. The development engineers have noted that the design of the trunk drainage line and overland flow path is acceptable.</i></p>
Parks, reserves, beaches, foreshore	<p>No objection, with conditions.</p> <p><i>This application is for the review of a previously determined Development Application. Proposed works include the demolition of existing site structures, and the construction of a new shop top housing development, alongside associated car parking, landscaping and strata subdivision.</i></p> <p><i>The property adjoins Whale Beach Reserve to the East, which is located down slope of proposed works. All works adjoining public land and foreshore must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries, and prevented from entering across the boundary and into the foreshore area and public reserve.</i></p> <p><i>No encroachments are permitted on public land and all works shall be confined within the legal boundaries of the site. It is noted that the original Architectural Plans demonstrated new driveway access was to utilise public reserve, however this has since been amended and removed. For this reason, no major concerns are raised with the amended Architectural Plans, and no encroachments on public land is anticipated.</i></p> <p><i>It is further noted that proposed works are inclusive of a four new car spaces and adjacent pathway on the southern side of surf road, with a new pathway linking to Whale Beach Road on the northern side of Surf Road. Although these works are subject to a Section 138 Roads Act application and are to be assessed by Councils Road Assets and Development Engineering Teams, no major concern is raised from a Parks perspective. It is however recommended that the new pathway on the northern side of the Surf Road be extended further east to the interaction of Surf Road and The Strand, providing better amenity and access for residents of Whale Beach Road..</i></p> <p><i>Parks Referral raises no objections to the proposal, subject to the following conditions.</i></p>
Road Reserve	<p>No objection, with conditions.</p>

Internal Referral Body	Comments
	<p><i>There is some impact on existing road assets however there is insufficient details to fully assess.</i></p> <p><i>DA Level 3 Plan - Neighbour View Study (DA63) - shows indented parking bays onroad to the east of the development.</i></p> <p><i>The existing longitudinal grade of Surf Road between the existing driveway crossing and the car park is inconsistent and will need to be resolved as part of resolving the vehicle access and roadworks that will need to form part of the required s138 Roads Act application to Development Engineering.</i></p> <p><i>The conveyance for stormwater in the road gutter to the existing drainage system will need to be detailed, as well as in the vicinity of the loading bay.</i></p> <p><i>Plan Site Analysis - Proposed - DA24 - seems to suggest additional works to Surf Road although no details are provided. Council should be supportive of these works if they are being considered by the applicant.</i></p> <p><i>The blade wall on the western side must ensure 1.5m clearance from the kerb for future pedestrian access</i></p> <p><i>Further consideration by Development Engineering in relation to requiring a Road Act application for infrastructure works (paving, retaining, driveways, and other improvements within the roadway.)</i></p> <p><i>Road Assets have no specific requirements.</i></p> <p><i>Development Engineering to review and apply requirement for s138 Road Act Application for all civil roadworks and landscaping within the public road reserve.</i></p> <p><u>Planner comment:</u> The concerns relating to a lack of information have been resolved through the imposition of conditions of consent.</p>
Strategic and Place Planning (Urban Design)	<p>No objection, with conditions.</p> <p><i>The proposal can be supported provided the following issues are addressed:</i></p> <p><i>Apartment Design Guide - Objective 4B-1 - Light wells are not the primary air source for habitable rooms</i></p> <p><i>The light wells where bedroom windows are orientated in apartment 1 and 2 should be cut right through to open up to the eastern boundary.</i></p>
Traffic Engineer	<p>No objection, with conditions.</p> <p><i>The application has been reviewed on parking and transport grounds. The DCP parking requirements indicate that the proposal should provide parking based on the following allocated basis:</i></p> <p><i>Residential - 2 spaces per apartment - 10 spaces</i></p> <p><i>Residential - 1 space per 3 apartments rounded up - 2 spaces</i></p>

Internal Referral Body	Comments
	<p><i>Retail - 1 space per 30 m² (299m² total) - 10 spaces.</i></p> <p><i>The proposal provides 10 allocated parking spaces for the residential component, 3 retail and 1 visitor/accessible space and relies on the adjoining public parking availability, and the customer base being local to the property.</i></p> <p><i>The parking deficiency is partly made up with the formalisation of the on-street parking directly to the east of the subject site in Surf Road, and the parking provided within the beach car park area further east of the site.</i></p> <p><i>The driveway access will need to have signals installed to manage the priority for access to the carpark.</i></p> <p><i>The proposal is supported subject to conditions provided.</i></p>
Waste Officer	No objection, with conditions.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs 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, REPs 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 55 - Remediation of Land

Clause 7(1)(a) of *State Environmental Planning Policy 55 - Remediation of Land (SEPP 55)* 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 use that would indicate any potential for land contamination. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7(1)(b) and (c) of SEPP 55 and the land is considered to be suitable for the continued residential and commercial land use proposed.

SEPP 65 - Design Quality of Residential Apartment Development

The application seeks consent for a three storey shop top housing development, comprising 5 dwellings, and as such, the provisions of SEPP 65 apply to this development.

Design Quality Principles

Clause 28 of SEPP 65 requires a consent authority to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration) the design quality of the development when evaluated in accordance with the design quality principles identified in Schedule 1 of SEPP 65, and the Apartment Design Guide ('ADG').

The proposal is considered with regard to the design quality principles of SEPP 65, as follows:

- **Principle 1: Context and Neighbourhood Character**

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.

Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment: With the exception of Whale Beach Surf Club, which comprises a function centre at the upper levels of the building, the site is surrounded by dwelling houses on land zoned E4 Environmental Living. The age, character and scale of the dwelling houses varies considerably, with original single storey beach houses interspersed between more recent dwelling multi-level dwellings. The form and scale of the dwellings is also influenced by the steep sloping topography of the area, with dwellings that step down the slope of the land, with multiple levels presenting towards the ocean/beach views. With this in mind, whilst the desired character statement aims to achieve dwellings that a limited to two storeys, a number of nearby and surrounding dwellings comprise 3-4 levels that are visible from the public domain.

Irrespective of the scale of development, there is a distinct landscaped character to the area which has been preserved and enhanced at the expense of available views. This is somewhat unique and is considered to be a defining feature of the locality.

The proposed development is limited to a height of three storeys in any one place, as measured above existing ground level, and has been stepped to follow the fall of the land, consistent with surrounding dwellings. The proposal provides an appropriate landscaped outcome that adequately balances the landscaped character of the area with the development outcomes anticipated on the B1 Neighbourhood Centre zoned site.

- **Principle 2: Built Form and Scale**

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.

Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment: The height of the development is maintained under the 8.5m height plane, which is the height standard that applies to all sites within the suburb of Whale Beach. However, it is noted that PLEP 2014 provides a variable height limit of 10m for dwelling houses on steeply sloping sites, and as such, it can be said that the proposal is equal to or less than the permissible height of existing and future development in the locality.

The proposed development also provides setbacks greater than the minimum prescribed by P21 DCP for dwelling houses and shop top housing development. This not only allows for landscaping to be incorporated along the side setbacks but ensures that the width of the development presenting to the public domain is reasonably minimised.

Whilst 5 levels present to Whale Beach, the development will not read as a five storey building. The landscaped podium above the Ground Floor acts to break down the massing of the development and provides a clear landscape buffer between the retail level and the residential levels above. Furthermore, the upper level is sufficiently set back, with no more than 3 storeys above ground in any one plane.

The proposed development is a skilful architectural design solution for the constrained site, that is an appropriate response to the form and massing of nearby and surrounding development.

- **Principle 3: Density**

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment: With 5 dwellings, the proposed development is compliant with the maximum density of 5.6 dwellings (1 per 150m² of site area) prescribed by clause 5.4A of PLEP 2014. The proposed dwellings will have a high level of internal amenity and will not result in any unreasonable impacts upon surrounding properties or the natural environment. The proposed massing is consistent with that anticipated on the site, and overall, the density of the proposed development is considered to be appropriate for the site.

- **Principle 4: Sustainability**

Good design combines positive environmental, social and economic outcomes.

Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.

Comment: The application was supported by a BASIX Certificate, which includes recommendations to ensure that the building performance exceeds minimum industry standards.

- **Principle 5: Landscape**

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.

Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.

Comment: The site meets the minimum landscaped area and deep soil requirements of the ADG and P21 DCP. The proposal will have the appearance of being integrated with the landform and landscape, consistent with surrounding development and the desired future character of the Palm Beach locality. The proposed development is considered to achieve an

appropriate landscaped solution that ensures that the built form is softened by landscaping, as required by Clause D12.1 (Character as viewed from a public place) of P21 DCP.

- **Principle 6: Amenity**

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.

Comment: As detailed in the assessment against the ADG and P21DCP, the proposed development performs well against the relevant design criteria, guidance and amenity controls. The proposal will achieve a high level of amenity for future occupants of the development, without unreasonably impacting upon the amenity of adjoining and nearby residences.

- **Principle 7: Safety**

Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment: The proposed development maximises opportunities for passive surveillance of the public domain. The proposal provides an appropriate interface with the public domain, and adequate delineation between the residential and commercial components of the development can be achieved by controlling access to stairs and lifts.

- **Principle 8: Housing Diversity and Social Interaction**

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.

Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.

Comment: The application provides a reasonable mix of apartment sizes, appropriate to the Whale Beach housing market.

- **Principle 9: Aesthetics**

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment: The proposed development is well articulated, with a material palette that is

appropriate for the development's beach-side setting.

ADG Assessment

The following table is an assessment against the ADG as required by SEPP 65:

DC – Is the development consistent with the Design Criteria?

DG – Is the development consistent with the Design Guidance?

O – Is the development consistent with the Objective?

