

STATEMENT OF ENVIRONMENTAL EFFECTS

Modification of
Development Consent

N0119/14

Shop Top Housing

1102 Barrenjoey Road,

Palm Beach

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1102 Barrenjoey Road, Palm Beach



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1 INTRODUCTION

On 13th November 2014, development consent was granted to Development Application N0119/14 proposing the demolition of existing structures and construction of a shop top housing development comprising 3 retail tenancies, 4 residential apartments and basement parking. This consent was subsequently physically commenced as confirmed by Council correspondence of 6th November 2019 a copy of which is at Attachment 1.

We have been engaged to prepare a modification application pursuant to section 4.55(2) of the Act. Specifically, the application seeks to refine the architectural detailing of the development application to provide superior streetscape, residential amenity, heritage conservation and broader urban design outcomes, to enhance buildability and economic viability and to better meet the more contemporary design guidelines contained within the Apartment Design Guide (ADG) as they relate to floor to floor heights, room sizes and layouts. Of most significance is the reconfiguration and augmentation of residential floor space to accommodate 6 apartments compared to the 4 as originally proposed noting that the increased residential yield remains compliant with the prescribed residential density standard whilst also securing the economic viability of the project to enable it to progress to construction. Further, the electrical substation adjacent to the frontage of the property is proposed to be relocated to facilitate a double width driveway entrance into the basement which will significantly enhance both vehicular and pedestrian safety and access and egress efficiencies with a concurrent application seeking the closure and purchase of the land previously occupied by the substation being assessed concurrently by Council.

The final design reflects a measured response to the issues arising from formal pre-DA discussions with Council (PLM2020/0276) in particular the maintenance of the approved built form relationship with both immediately adjoining properties including the heritage listed Barrenjoey House. In this regard the final design detailing has been prepared in consultation with Urbis – Heritage with the accompanying Heritage Impact Statement containing the following conclusion:

The proposed new structure has been designed with consideration of the surrounding heritage items. The bulk of the new building has been reduced from the primary streetscape with the massing concentrated to the rear. Additionally, the new structure's terraced façade would be set back from the front boundary, consequently reducing its appearance from the streetscape. This design element would also reduce the appearance of the new works against the aforementioned adjacent heritage items. Furthermore, the selected colour scheme, including neutral tones, natural wood, natural zinc and soft landscaping would respond well to both the surrounding development and existing natural vegetation. the above considered, it is assessed that the proposed development would not engender a negative heritage impact. Accordingly, the proposal is considered a positive heritage outcome and recommended for approval on heritage grounds.

This submission demonstrates that the modified development is of exception design quality which will afford superior levels of amenity for future occupants whilst maintaining appropriate amenity to surrounding development in relation to privacy, views and solar access. Whilst the previously approved building heights are increased by 817mm to accommodate ADG compliant floor to floor heights the additional height is justified having regard to the superior building design, amenity and broader urban design outcomes achieved.

The ultimate outcome is a building of exceptional design quality which will make a positive contribution to the streetscape whilst maintain the heritage conservation and residential amenity outcomes afforded to adjoining development through approval of the original scheme.

In addition to this Statement of Environmental Effects, the application is also accompanied by the following:

- Site survey
- Architectural plans, elevations, sections, shadow diagrams
- Landscape plans
- Heritage Impact Statement
- Traffic and Parking Impact Assessment
- Stormwater / erosion and sediment control plans
- Geotechnical report
- Preliminary Acid Sulfate Soil Investigation
- Waste management plan
- Schedule of finishes
- Floodplain Management Report
- BCA Assessment Report
- Photomontage
- BASIX Assessment Report and Certificate

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

- Environmental Planning and Assessment Act, 1979 (the Act),
- Pittwater Local Environmental Plan 2014 (PLEP),
- Pittwater 21 Development Control Plan (P21DCP),
- State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development,
- State Environmental Planning Policy (Coastal Management) 2018, and
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

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

- The application provides for superior streetscape, residential amenity and broader urban design outcomes on this particular site. The modified scheme exhibits design excellence.
- The proposal maintains the general massing of the approved development in relation to heights and setbacks with the proposed residential density compliant with the associated standard.
- The proposed building height, as modified, continues to satisfy the objectives of the standards and accordingly strict compliance is unreasonable and unnecessary under the circumstances.
- The development, as modified, better achieves the design quality principles contained within State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP65) and the objectives and guidelines contained within the Apartment Design Guide (ADG).
- The proposed development, as modified, will not compromise the residential amenity or heritage conservation outcomes afforded to surrounding development through approval of the original scheme.

On the basis of the above analysis we regard the proposed application as being “essentially or materially” the same as the approved development such that the application is appropriately categorised as being “substantially the same” and is appropriately dealt with by way of Section 4.55(2) of the Act.

2 SITE ANALYSIS

2.1 Site Description and location

2.1.1 The Site

The Heritage Impact Statement describes the site and its relationship to the adjacent heritage item in the following manner.

The site is located at 1102 Barrenjoey Road, Palm Beach and is legally described as Lot 11 of Deposited Plan 1207743. The site comprises of a contemporary structure which addresses Barrenjoey Road and has rear views and access to Mckay Reserve. The allotment is situated within B1 – Neighbourhood Centre zoning for mixed-use purposes, i.e., residential and commercial. The subject allotment is of an asymmetrical shape which abuts the neighbouring property at 1108 Barrenjoey Road. The principle-built form consists of a rectangular masonry structure with lightweight additions. The site has a large, paved hardstand area and minimal landscaping. A gravelled parking area extends to the rear (east) of the site.

*The subject site is not identified as a heritage item of local or other significance. However, it adjoins the locally listed heritage item, “Barrenjoey House”, to the north. “Barrenjoey House” is sited at 1108 Barrenjoey Road and is recognised as item 2270076 in the Pittwater Local Environmental Plan 2014. The subject site also lies within the vicinity of the heritage item 2270037, “Norfolk Island Pines (*Arancaria heterophylla*)”.*

The subject site’s setting is characterised by the proximity to Palm Beach, which lies east of the subject site. Importantly, the subject site has significant views to Snapperman Beach with the primary frontage of the allotment facing Pittwater to the west. Barrenjoey Road is a major thoroughfare, extending from Pittwater Road and providing access to the various subject on the peninsula. The Mackay Reserve lies immediately to the east of the subject site with a steep slope to the east.

The surrounding built environment features a regular subdivision pattern, narrow allotments with detached dwellings of 1-2 storeys, deep setbacks, manicured gardens, and rear beach views/access. An aerial photograph of the local context is provided as indicated over page below, the subject site is indicated in red.