ADG reference	Subclause	Design Criteria	DC	DG	O
Part 3 Siting the Development					
3A Site analysis	3A-1	Design decisions based on site analysis.	-	Y	Y
3B Orientation	3B-1	Layouts respond to the streetscape and optimise solar access.	-	Y	Y
	3B-2	Overshadowing of neighbouring properties is minimised during mid winter.	-	Y	Y
3C Public domain interface	3C-1	Transition between private and public places is achieved without compromising safety and security.	-	Y	Y
	3C-2	Amenity of the public domain is retained and enhanced.	-	Y	Y
3D Communal and public open space	3D-1	Communal open space has a minimum area equal to 25% of the site.	N	N	N
		Development must achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (midwinter).	N	N	N
	3D-2	Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting.	-	N	N
	3D-3	Communal open space is designed to maximise safety.	-	N	N
	3D-4	Public open space is responsive to the existing pattern and uses of the neighbourhood.	-	-	-
3E Deep soil zones	3E-1	At least 7% of the site are shall comprise deep soil zones.	Y	Y	Y
3F Visual privacy	3F-1	A minimum setback of 6m is to be provided between habitable rooms and balconies and side or rear setbacks, and a minimum setback of 3m is to be provided between non-habitable rooms and side and rear setbacks.	N	Y	Y
	3F-2	Building design elements increase privacy without compromising access to light and air and balance outlook from habitable rooms and private open space.	-	Y	Y
3G Pedestrian access and entries	3G-1	Entries and pedestrian access connects to and addresses the public domain.	-	Y	Y
	3G-2	Access, entries and pathways are accessible and easy to identify.	-	Y	Y
	3G-3	Large sites provide pedestrian links for access to streets and connection to destinations.	-	-	-
3H Vehicle	3H-1	Vehicle access points are designed and located to	-	Y	Y

ADG reference	Subclause	Design Criteria	DC	DG	O
access		achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.			
3J Bicycle and car parking	3J-1	Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.	-	-	-
	3J-2	Parking and facilities are provided for other modes of transport.	-	Y	Y
	3J-3	Car park design and access is safe and secure.	-	Y	Y
	3J-4	Visual and environmental impacts of underground car parking are minimised.	-	Y	Y
	3J-5	Visual and environmental impacts of on-grade parking are minimised.	-	-	-
	3J-6	Visual and environmental impacts of above ground enclosed car parking are minimised.	-	-	-
Part 4 Designing the building					
Amenity					
4A Solar and daylight access	4A-1	Living rooms and private open space of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at midwinter.	Y	Y	Y
		A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Y	Y	Y
	4A-2	Daylight access is maximised where sunlight is limited.	-	Y	Y
	4A-3	Design incorporates shading and glare control, particularly for warmer months.	-	Y	Y
4B Natural ventilation	4B-1	All habitable rooms are naturally ventilated.	Y	Y	Y
	4B-2	The layout and design of single aspect apartments maximises natural ventilation.	-	Y	Y
	4B-3	At least 60% of all apartments are naturally cross ventilated.	Y	Y	Y
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.		Y	Y	Y	
4C Ceiling heights	4C-1	As measured from the finished floor level, the minimum ceiling height for: - habitable rooms is 2.7m, - non-habitable rooms is 2.4m, and - ground floor non-residential uses is 3.3m.	N	Y	Y
		4C-2	Ceiling height increases the sense of space in apartments and provides for well proportioned rooms.	-	Y
	4C-3	Ceiling heights contribute to the flexibility of building use over the life of the building.	-	Y	Y
4D Apartment size and layout	4D-1	Apartments are required to have the following minimum internal areas:	Y	Y	Y
		Apartment Type	Min. internal area		
		Studio	35m ²		
		1 Bedroom	50m ²		

ADG reference	Subclause	Design Criteria	DC	DG	O															
4E Private open space and balconies		2 Bedroom																		
		3 Bedroom	70m ²																	
			The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each.																	
			Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	Y	Y	Y														
	4D-2		Habitable room depths are limited to a maximum of 2.5 x ceiling height.	Y	Y	Y														
			In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Y	Y	Y														
	4D-3		Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobes).	Y	Y	Y														
			Bedrooms have a minimum dimension of 3m (excluding wardrobes).	Y	Y	Y														
			Living rooms or combined living/dining rooms have a minimum width of 3.6m for 1 bedroom apartments and 4m for 2 bedroom apartments.	N	Y	Y														
			The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	Y	Y	Y														
		4E-1	All apartments are required to have primary balconies as follows:	Y	Y	Y														
			<table border="1"> <thead> <tr> <th>Apartment Type</th> <th>Min. area</th> <th>Min. depth</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>4m²</td> <td>-</td> </tr> <tr> <td>1 Bedroom</td> <td>8m²</td> <td>2m</td> </tr> <tr> <td>2 Bedroom</td> <td>10m²</td> <td>2m</td> </tr> <tr> <td>3 Bedroom</td> <td>12m²</td> <td>2.4m</td> </tr> </tbody> </table>	Apartment Type	Min. area	Min. depth	Studio	4m ²	-	1 Bedroom	8m ²	2m	2 Bedroom	10m ²	2m	3 Bedroom	12m ²	2.4m		
Apartment Type	Min. area	Min. depth																		
Studio	4m ²	-																		
1 Bedroom	8m ²	2m																		
2 Bedroom	10m ²	2m																		
3 Bedroom	12m ²	2.4m																		
		For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m ² .	Y	Y	Y															
	4E-2	Primary private open space and balconies are appropriately located to enhance liveability for residents.	-	Y	Y															
	4E-3	Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.	-	Y	Y															
	4E-4	Private open space and balcony design maximises safety.	-	Y	Y															
4F Common circulation and spaces	4F-1	The maximum number of apartments off each circulation core on a single level is eight.	Y	Y	Y															
	4F-2	Common circulation spaces promote safety and provide for social interactions between residents.	-	Y	Y															

ADG reference	Subclause	Design Criteria	DC	DG	O										
4G Storage	4G-1	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is to be provided:	Y	Y	Y										
		<table border="1"> <thead> <tr> <th>Apartment Type</th> <th>Min. area</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>4m³</td> </tr> <tr> <td>1 Bedroom</td> <td>6m³</td> </tr> <tr> <td>2 Bedroom</td> <td>8m³</td> </tr> <tr> <td>3 Bedroom</td> <td>10m³</td> </tr> </tbody> </table>	Apartment Type	Min. area	Studio	4m ³	1 Bedroom	6m ³	2 Bedroom	8m ³	3 Bedroom	10m ³			
		Apartment Type	Min. area												
Studio	4m ³														
1 Bedroom	6m ³														
2 Bedroom	8m ³														
3 Bedroom	10m ³														
At least 50% is to be located within the apartment.															
	4G-2	Additional storage is conveniently located, accessible and nominated for individual apartments.	-	Y	Y										
4H Acoustic privacy	4H-1	Noise transfer is minimised through the siting of buildings and building layout.	-	Y	Y										
	4H-2	Noise impacts are mitigated within apartments through layout and acoustic treatments.	-	Y	Y										
4J Noise and pollution	4J-1	In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings.	-	Y	Y										
	4J-2	Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.	-	Y	Y										
Configuration															
4K Apartment Mix	4K-1	A range of apartment types and sizes is provided to cater for different household types now and into the future.	-	Y	Y										
	4K-2	The apartment mix is distributed to suitable locations within the building.	-	Y	Y										
4L Ground floor apartments	4L-1	Street frontage activity is maximised where ground floor apartments are located.	-	-	-										
	4L-2	Design of ground floor apartments delivers amenity and safety for residents.	-	-	-										
4M Facades	4M-1	Building facades provides visual interest along the street while respecting the character of the local area.	-	Y	Y										
	4M-2	Building functions are expressed by the facade.	-	Y	Y										
4N Roof design	4N-1	Roof treatments are integrated into the building design and positively respond to the street.	-	Y	Y										
	4N-2	Opportunities to use roof space for residential accommodation and open space are maximised.	-	Y	Y										
	4N-3	Roof design incorporates sustainability features.	-	Y	Y										
4O Landscape design	4O-1	Landscape design is viable and sustainable.	-	Y	Y										
	4O-2	Landscape design contributes to the streetscape and amenity.	-	Y	Y										
4P Planting on structures	4P-1	Appropriate soil profiles are provided.	-	Y	Y										
	4P-2	Plant growth is optimised with appropriate selection and maintenance.	-	Y	Y										
	4P-3	Planting on structures contributes to the quality and amenity of communal and public open spaces.	-	Y	Y										

ADG reference	Subclause	Design Criteria	DC	DG	O
4Q Universal design	4Q-1	Universal design features are included in apartment design to promote flexible housing for all community members.	-	Y	Y
	4Q-2	A variety of apartments with adaptable designs are provided.	-	Y	Y
	4Q-3	Apartment layouts are flexible and accommodate a range of lifestyle needs.	-	Y	Y
4R Adaptive reuse	4R-1	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	-	-	-
	4R-2	Adapted buildings provide residential amenity while not precluding future adaptive reuse.	-	-	-
4S Mixed Use	4S-1	Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement.	-	Y	Y
	4S-2	Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents.	-	Y	Y
4T Awnings and signage	4T-1	Awnings are well located and complement and integrate with the building design.	-	Y	Y
	4T-2	Signage responds to the context and desired street character.	-	-	-
Performance					
4U Energy efficiency	4U-1	Development incorporates passive environmental design.	-	Y	Y
	4U-2	Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer.	-	Y	Y
	4U-3	Adequate natural ventilation minimises the need for mechanical cooling.	-	Y	Y
4V Water management and conservation	4V-1	Potable water use is minimised.	-	Y	Y
	4V-2	Urban stormwater is treated on site before being discharged to receiving waters.	-	Y	Y
	4U-3	Flood management systems are integrated into site design.	-	-	-
4W Waste management	4W-1	Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.	-	Y	Y
	4W-2	Domestic waste is minimised by providing safe and convenient source separation and recycling.	-	Y	Y
4X Building maintenance	4X-1	Building design detail provides protection from weathering.	-	Y	Y
	4X-2	Systems and access enable ease of maintenance.	-	Y	Y
	4X-3	Material selection reduces ongoing maintenance costs.	-	Y	Y

Detailed ADG Discussion

- **Communal open space (3D-1, 3D-2 and 3D-3)**
The proposed development does not provide any areas of communal open space, and as such,

is inconsistent with the design criteria of Objective 3D-1 of the ADG that requires an area of communal open space of at least 211m², being 25% of the area of the site. With no communal open space, the proposal is also inconsistent with the second design criteria of this Objective, which requires good solar access to 50% of the communal open space in midwinter. The absence of an areas of communal open space is justified in this instance as all units comprise areas of private open space of high amenity, that exceed the minimum requirements prescribed by Objective 4E-1 of the ADG. Furthermore, the site is advantageously located in close proximity to Whale Beach with ample space for outdoor recreation.

- **Visual privacy (3F-1)**

With varied setbacks ranging from Nil to 4.6m on the northern side and 2.5m to 4.6m on the southern side, the proposal is non-compliant with Objective 3F-1 of the ADG that prescribes a 6m minimum setback between habitable rooms/balconies and side boundaries, with recommendations for increased setbacks up to 9m where the site adjoins a different zone that permits lower density residential development.

With E4 zoned land to both sides of the subject site, and a minimum width of 19.8m, the 9m minimum side setback prescribed by this objective would essentially sterilise the site. Even at 6m, the developable area of the subject site is significantly diminished.

The proposed development incorporates varied setbacks to respond to the circumstances of the site. The lesser setbacks (ranging from Nil - 2.5m are proposed at the Basement and Ground Level, with soil to be reintroduced such that the lesser setbacks are not perceived from the public domain. As the development protrudes above ground, the setbacks increase to 4.0m at Level 1, 2 and 3. The Level 1, 2 and 3 side setbacks exceed the 3m minimum requirement of P21 DCP, and provide sufficient spatial separation to the adjoining properties in light of the height and density proposed. The setbacks also allow for increased landscaping along the side boundaries to reduce the visual impact of development and minimise impacts upon the adjoining dwellings. The Level 5 setback is increased further to 4.6m, to reduce the apparent size of the development as seen from the public domain.

Objective 3F-1 aims to ensure that adequate separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy. Subject to conditions of consent (as discussed with regard to clause C1.5 Visual Privacy of P21 DCP), the proposed development will comprise adequate screening along the side setbacks, comprising both fixed screens and landscaping, to ensure that reasonable levels of privacy are achieved between properties. The proposal is not overly reliant upon the adjoining sites to achieve the necessary separation, with the proposed above ground setbacks approximately equal to that of the adjoining dwellings to achieve 9m (minimum) spatial separation distances between buildings on both sides.

- **Ceiling heights (4C-1)**

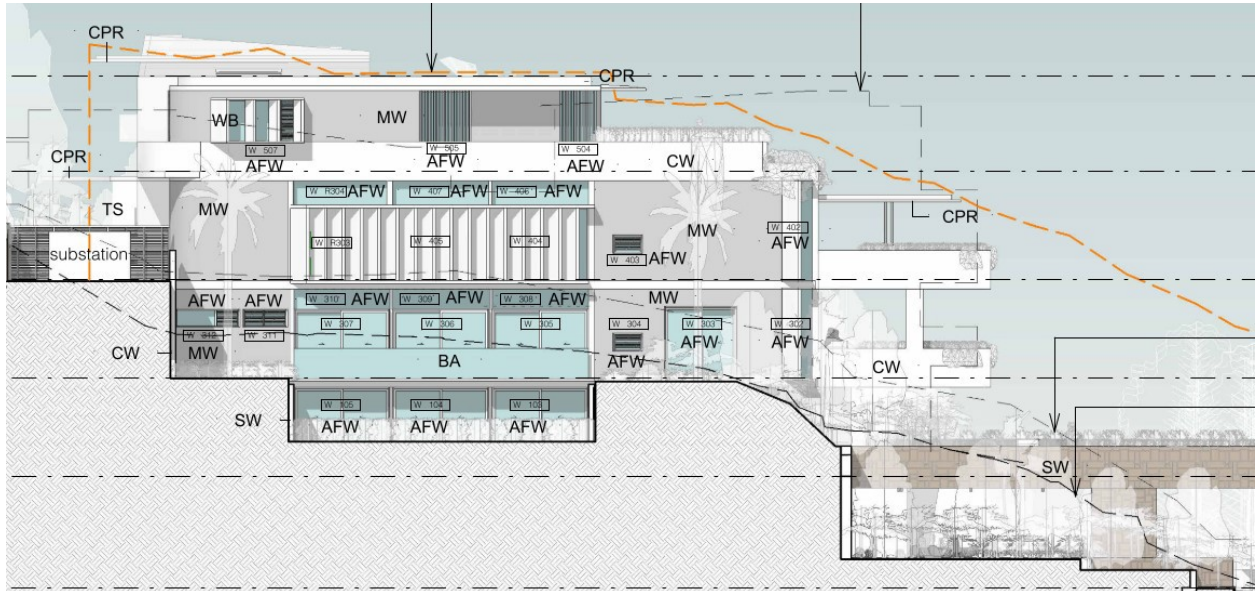
The Level 4 retail tenancies have a ceiling height of 3.2m, just shy of the 3.3m minimum ceiling height prescribed by Objective 4C-1 of the ADG. The minor non-compliance is supportable in circumstances where the area of the retail spaces is limited, and noting the large expanse of glass and views available from within the spaces proposed. The retail areas will have an abundance of natural light, with a high internal amenity for occupants and visitors alike.

Whilst the floor-to-floor measurements indicate adequate ceiling heights for the residential levels, when measured, the ceilings heights depicted in the Sections appear to be approximately 2.6m, resulting in slight non-compliance with the 2.7m minimum ceiling height prescribed by this objective. It is assumed that this is a scaling issue with the plans, and there is no reason why 2.7m ceiling heights cannot be achieved. This has been confirmed by

the Architect, who is happy for the matter to be the subject of a condition, if necessary.

- Daylight & Natural ventilation (4A-2 and 4B-1)

The proposed development includes rooms that are excavated into the slope of the land. At worst, the FFL of Bedroom 3 in Apartment 1 is up to 4.7m below existing ground level, as shown in the Southern Elevation, below.



Southern Elevation - The lower black dashed line depicts

natural ground,

with the boundary fence depicted by the light grey dashed

line above.

The areas of excavation beyond the proposed rooms are 2.9m* wide, comprise landscaping, and are designed to provide natural light and ventilation to these rooms. Whilst by no means ideal, the design essentially mimics an enclosed courtyard design or a light well, both of which are anticipated by the ADG and seen throughout shop top housing developments and residential flat buildings in the wider local government area. The proposed design solution is supported in these circumstances, noting that:

- The size of the courtyard space is sufficient (2.9m* x 9.8m) and increases at the level above,
- In addition to the 2.9m* width of the courtyard, the boundary is located a further 1.1m away, resulting in a 4m setback from the fence line,
- The primary orientation of each of the units is to the east, and the units are not single aspect apartments,
- The windows extend across the full width of each room (3.2m wide glazed panels),
- Each room has a minimum ceiling height of 2.7m high, with 2m high windows,
- The amenity of the unit is otherwise high, with excellent solar access and magnificent views of Whale Beach.

The image below was provided by the Architect to demonstrate the internal amenity of the proposed bedrooms.



Council's Urban Designer has suggested that the amenity of these spaces can be improved by extending the level of excavation all the way across to the east of the site, as opposed to reintroducing natural ground level to the east of the rooms in question. This will mean that the excavation is open to the east, with only two enclosing walls as opposed to three. A condition of consent is recommended in this regard.

*Note: The width of the excavated terrace is increased to 2.9m as a result of conditions recommended by Council's Development Engineer to reduce the width of the overland flow path.

Whilst minor elements of the proposal are inconsistent with the minimum requirements of the ADG, the proposal is considered to be a skillful design solution for the constrained site. In accordance with clause 30 of SEPP 65, the consent authority can be satisfied that the proposal has had adequate regard to the objectives of the ADG and the design quality principles of SEPP 65.

SEPP (Infrastructure) 2007

The application was referred to Ausgrid in accordance with the provisions of clause 45 of *State Environmental Planning Policy (Infrastructure) (SEPP Infrastructure)*. Ausgrid provided a response confirming that there are no objections to the proposed development, with conditions recommended with regard to safe work methods.

SEPP (Coastal Management) 2018

The site is identified as being within the Coastal Use Area under the provisions of *State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP)*, and the provisions of this policy are

applicable in relation to the proposal. Following detailed assessment of the proposal development, the consent authority can be satisfied of the following:

- the proposal is not likely to cause an adverse impact upon the matters listed in clause 14(1) of the CM SEPP,
- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 14(1) of the CM SEPP,
- the proposal has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development, and
- the proposal is not likely to cause increased risk of coastal hazards on the site or other land.

As such, the proposal is consistent with the provisions of the CM SEPP, including the matters prescribed by clauses 14 and 15 of this policy.

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

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	8.5m	-	Yes
Density	1 per 150m ² 5.63 dwellings	1 per 168.8m ² 5 dwellings	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.6 Subdivision - consent requirements	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.5A Density controls for certain residential accommodation	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

7.2 Earthworks

The matters prescribed by clause 7.2 of PLEP 2014 are considered, as follows:

- a. *the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development*

Comment: The proposed development proposes works to existing stormwater infrastructure and overland flow paths, however the works will provide an improved outcome that will not detrimentally effect drainage patterns or soil stability.

- b. *the effect of the proposed development on the likely future use or redevelopment of the land*

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

- c. *the quality of the fill or the soil to be excavated, or both*

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

- d. *the effect of the proposed development on the existing and likely amenity of adjoining properties*

Comment: The impacts upon the amenity of adjoining properties associated with the proposed earthworks are limited to the short-term impacts during construction. Should the application be approved, conditions of consent are recommended to limit impacts during excavation/construction.

- e. *the source of any fill material and the destination of any excavated material*

Comment: The excavated material will be processed according to the Waste Management Plan for the development. Should the application be approved, conditions of consent are recommended to require any fill to be of a suitable quality.

- f. *the likelihood of disturbing relics*

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

- g. *the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area*

Comment: The proposed development will not result in any adverse impacts upon Whale Beach. Should the application be approved, conditions of consent are recommended to ensure that the waterway is protected during construction and over the life of the development.

- h. *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment: Conditions are included in the recommendation of this report that will minimise the impacts of the development.

- i. the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.

Comment: The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

Having regard to the above assessment, the consent authority can be satisfied that the matters listed in clause 7.2 of PLEP 2014 have been considered.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Retail Percentage	25% of GFA (338.5m ²)	332.4m ² or 24.5%	6.15m ² or 1.8%	No
Front building line	Whale Beach Rd: 3.5m	3.5m	-	Yes
	Surf Rd: 3.5m	Nil	3.5m or 100%	No
Side building line	North: 3.0m	Basement: Nil - 4.5m	3.0m or 100%	No
		Ground: 1.2m - 4.5m	1.8m or 60%	No
		Levels 1-3: 4.0m	-	Yes
		Level 4: 4.6m	-	Yes
	South: 3.0m	Basement: 2.5m	0.5m or 16%	No
		Ground: 2.5m	0.5m or 16%	No
		Levels 1-3: 4.0m	-	Yes
		Level 4: 4.6m	-	Yes

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for Landscaped area - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: 38/40 x 100 = 95 then 100 - 95 = 5% variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency with Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B2.6 Dwelling Density and Subdivision - Shop Top Housing	No	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	N/A	N/A
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	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	Yes	Yes
C2.1 Landscaping	Yes	Yes
C2.2 Safety and Security	Yes	Yes
C2.3 Awnings	No	Yes
C2.5 View Sharing	Yes	Yes
C2.6 Adaptable Housing and Accessibility	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	No	Yes
C2.16 Undergrounding of Utility Services	Yes	Yes
C2.20 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C2.22 Plant, Equipment Boxes and Lift Over-Run	Yes	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

A4.12 Palm Beach Locality

The site is located within the Palm Beach Locality, as defined and identified in clause A4.12 of P21 DCP. The proposed development is considered with respect to the desired future character statement for the Palm Beach Locality, as follows:

The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.

Comment: The proposed development is located on land zoned B1 Neighbourhood Centre and dwelling houses are prohibited on the land. Whilst reference to a two storey character is important to understand the dominant form and massing of surrounding development, the two storey height restriction does not apply to the proposed development. The size and scale of the proposed development does not detract from the locality's ability to remain a primarily low density residential area. As a result of the zoning of the land, the subject site is the exception to this part of the character statement.

Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, community and recreational facilities will serve the community.

Comment: The location of medium density development is set by the zoning of the land, and the proposed shop top housing development is permissible with consent on the site. The proposal includes commercial/retail floor space that will serve the community.

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

Comment: The site has appropriate access to necessary infrastructure, with upgrades proposed to stormwater infrastructure and the public domain.

Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment.

Comment: The proposed development will be maintained below the height of existing and proposed canopy trees. Whilst the bulk and scale of the development is greater than that of surrounding dwelling houses, it has been reasonably minimised in light of the type of development that is proposed and that which is anticipated on the site. The height of the upper roof form is generally consistent with that of surrounding development, and contributes to the horizontal massing of existing built form, which is generally a consequence of the subdivision pattern and the way in which buildings are sited along the roadways. The proposed development has a high level of facade modulation, and the proposed colours and materials will harmonise with the beach-side setting.

Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

Comment: The exposed built form is appropriately stepped to follow the slope of the land. Whilst the

proposal involves significant excavation, this is somewhat unavoidable due to the design of the basement and the provision of retail floor space to both road frontages. The development has been supported by certification from appropriately qualified Geotechnical and Coastal Engineers to ensure that the development is designed to be safe from hazards.

The design, scale and treatment of future development within the commercial centres will reflect a 'seaside-village' character through building design, signage and landscaping, and will reflect principles of good urban design. Landscaping will be incorporated into building design. Outdoor cafe seating will be encouraged.

Comment: Whilst not within a nominated 'centre', the site is within the B1 Neighbourhood Centre zone. The proposal is a high quality architectural response that incorporates materials and landscaping that is appropriate for a site in such close proximity to the beach.

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

Comment: As above, the proposal includes a significant volume of excavation. However, this is not unreasonable in light of the zoning of the land and the type of development proposed. The proposal provides a landscaped outcome that is commensurate with surrounding and nearby development.

Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities.

Comment: The development proposes upgrades to the public domain, including the footpaths along each street frontage. The proposed development will not result in any unreasonable impacts upon vehicular, pedestrian or cycle access.

As such, the proposed development is consistent with the desired future character of the Palm Beach Locality.

B2.6 Dwelling Density and Subdivision - Shop Top Housing

Clause B2.6 of P21 DCP requires a minimum of 338.5m² or 25% of the gross floor area of the building to be retail/commercial floor space. The proposal is just shy of this requirement, with 332.4m² (24.5%) of retail floor space proposed. The proposed non-compliance (6.15m² or 1.8%) is relatively minor and does not detract from consistency with the outcomes of the control, as follows:

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

Comment: The minor area of non-compliance does not detract from consistency with the desired character of the locality.

- *The density and scale of development reflects the infrastructure capability of the area.*

Comment: The proposed development includes upgrades to existing public infrastructure where required (stormwater and public domain works) such that the resultant local infrastructure will accommodate the density and scale of the development.

- *Design opportunities and site layout efficiencies are improved through amalgamation of allotments.*

Comment: Not applicable - The site cannot amalgamate with adjacent lots as it is the only property with the B1 Neighbourhood Centre zoning.

- *The development does not adversely impact upon adjoining residential development.*

Comment: Neither the minor shortfall in retail floor space or the minor exceedance in residential floor space will result in adverse impacts upon adjoining residential development.

- *An appropriate mix of residential and commercial development is provided, ensuring the functionality of commercial centres.*

Comment: The proposed development provides an appropriate mix of retail and residential floor space. In particular, the area will benefit from the incorporation of retail premises presenting to both street frontages.

- *Meet the economic and employment needs of Pittwater Community.*

Comment: The proposed development provides three retail tenancies, with an increase in commercial floor space compared to the current development.

B6.3 Off-Street Vehicle Parking Requirements

The number of parking spaces proposed is inconsistent with the minimum requirements of this clause, as follows:

Type	Required	Proposed	+/-
Residential	10	10	0
Visitor	2	1	-1
Retail	10	3	-7
Total	22	14	-8

The proposed parking shortfall is supportable on merit, as the proposal is consistent with the outcomes of this clause, as follows:

- *An adequate number of parking and service spaces that meets the demands generated by the development.*

Comment: The number of on-site parking spaces is considered to be adequate in light of the constraints of the site and noting the proximity of the development to the large public car park along the beach front. The proposed development provides an increase in parking compared to the existing site circumstances, which is also complemented by on-street time restricted parking along the Whale Beach Road frontage.

The application was supported by a Traffic Assessment that identifies the availability of parking within the vicinity of the site, which is supported by Council's Traffic Engineer.

- *Functional parking that minimises rainwater runoff and adverse visual or environmental impacts while maximising pedestrian and vehicle safety.*

Comment: The proposed basement car park is a functional design response. Should the application be approved, conditions of consent are recommended to require the installation of a system that alerts pedestrians when a vehicle is leaving the site to ensure pedestrian safety.

- *Safe and convenient parking.*

Comment: The proposed basement provides secure parking for residents and visitors to the development. On-street parking along Whale Beach Road or within the public beach car park is within convenient walking distance from the site.

C1.3 View Sharing

and C2.5 View sharing of P21 DCP

Beach and ocean views are currently enjoyed over the subject site by neighbouring and nearby properties. In response to the notification of the application, submissions were received raising concerns with regard to the potential impact of the development upon such views from the owners of the following properties:

- 229 Whale Beach Road
- 194 Whale Beach Road
- 198 Whale Beach Road
- 200 Whale Beach Road
- 11 Morella Road

Height poles were erected to demonstrate the indicative height of the proposal. An assessment of the level of impact based upon these height poles and with regard to the four step View Sharing Planning Principle has been undertaken, as follows:

229 Whale Beach Road

1. The dwelling at 229 Whale Beach Road is located immediately to the south of the subject site. The occupants of the dwelling at 229 Whale Beach Road currently enjoy expansive views of Whale Beach from all east facing windows of the property.
2. On the upper level of the dwelling at 229 Whale Beach Road, views in a north-easterly and easterly direction are obtained from bedrooms and a central hallway/stairway. On the ground level, views are obtained in a north-easterly and easterly direction from the living area, kitchen, dining area and the balcony (primary area of private open space) The views obtained in an easterly direction are obtained over the rear of the site itself, where as views in a north-easterly direction towards the northern headland are obtained across the common side boundary. All views obtained are generally available in a seated and standing position, with the exception of the kitchen.
3. The potential impact of the development is limited to the views available in a north-easterly direction from the rooms/areas on the northern side of the building, being the master bedroom on the upper floor and balcony at the ground floor. From the master bedroom, the proposed

development will obstruct a minor portion of the carpark in the foreground, with the land and water interface and the headland beyond unaffected by the proposal, as shown in Image 1. As the bulk of the development is to be stepped back from that which currently exists on the site, the occupants of the dwelling at 229 Whale Beach Road are likely to obtain greater views of the northern end of the beach and the headland beyond.



Image 1 - North-easterly view from master bedroom at 229 Whale Beach Rd.
Height pole highlighted in red.

From the balcony, the proposal will obstruct a minor portion of the northern end of the beach, as shown in Image 2, below. In light of the expansive views retained throughout the property, the impact is considered to be negligible.



Image 2 - North-easterly view from balcony at 229 Whale Beach Rd.
Height pole highlighted in red.

4. The portion of the development visible from the east facing rooms at 229 Whale Beach Road is maintained below the height limit, with setbacks of 4m from the common side boundary (and greater than the 3m setback of P21 DCP). In light of both the level of impact and in consideration of the applicable controls, the level of impact associated with the development upon views currently enjoyed from 229 Whale Beach Road is reasonable.

194 Whale Beach Road

1. The dwelling at 194 Whale Beach Road is located to the south-west and up slope of the site, on the opposite side of Whale Beach Road. The occupants of 194 Whale Beach Road enjoy ocean and beach views in a north-westerly and easterly direction.
2. Ocean views are available from the primary living room on the ground floor, and beach and ocean views are available in a north-easterly and easterly direction from a loft above. The views in question are obtained in both a seated and standing position, over the front property boundary of the 194 Whale Beach Road and over downslope properties (including the site).
3. The subject site and the height poles are not visible from the ground floor living room. The potential impact is limited to the beach views available from the loft space above the primary living area, as shown in Image 3, below. Whilst it is appreciated that views that comprise the land/water interface are valued more highly than ocean views, in consideration of the nature of the space affected, and the extent of views available to the property as a whole, the impact is considered to be minor.



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

4. The portion of the development attributing to this impact is the upper floor, which is sited in a manner that is consistent with relevant DCP controls and is maintained below the permitted height limit. The level of impact is considered to be reasonable.

198 Whale Beach Road

1. 198 Whale Beach Road is located to the west and up slope of the site, on the opposite side of Whale Beach Road. The occupants of 198 Whale Beach Road currently enjoy ocean and beach views from all east facing rooms and balconies.
2. The ocean and beach views are available in an easterly direction from the primary living room and adjacent balcony, with more expansive views available from the master bedroom and adjacent balcony on the level above. All views are gained over the front boundary of 198 Whale Beach Road and over properties downslope (including the site).
3. The potential impact to views currently enjoyed from the primary living area and adjacent balcony is limited to a portion of the beach view, currently gained over the roof of the single storey portion of the building fronting Whale Beach Road, as shown in Image 4, below. The potential impact to views enjoyed from the master bedroom and adjacent balcony is also limited to this same view corridor, as shown in Image 5, below. The level of impact upon the available views is considered to be appropriately described as minor.



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



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

4. The portion of the development attributing to this impact is the upper floor, which is sited in a manner that is consistent with relevant DCP controls and is maintained below the permitted height limit. The level of impact is considered to be reasonable.

200 Whale Beach Road

As seen from 200 Whale Beach Road, the proposed development is maintained the volume of the existing development, with no additional impacts to views. As shown in Image 6 (below), the proposal is likely to enhance views from 200 Whale Beach Road, as the massing is to be redistributed closer to Whale Beach Road.



Image 6 - View from east facing terrace at 200 Whale Beach Road.
Height pole highlighted in red.

11 Morella Road

As seen from 11 Morella Road, the proposed development is generally maintained within the volume of the existing development, with no additional impacts to views. As shown in Image 7 (below), the proposal is likely to enhance views from 11 Morella Road, as the massing is to be redistributed closer to Whale Beach Road.



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

Overall, the proposed development does not result in any unreasonable impacts upon existing views and the proposal is consistent with the requirements of this control.

C1.5 Visual Privacy

and C2.12 Protection of residential amenity

Clauses C1.5 and C2.12 of P21 DCP prescribe the need to protect windows and areas of private open space of adjoining dwellings within 9m from overlooking. Whilst it is appreciated that privacy measures may restrict a portion of the expansive of views available from the property, there is scope to achieve a more appropriate balance between the obtainment of views and the protection of privacy of neighbouring properties.

The areas with no screening or inadequate screening are considered individually, as follows:

- Level 1 - Apartment 1 Terrace
The terrace of Apartment 1 is located 4m from the southern side boundary, within 9m of areas of private space of the adjoining property to the south, with no screening along the side elevation. This lack of screening in this location is supported as the boundary fence and proposed landscaping will act as a privacy screen to prevent overlooking of the adjoining property to the south.
- Level 1 - Apartment 2 Lower Terrace

The lower level terrace of Apartment 2 is located in close proximity to the northern side boundary. Whilst within 9m of private open space of the adjoining dwelling to the north, the terrace is located down slope of the area and will be screened by existing and proposed landscaping. The lack of any additional screening is supported.

- Level 2 - Apartment 3 Terrace

The terrace of Apartment 3 is located 4m from the side boundary and is within 9m of areas of private space of the adjoining property to the south. The majority of the southern edge of the balcony features a fixed planter containing Snow Maiden's, which are a hedging plant that can grown to 1m in height. A BBQ is also proposed along the southern elevation. Someone standing at the BBQ will be able to overlook the private open space of the adjoining dwelling, and until such time that the plants achieve maturity, a person standing at the terrace will also be able to look down into the neighbours rear yard. With this in mind, it is considered that additional screening is required along the southern elevation of the terrace.

A condition of consent is recommended to require the planter box to continue the entire length of the terrace. A fixed privacy screen to a height of 1.7m above the FFL of the terrace is to be incorporated on the inside edge of the planter, for a minimum distance of 3m measured from the eastern facade of the external wall. The privacy screen can be constructed of translucent glazing or timber screens (TS), of the same detail of those proposed on Level 4.

- Level 2 - Apartment 2 Upper Terrace

The upper level terrace of Apartment 2 is located in close proximity to the northern side boundary. Whilst within 9m of private open space of the adjoining dwelling to the north, the terrace is located down slope of the area and will be screened by existing and proposed landscaping. The lack of any additional screening is supported.

- Level 3 - Apartment 4 Terrace

The terrace of Apartment 4 is located 4m from the side boundary and is within 9m of areas of private space of the adjoining property to the south. Similar to the Apartment 3 terrace, the majority of the southern edge of the balcony features a fixed planter containing Snow Maiden's, which are a hedging plant that can grown to 1m in height. A BBQ is also proposed along the southern elevation. Someone standing at the BBQ will be able to overlook the private open space of the adjoining dwelling, and until such time that the plants achieve maturity, a person standing at the terrace will also be able to look down into the neighbours rear yard. As with the terrace of Apartment 3, it is considered that additional screening is required along the southern elevation of the terrace.

A condition of consent is recommended to require the planter box to continue the entire length of the terrace. A fixed privacy screen to a height of 1.7m above the FFL of the terrace is to be incorporated on the inside edge of the planter, for a minimum distance of 3m measured from the eastern facade of the external wall. The privacy screen can be constructed of translucent glazing or timber screens (TS), of the same detail of those proposed on Level 4.

- Level 4 - Apartment 5 Terrace

The northern elevation of the terrace is located 4.6m from the northern side boundary and is located within 9m of private open space of the adjoining dwelling to the north. Whilst the terrace below in the same location incorporates fixed louvre screening, no screening is proposed on Level 4. This is considered appropriate with regard to the different levels of the development, as overlooking will only be achieved when someone walks up to the balustrade and looks down, away from the available views beyond.

The southern elevation of the terrace is located 4.6m from the southern side boundary and is

located within 9m of private open space of the adjoining dwelling to the south. The south-eastern corner also incorporates a spa, elevating people above the level of the balustrade. The full length planter is considered to appropriately prevent people from approaching the edge of the balcony and looking down into the neighbouring property. However, it is questionable as to whether the spa can be accommodated in that position, as it compromises the height of the balustrade. The spa is not supported in this location.

A condition of consent is recommended to require the deletion of the proposed spa on the Level 4 terrace.

Subject to the imposition of conditions, the proposed development is considered to achieve reasonable privacy between properties.

C2.3 Awnings

Clause C2.3 of P21 DCP prescribes that continuous awnings are to be provided to the footpaths adjoining the development site. The proposed development incorporates awnings, however they do not extend beyond the property boundaries. In light of the circumstances of the site, being a stand alone B1 Neighbourhood Centre zoned site, and with regards to the nature of the adjoining road reserves, a continuous footpath awning is not required or appropriate in this instance.

D12.5 Front building line

Whale Beach Road

With a proposed setback of 3.5m, the portion of the development fronting Whale Beach Road is consistent with the minimum front setback prescribed by this control.

Surf Road

With a setback that ranges from Nil to 11.6m, the portion of development fronting Surf Road is non-compliant with the 3.5m setback prescribed by this control. The areas of non-compliance are addressed individually, as follows:

- Basement
The proposed basement level is sited with a Nil setback to Surf Road. The Nil setback is supported in circumstances where the non-compliance is not readily visible and noting that the additional floor space is required to maximise the number of off-street parking spaces.
- Level 1 (Podium Level)
The proposed podium level has been designed to follow the curvature of the road and skillfully delineates between the excavated retail space and the residential levels above. The protruding landscaped podium also acts to screen the upper levels when viewed from Surf Road, to create a more 'human scale' along the narrow frontage of the site. Whilst portions of the Level 1 terraces also encroach within the 3.5m setback area, the podium structure essentially acts as an awning to the outdoor commercial area below, which is anticipated under the provisions of both P21 DCP and the ADG.

The areas of non-compliance are supportable on merit, as the Outcomes of the control are otherwise achieved, as follows:

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

Comment: The areas of non-compliance do not detract from consistency with the Palm Beach

Locality. If anything, the non-compliant podium level assists in breaking down the scale of the development and gives the appearance that the building is integrated with the natural landform, in a manner that is consistent with the desired future character statement.

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

Comment: The areas of non-compliance do not attribute to any unreasonable impacts upon views.

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

Comment: Not applicable - the site does not adjoin a main road.

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

Comment: The proposed podium structure incorporates a landscaped planter enhancing landscaping across the frontage of the site.

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

Comment: Vehicle movement in a forward direction is achieved.

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

Comment: The proposed development appropriately responds to the landscaped character of the area.

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

Comment: The protruding nature of the podium level actively reduces the apparent size of the development, and acts as a buffer between the retail and residential components of the development.

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

Comment: The proposed development will result in a significant improvement to the aesthetic quality and amenity of both the Whale Beach Road and Surf Road streetscapes. The proposal also incorporates upgrades to the public domain which will improve pedestrian safety in the area.

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

Comment: The proposed development, particularly the non-compliant podium level, is a highly considered architectural form that sensitively relates to the constraints of the site.

D12.6 Side and rear building line

With Nil - 4.3m setbacks proposed on the northern side boundary and 2.5m setbacks proposed along the southern side boundary, the Basement and Ground Floor are non-compliant with the 3m minimum

setbacks prescribed.

The non-compliant portions of the development are appropriately minimised and are maintained below existing and proposed ground level, such that the non-compliance will not be discernible from the public domain. All structure above ground have been sited in compliance with this control. Where non-compliance is proposed, the application proposes to reintroduce soil and plantings above, such that the landscaped quality of the setback area will not be compromised.

In circumstances where the non-compliance will not be perceived and landscaping can still be accommodated, and when the exposed portions of the buildings are sited with setbacks greater than the 3.0m minimum, the minor areas of non-compliance are supportable on merit.

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 2021

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of \$164,930 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$16,492,961.

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 2000;
- 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

The amended proposal the subject of the review application has satisfactorily addressed the reasons for the refusal of DA2020/0442, with no new issues arising that would warrant the refusal of the application.

Whilst the proposal is larger than the majority of surrounding dwelling houses, this is not an unreasonable or unacceptable outcome, as the zoning of the site and the relevant design requirements differ from that of surrounding sites.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to REV2021/0034 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:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA01 Site Plan, Revision W	8 November 2021	Richard Cole Architecture
DA03 Basement Plan, Revision V	7 October 2021	Richard Cole Architecture
DA04 Ground Floor Plan, Revision V	7 October 2021	Richard Cole Architecture
DA05 Level 1 Plan, Revision V	7 October 2021	Richard Cole Architecture
DA06 Level 2 Plan, Revision V	7 October 2021	Richard Cole Architecture
DA07 Level 3 Plan, Revision V	7 October 2021	Richard Cole Architecture
DA08 Level 4 Plan, Revision V	7 October 2021	Richard Cole Architecture
DA09 Roof Plan, Revision W	8 November 2021	Richard Cole Architecture
DA10 Elevations, Revision V	7 October 2021	Richard Cole Architecture
DA11 Elevations, Revision W	8 November 2021	Richard Cole Architecture
DA12 Boundary Elevations, Revision V	7 October 2021	Richard Cole Architecture
DA13 Section, Revision V	7 October 2021	Richard Cole Architecture
DA14 Section, Revision V	7 October 2021	Richard Cole Architecture
DA35 Finishes Board - Surf Road,	7 October 2021	Richard Cole

Revision V		Architecture
DA36 Finishes Board - Whale Beach Road, Revision V	7 October 2021	Richard Cole Architecture

Engineering Plans		
Drawing No.	Dated	Prepared By
21078/01 Proposed Car Park Layout, Revision D	10 November 2021	TEF Consulting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Access Report, Issue B	28 July 2021	Accessible Building Solutions
Acoustic Report, Revision B	5 February 2020	JHA Services
Acoustic Report Addendum Letter	26 July 2021	JHA Services
Geotechnical Report	27 September 2019	Douglas Partners Pty Ltd
Geotechnical Forms 1 and 1a	28 October 2021	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
BCA Design Compliance Report	2 August 2021	MBC Modern Building Certifiers
Stormwater Asset Relocation Investigation & Report	October 2020	Barrenjoey Consulting Engineers 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:

Landscape Plans		
Drawing No.	Dated	Prepared By
DA-L01C Landscape Site Plan	9 August 2021	Trish Dobson
DA-L02C Site Planting Plan	9 August 2021	Trish Dobson
DA-L07C Planting Schedule	9 August 2021	Trish Dobson
DA-L08C Tree Retention Plan + Details	9 August 2021	Trish Dobson
DA-L09C Street Elevations	9 August 2021	Trish Dobson

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By

Waste Management Plan	23 April 2020	Diane Cassar and Leslie Cassar
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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.

2. **Compliance with Other Department, Authority or Service Requirements**

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	Response Ausgrid Referral	[undated]

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website 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.

3. **Approved Land Use**

This consent authorises a mixed-use development, comprising shop top housing and additional retail premises.

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

retail premises means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following—

- (a) *(Repealed)*
 - (b) *cellar door premises,*
 - (c) *food and drink premises,*
 - (d) *garden centres,*
 - (e) *hardware and building supplies,*
 - (f) *kiosks,*
 - (g) *landscaping material supplies,*
 - (h) *markets,*
 - (i) *plant nurseries,*
 - (j) *roadside stalls,*
 - (k) *rural supplies,*
 - (l) *shops,*
 - (la) *specialised retail premises,*
 - (m) *timber yards,*
 - (n) *vehicle sales or hire premises,*
- but does not include highway service centres, service stations, industrial retail outlets or restricted premises.*

This consent authorises the first use of the Ground Floor and Level 3 retail premises. Retail 1 is specifically approved for the purpose of a restaurant or cafe.

***restaurant or cafe** means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, takeaway meals and drinks or entertainment are also provided.*

Any variation to the approved land use and/occupancy of the building or any part of the building beyond the scope of the above definitions will require separate development consent.

Reason: To ensure compliance with the terms of this consent.

4. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of

the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- (i) protect and support the adjoining premises from possible damage from the excavation, and
- (ii) where necessary, underpin the adjoining premises to prevent any such damage.
- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

5. **General Requirements**

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety

- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$164,929.61 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$16,492,961.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

7. **Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

8. **Construction, Excavation and Associated Works Bond (Drainage works)**

The applicant is to lodge a bond of \$150,000 as security against any damage or failure to complete the construction of stormwater drainage works as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

9. **Construction, Excavation and Associated Works Security Bond (Crossing / Kerb)**

The applicant is to lodge a Bond of \$100,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

10. **Construction, Excavation and Associated Works Bond (Maintenance for civil works)**

The developer/applicant must lodge with Council a maintenance bond of \$25,000 for the construction of public domain works. The maintenance bond will only be refunded upon completion of the six month maintenance period, if work has been completed in accordance with the approved plans and to the satisfaction of Council. The maintenance bond is to be paid prior to Council issuing practical completion.

Reason: To ensure adequate protection of Council infrastructure.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

11. **Public Domain Plan**

A Public Domain Plan for works within the Whale Beach Road and Surf Road public road reserve, generally in accordance with the approved plans, and in compliance with Council's

Northern Beaches Public Spaces Vision & Design Guidelines, shall be submitted as part of a Infrastructure Works on Council Roadway application under Section 138 of the Roads Act, for approval by Council, with sufficient detail design information including the following development requirements:

- a. all civil works shall be accompanied by Engineering drawings including existing and proposed levels, long and cross sections, proposed design layout and materials, for the works proposed within the road reserve,
- b. proposed stormwater diversions works as required by the Development Engineer Referral response,
- c. reinstatement of the existing driveway crossing along Whale Beach Road to kerb and footpath, including details plans and sections, and selection of materials, with proposed gradients no more than a 2.5% fall from building openings to top of kerb, and to match existing levels along adjoining properties,
- d. footpath material shall comply with the Northern Beaches Public Spaces Vision & Design Guidelines applicable to the 'Beach' Character Area Map, requiring: insitu concrete, off-white cement, and broom finish,
- e. tactile ground surface indicators at kerb ramps crossings and crossovers in accordance with Australian Standard 1428.4.1-2009 - Design for Access and Mobility,
- f. details of any utility alignment and level changes,
- g. existing street trees retained or removed, and any street tree replacement planting,
- h. any proposed street tree planting within pavement shall be in accordance with Northern Beaches Council's Standard Drawing 1300 - Tree Pit Details, and the tree species shall be at a pre-ordered 200 litre container,

The following works shall also be documented:

- i. any public seating in accordance with Council's *Northern Beaches Public Spaces Vision & Design Guidelines*,
- j. any bicycle racks in accordance with Council's *Northern Beaches Public Spaces Vision & Design Guidelines*,
- k. kerb ramps in accordance with Council's *Northern Beaches Public Spaces Vision & Design Guidelines*,
- l. any other additional relevant works within the road reserve.

Any work carried out upon public land shall have all the necessary prior approvals and permits from Council and utility authorities in place prior to commencement to conduct such works.

Reason: compliance with Council standards for works on public land.

12. **On Slab Landscape Works**

Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall also be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following soil depths are required to support landscaping as proposed:

- i) 300mm for lawn
- ii) 600mm for shrubs
- iii) 1m for small trees

Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

For all new residential works with two or more dwellings and mixed use developments the maintenance activity schedule shall incorporate an on-going maintenance plan that shall be submitted to the Certifying Authority outlining a program to monitor and replenish soil levels as a result of soil shrinkage over time.

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

13. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the proposed Council piped drainage system in Surf Road. The plans are to include an overland flow path a minimum of 600mm wide along the southern boundary of the site.

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

Reason: To ensure appropriate provision for disposal and stormwater management arising from the development.

14. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Douglas Partners dated September 2019 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.

15. **Car Parking Standards**

The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. The dimensions of car parking bays and aisle widths in the car park are to comply with Australian/New Zealand Standard for Off-Street Parking AS/NZS 2890.1-2004.

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 vehicles.

16. **Vehicular Swept Paths**

Vehicular manoeuvring paths must be provided to demonstrate all vehicles can enter or depart the site in a forward direction without encroaching on required car parking spaces. The drawings must be compliant with Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

Details demonstrating compliance with this condition must be submitted to the Certifying Authority prior to the issue of the construction Certificate.

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

17. **Construction Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

Truck movements must be agreed with Council's Traffic Engineer prior to submission of the CTMP.

The CTMP must address following:

- i The proposed phases of construction works on the site, and the expected duration of each construction phase
- i The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- i Make provision for all construction materials to be stored on site, at all times
- i The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- i The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- i The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- i Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- i Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- i Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- i The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- i Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around

Council street trees

- i Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- i The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- i Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- i The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- i Proposed protection for Council and adjoining properties
- i The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

18. **Removal of Redundant Driveways**

All redundant driveways shall be removed and reinstated to Council standard kerb and gutter. Suitably prepared plans shall be submitted to for an approval under and approved by Council prior to the issue of the Construction Certificate. All costs associated with the works shall be borne by the applicant.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approval.

Reason: To maximise on street car parking by removing driveways that are no longer needed in accordance with Council policy.

19. **Amendments to the Approved Plans**

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

- i 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.
- i 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.
- i Apartment 3 terrace: The planter box proposed on the southern elevation of the terrace associated with Apartment 3 is to continue the entire length of the terrace. A fixed

privacy screen to a height of 1.7m above the FFL of the terrace is to be incorporated on the inside edge of the planter, for a minimum distance of 3m measured from the eastern facade of the external wall. The privacy screen can be constructed of translucent glazing or timber screens (TS), of the same detail of those proposed on Level 4.

- i Apartment 4 Terrace: The planter box proposed on the southern elevation of the terrace associated with Apartment 4 is to continue the entire length of the terrace. A fixed privacy screen to a height of 1.7m above the FFL of the terrace is to be incorporated on the inside edge of the planter, for a minimum distance of 3m measured from the eastern facade of the external wall. The privacy screen can be constructed of translucent glazing or timber screens (TS), of the same detail of those proposed on Level 4.
- i 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.

20. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

21. **Submission Roads Act Application for Civil Works in the Public Road**

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of the public domain works which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plans shall be prepared by a qualified civil engineer.

The design must include the following information:

1. The diversion of the existing Council stormwater pipeline from Whale Beach Road to Surf Rd. The kerb and gutter is to be reconstructed under the path of the pipeline.
2. Stormwater pits must be provided at each bend in the pipeline, including a lintel with a minimum size of 1.8 metres.
3. The pits are to be designed in accordance with Council's standard details.
4. Reinstatement of all redundant crossings to kerb, footpath and grass.
5. Reconstruction of the kerb and gutter along Surf Road.
6. Provision of a 4 metre wide driveway crossing off Surf Rd generally in accordance with Council standard drawing A4/3330/3 NL.
7. Details of the service bay and associated footpath and retaining walls in Surf Road.

8. Details of the parking bays and footpath to the east of the site in Surf Road to The Strand.
9. Details of all works proposed in the Public Domain Plan condition of this consent.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

22. **Utilities Services**

Prior to the issue of the Construction Certificate, the Applicant is to obtain the following:

- (a) A letter from the utility provider confirming that satisfactory arrangements have been made for the approved development have been made; and
- (b) Evidence that notification has been received from a utility authority that, requirements for the development can be provided.

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

Reason: To ensure that services have been provided as required by this Consent.

23. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

24. **Sub-Soil Seepage**

The Applicant is to submit plans demonstrating that all sub-soil seepage drainage is discharged via a suitable silt arrester pit, directly to Council's nearest stormwater drainage line being in Surf Road and is to be carried out in accordance with relevant Australian Standards. (Note: At the time of determination the following (but not limited to) Standards applied:

- i Australian/New Zealand Standard AS/NZS 3500.3 - 2003 Plumbing and drainage - Stormwater drainage
- i Australian/New Zealand Standard AS/NZS 3500.3 - 2003 / Amdt 1 - 2006 Plumbing and drainage - Stormwater drainage.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior

to the issue of the Construction Certificate.

Reason: To ensure appropriate drainage and Stormwater management on site to protect amenity of residents.

25. **Shoring of Council's Road Reserve (Temporary road anchors)**

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

Written approval from Council under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Council's road reserve. The Owner's approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

26. **Stormwater Drainage Application**

The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the overland flow path along the southern boundary of the site which is to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website at www.northernbeaches.nsw.gov.au > Council Forms > Stormwater Drainage Application Form.

The design must include the following information.

1. The perimeter walls are to be watertight to ensure no flows enter the site or adjoining property.
2. The overland flow path is to be clear of any vegetation that will impede the flow.
3. Turf is to be provided between the rear of the public footpath in Whale Beach Road and the opening of the overland flow path at the boundary of the site, graded to ensure all flows enter the channel.
4. Details of the removal of the existing 450 mm pipeline traversing the site.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges.

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

Reason: To ensure appropriate provision for disposal and maintenance stormwater management and compliance with the BASIX requirements, arising from the development.

27. **Plans of Kitchen Design, construction and fit out**

Prior to any Construction Certificate (CC) being issued, detailed plans that demonstrate compliance with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, the Food Act 2003 and Australian Standard AS 4674 'Design, construction and fit out of food premises', must be submitted to and approved by the Certifying Authority. These plans are to be prepared by a suitably qualified person.

The plans must detail adequate provision for storage including separate storage of food, equipment, chemicals and personal belongings.

Reason: To ensure that the food premises complies with the design construction and fit-out requirements.

28. **Mechanical Ventilation Plans**

Detailed plans of mechanical ventilation that demonstrate compliance with Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings", must be submitted to and approved by the Certifying Authority. Any external exhaust discharge must also be above the roofline and discharged in a manner that is not likely to cause an amenity impact. These plans are to be prepared by a suitably qualified person.

Reason: To ensure that the design, construction and installation requirement for mechanical ventilation complies with the Australian Standard 1668.2.

29. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

30. **External Finishes to Roof**

With the exception of the copper detailing, the upper floor membrane roof is to be a natural tone, in the medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

31. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- ı "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- ı Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

Reason: To ensure compliance with the statutory requirements of Sydney Water.

32. **Internalised Services**

Service ducts, drainage, plumbing, pipes, cables and conduits are to be internalised and must

not be visible from the public domain. All service, communication and electricity connections must be provided underground.

Provision must also be made for any future ventilation or exhaust system required for the retail tenancies throughout the development.

Details demonstrating compliance with this requirement must be provided to the certifying authority prior to the issuance of the construction certificate.

Reason: To remove visual clutter and ensure a high-quality finish to the development.

33. Acoustic Report Recommendations have been Incorporated into Designs and Structural Plans

The recommendations of the Acoustic Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure appropriate amenity.

34. Access Report Recommendations have been Incorporated into Designs and Structural Plans

The recommendations of the Access Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure the development is accessible.

35. Waste and Recycling Requirements

Details demonstrating compliance with Northern Beaches Waste Management Guidelines, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with the Northern Beaches Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans, a modification(s) to the development may be required.

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

36. Project Arborist

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 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.

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 Certifying Authority 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.

37. No Access Through Adjoining Park/Reserves

Access to the site through an adjoining park/reserve is prohibited without the written approval of the Council.

Reason: To ensure protection of council parks/reserves.

38. Works on Land Owned or Managed By Council

No works are to be carried out on Land owned or managed by Council.

Note: Separate approval from Council is required for access driveways, paths, stairs, connections to underground utilities (stormwater, gas, sewer, electricity, telecommunications etc.), and landscaping works on Land owned or managed by Council.

Reason: To protect the land owned and managed by Council.

39. Installation and Maintenance of Sediment and Erosion Control

Prior to commencement of works on site, sediment and erosion controls must be installed along the immediate downslope of the works area, in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period.

Techniques used for erosion and sediment control on site are to be adequately maintained and

monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site.

40. **Work Zones and Permits**

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane and a Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

Reason: To ensure Work zones are monitored and installed correctly.

41. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

1. 229 Whale Beach Road, Whale Beach
2. 233 Whale Beach Road, Whale Beach

The dilapidation reports are to be prepared by a suitably qualified person. A copy of the reports must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage arising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

42. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

43. Protection of Sites of Significance

a) Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

b) Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

44. Protection of Existing Street Trees

a) All existing street trees in the vicinity of the works shall be retained during all construction stages and the street trees fronting the development site shall be protected by tree protection fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings and in accordance with the Arboricultural Impact Assessment dated July 2021 prepared by Urban Forestry Australia and Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

b) 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 unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture.

c) All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

d) Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: Tree protection.

45. Tree and Vegetation Protection

a) Existing trees and vegetation shall be retained and protected including:

- i) all trees and vegetation within the site not indicated for removal on Tree Retention Plan Dwg No. DA L08C dated 24.4.20 Prepared by Trish Dobson, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with the Arboricultural Impact Assessment dated July 2021 prepared by Urban Forestry Australia and Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5

- metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by the Project Arborist,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with the Project Arborist,
 - 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 the Project Arborist on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with the Project Arborist including advice on root protection measures,
 - vii) should either or all of v), vi) and vii) occur during site establishment and construction works, the Project Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
 - 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 Australian Standard 4970-2009 Protection of Trees on Development Sites,
 - ix) the activities listed in section 4.2 of Australian Standard 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 Australian Standard 4373-2007 Pruning of Amenity Trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

- c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites do not occur within the tree protection zone of any tree and any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained on the site during the construction is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property 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.

Reason: Tree and vegetation protection.

46. **Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

47. **No Access Through Land Owned or Managed by Council**

Site access is not approved for delivery of materials nor construction of the development through adjacent Land owned or managed by Council, without the written approval of Council.

Reason: Public safety, landscape amenity and tree protection.

48. **Protection of Council's Public Assets**

Any damage to Council's public assets shall be made good by the applicant and/or the contractor, to the satisfaction of Council.

Council's public assets include, but is not limited to the following: road, kerb and gutters, crossovers, crossings, paths, grass verge, open space and associated elements such as furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993.

The dumping or storage of building materials, spoil, vegetation, green waste, or any other material in Land owned or managed by Council is prohibited.

Asset Protection Zones as defined within Planning for Bush Fire Protection 2019, shall be contained wholly within development sites, and shall be managed by the development site owner in perpetuity.

Existing trees shall be protected in accordance with AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor canopy disturbance. Should any problems arise with regard to the existing trees on public land during the construction period, the applicant is to immediately Contact Council's Tree Services section and resolve the matter to Council's satisfaction.

Reason: To protect and/or restore any damaged public asset.

49. **Staff and Contractor Parking**

The applicant is to make provision for parking for all construction staff and contractors for the duration of the project. All Staff and Contractors are to use the basement parking once available. All necessary facilities are to be provided to accommodate this requirement including lighting in the basement, security cameras, etc.

Reason: To ensure minimum impact of construction activity on local parking amenity.

50. **Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to

Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

51. **Ongoing Management**

The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

52. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- i Work Health and Safety Act;
- i Work Health and Safety Regulation;
- i Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- i Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)];
- i Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- i The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

53. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

54. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the

wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

55. Progress Certification (Road & Subdivision)

The applicant shall provide written certification is to be provided by a suitably qualified engineer upon completion and/or as and when requested by the Roads Authority for the following stages of works:

- (a) Silt and sediment control facilities
 - (b) Laying of stormwater pipes and construction of pits
 - (c) Proof Roll
 - (d) Sub-grade trimmed and compacted **
 - (e) Base-course laid and compacted **
 - (f) Kerb and gutter construction
 - (g) Pavement
 - (h) Landscaping and vegetation
 - (i) Clean-up of site, and of adjoining Council roadway and drainage system.
- (**To be tested by a recognised N.A.T.A. approved laboratory).

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works.

56. Civil Works Supervision

The Applicant shall ensure all civil works approved in the Section 138 and Section 68 application approvals are supervised by an appropriately qualified and practicing Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works.

57. Public Domain Construction

The applicant shall construct the public domain works in accordance with the following:

- (a) All works are to be constructed in accordance with the Section 138 Road Act approval
- (b) Council is to inspect the the works to ensure compliance with Section 138 Road Act approval.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure compliance of Public Domain works with Council's specification for engineering works.

58. **Notification of Inspections (infrastructure works to be handed over to Council)**

Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

- (a) Installation of Silt and Sediment control devices
- (b) Prior to backfilling of pipelines
- (c) Prior to pouring of stormwater gully pits
- (d) Prior to pouring of kerb and gutter, footpath and driveway crossing
- (e) Subgrade level / basecourse level / subbase
- (f) Sealing road pavement

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification.

Reason: To ensure new Council infrastructure is constructed in accordance with Auspec 1 Council's design and specification standards.

59. **Vehicle Crossing**

The Applicant is to construct one vehicle crossing 4 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/3 NL and the Section 138 Roads Act application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to kerb, footpath and grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

60. **Kerb and Gutter Construction**

The Applicant is to construct kerb and gutter and associated works along the entire frontage of the site in accordance with Northern Beaches Council Drawing No. A4 2276/A. Prior to the pouring of concrete, the works are to be inspected by Council and an approval issued.

The approval is to be submitted to the Principal Certifying Authority.

Reason: To facilitate the preservation of on street parking spaces.

61. **Waste/Recycling Requirements (Waste Plan Submitted)**

During demolition and/or construction the proposal/works shall be generally consistent with the Approved Waste 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.

CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

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.

Note: Please consider registering your new tree through the link below to be counted as part of the NSW State Government's 5 Million trees initiative

<https://5milliontrees.nsw.gov.au/>

Reason: To maintain environmental amenity.

63. **Landscape Completion**

a) Landscaping is to be implemented in accordance with the approved Landscape Plans.

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

Reason: Environmental amenity.

64. **Condition of Retained Vegetation - Project Arborist**

Prior to the issue of any Occupation Certificate a report prepared by the project arborist shall be submitted to the Certifying Authority assessing the health and impact on all existing trees required to be retained including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

65. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

66. **Removal of All Temporary Structures/Materials and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences/bunds are to be removed from the site.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To protect reserve amenity and public safety.

67. **Signage and Linemarking – Implementation**

The applicant is to install all signage and linemarking, as per any Roads Act approval. These works are to be completed prior to the issue of any Occupation Certificate.

Reason: To ensure compliance with the Road Act.

68. **Basement Garage Traffic Signal System**

To prevent conflicting vehicle flows on the internal basement garage ramp and avoid vehicles having to reverse up/ down the ramp, a traffic signal system must be installed at each ramp entry, designed to warn drivers about to enter the road of any conflicting vehicle approaching.

The signal system must;

- i be clearly visible from ramp entrances,
- i is to clearly indicate to an approaching driver, by way of red light or wording, that an opposing vehicle has entered the ramp,
- i Incorporate linemarking to delineate traffic flow and nominate waiting bay locations to allow vehicles to overtake another.

Details of the system, including the system operation, components and placement within the development, must be specified by a practising Traffic Engineer. This engineer is to submit a compliance certificate to the Principal Certifying Authority that the system has been installed and operating as designed, in accordance with the requirements of this condition, prior to the issue of any Occupation Certificate issued for the development.

Reason: To ensure no vehicle conflicts within the basement carpark.

69. **Allocation of parking spaces**

All residential units must be assigned two parking spaces, and each retail tenancy must be assigned one parking space. The visitor/disabled parking space is to remain common property.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any occupation certificate.

Reason: To ensure parking availability for residents.

70. **Disabled Parking Spaces**

Where disabled parking spaces are provided they must be in accordance with AS2890.6:2009.

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

Reason: To ensure compliance with Australian Standards.

71. **Shared Zone Bollard**

A bollard is to be provided at the shared zone between disabled spaces in accordance to Australian Standards AS2890.6:2009.

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

Reason: To ensure compliance with Australian Standards.

72. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The reports must:

- i Compare the post-construction report with the pre-construction report,
- i Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- i Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any occupation certificate.

Reason: To maintain proper records in relation to the proposed development.

73. **Acoustic Certification Prior to Occupation Certificate**

A suitably qualified Acoustic Consultant is to confirm that the development was constructed in accordance with the recommendations of the Acoustic Report reference in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifying Authority prior to the issuance of any occupation certificate.

Reason: To ensure appropriate amenity.

74. **Plan of Management**

A Plan of Management is to be produced for the management of the site and adjacent road reserves identifying:

- a. Consistency with all 'on-going' conditions of consent over the life of the development
- b. Outlining all required maintenance responsibilities for private infrastructure, including water management infrastructure and landscaping, and
- c. Space management strategies including activity coordination, site cleanliness, rapid repair of vandalism and graffiti, and the maintenance of lighting and landscaping.

The Plan of Management is to be submitted to the Principal Certifying Authority prior to the issuance of the occupation certificate.

Reason: To ensure the on-going management of the site over the life of the development.

75. **Driveway and Parking Facility Work**

The Applicant shall submit a Traffic Engineers' certificate certifying that the driveway and parking facility was constructed in accordance with this development consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking.

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

Reason: Compliance with this consent.

76. **Retaining Wall in Public Domain**

The retaining wall works shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any occupation certificate.

Reason: Public and private safety

77. **Geotechnical Certification Prior to Occupation Certificate**

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

78. **Certification of Civil Works and Works as Executed Data within the Public Domain**

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed works have been constructed in accordance with this consent and the approved Section 138 and Section 68 approvals. Works as Executed data certified by a registered surveyor in relation to boundaries and/or relevant easements, prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Assets' in an approved format shall be submitted to Council for acceptance and the acceptance issued to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure compliance of works with Council's specification for engineering works.

79. **Restriction as to User (Stormwater Overland Flow Path)**

The Applicant shall create lodge a Legal Documents Authorisation Application with Council to create a restriction as to user on the title over the area affected by the 100 year ARI stormwater overland flow path in order to:

1. Prohibit the alteration of the final stormwater overland flow path. (A copy of the Works-as-Executed plan details overdrawn on a copy of the approved drainage plan of the overland flow path and Hydraulic Engineers certification must be submitted to Council).
2. Prohibit the erection of any structure (including fencing) within the overland flow path without the written permission of Northern Beaches Council.

Northern Beaches Council shall be nominated as a party to release, vary or modify such restriction.

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

Reason: To ensure no modification of the stormwater overland flow path and the building platform without Council's approval.

80. **Kitchen Design, Construction and Fit-out of Food Premises Certification**

Prior to the issuing of the occupation certificate, certification is to be provided to the Principal Certifying Authority by a suitably qualified person demonstrating that the design, construction and fit out of food premises kitchen is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

Reason: To ensure that the kitchen complies with Australian Standard design requirements.

81. **Mechanical Ventilation Certification**

Mechanical ventilation must comply with Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings" prior to any Occupation Certificate (OC) being issued.

Certification is to be provided to the Principal Certifying Authority by a suitably qualified person that the mechanical ventilation complies with the above requirements.

Reason: To ensure that the installed mechanical ventilation complies with the requirements of the Australian Standard 1668.2.

82. **Garbage and Recycling Facilities**

All internal walls of the waste rooms shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

Waste room floors shall be graded and drained to an approved Sydney Water drainage system.

Waste rooms shall be clear of any other services or utilities infrastructure such as gas, electricity air-conditioning, plumbing, piping ducting or equipment.

Reason: To prevent pollution of the environment, provide a safe workplace for contractors and residents and to protect the amenity of the area.

83. **Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)**

The units within the development are to be numbered in accordance with the Australia Post Address Guidelines (https://auspost.com.au/content/dam/auspost_corp/media/documents/Appendix-01.pdf).

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website Unit Numbering for Multi-Unit Developments Form

External directional signage is to be erected on site at driveway entry points and on buildings and is to reflect the numbering in the table provided. Unit numbering signage is also required on stairway access doors and lobby entry doors.

It is essential that all signage throughout the complex is clear to assist emergency service providers in locating a destination within the development with ease and speed, in the event of an emergency.

Details are to be submitted with any Interim/Final Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

84. **Sydney Water**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site

www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to “Water Servicing Coordinator” under “Developing Your Land” or telephone 13 20 92 for assistance.

Following application a “Notice of Requirements” will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure compliance with the statutory requirements of Sydney Water.

85. Access Certification Prior to Occupation Certificate

A suitably qualified Access Consultant is to confirm that the development has been constructed in accordance with the recommendations of the Access Report reference in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifying Authority prior to the issuance of any occupation certificate.

Reason: To ensure appropriate accessibility.

86. Waste and Recycling Facilities Certificate of Compliance

The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste and recycling facilities are provided.

87. Waste/Recycling Compliance Documentation

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled.

88. Positive Covenant for Council and Contractor Indemnity

A positive covenant shall be created on the title of the land prior to the issue of an Interim/Final Occupation Certificate requiring the proprietor of the land to provide access to the waste storage facilities. The terms of the positive covenant are to be prepared to Council’s requirements, (Appendix E of the Waste Management Guidelines), at the applicant’s expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities.

89. Authorisation of Legal Documentation Required for Waste Services

The original completed request form (NSW Land Registry Services form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying

Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

90. Landscape Maintenance

a) If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

b) If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

c) All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

91. Sight lines within carparks

The required sight lines to pedestrians and other vehicles in and around the carpark and entrance(s) are not to be obstructed by landscaping or signage.

Reason: To maintain unobstructed sight distance for motorists.

92. Hours of Operation

The hours of operation of the retail premises and restaurant or cafe are to be restricted to 7:00am to 10:00pm, seven days.

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Deliveries of goods and waste collection associated with the retail premises and restaurant or cafe must not occur between 7:00pm and 7:00am.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

93. Commercial Waste and Recycling Storage

Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins as shown on the approved plans.

Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed.

94. Odour Control for Ventilation Systems to Commercial Kitchens

Ventilation systems for any commercial kitchen must be designed, operated and maintained to prevent odour being smelt within any nearby habitable rooms, including when windows and

doors are open.

Reason: To prevent a negative impact on residents both within the complex and surrounding properties.

95. **Music or Amplified Noise**

No background music is permitted in the Ground Floor restaurant/cafe space or the associated outdoor dining area. No speakers are to be placed in any outside areas of retail premises.

No music or amplified noise is to be audible within habitable rooms of residents within the complex or surrounding premises, including when windows and doors are open.

Reason: To ensure no negative impact on residents within the complex or surrounding premises.

96. **Plant Equipment - Noise and Vibration**

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 must not generate noise above 5dBA at the property boundary and must not be audible within habitable rooms of units within complex and surrounding premises including when doors and windows to those rooms are open.

Above equipment must not create vibrations that can be detected within habitable rooms of units within complex and surrounding premises.

Reason: To ensure no ongoing negative impacts on persons living within the complex and surrounding premises.

97. **Consistency with Plan of Management**

The development is to be maintained in accordance with the Plan of Management required by this consent.

Reason: To ensure that the site is maintained in accordance with the standards required by this consent.

98. **Parking**

The development is to maintain the following parking allocation for the life of the development:

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

All spaces must be line-marked and identified accordingly.

Manoeuvring areas must be kept clear of obstructions at all times. Vehicles must not be required to queue on public roads at any time.

Reason: To ensure the appropriate management of parking on site.

99. **Capacity of Ground Floor Cafe or Restaurant**

The capacity of the Ground Floor cafe/restaurant premises is limited to 44 indoor patrons, 20 outdoor patrons and 6 staff members.

Reason: To ensure residential amenity is protected and maintained.

00. **Plant Equipment**

With the exception of flush-mounted solar panels, and the plant equipment shown within the portion of the upper floor roof bound in copper sheeting, no plant equipment is permitted on the roof or in a location that is visible from the public domain.

The plant equipment shown on the upper roof must not protrude above the height of the copper roof depicted on the Approved Plans.

The solar panels must not be elevated/angled more than 250mm above the height of the membrane roof depicted on the Approved Plans.

Reason: To minimise visual clutter.

CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA SUBDIVISION OR SUBDIVISION CERTIFICATE

01. **Subdivision Certificate Application**

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, four copies of the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

02. **Strata Subdivision Plans**

Strata Subdivision Plans are to be prepared, consistent with the Approved Plans.

The Strata Subdivision Plans are to specifically nominate:

- a. two parking spaces for each residential unit
- b. one parking space for each retail tenancy
- c. one visitor/disabled parking space as common property
- d. the landscaped terrace adjacent to Apartment 1 as common property
- e. gardens/landscaping around the perimeter of the building as common property

Details demonstrating compliance with these requirements are to be submitted to the Principal Certifying Authority prior to the release of the Strata Subdivision Plan.

Reason: To ensure the appropriate allocation and maintenance of space.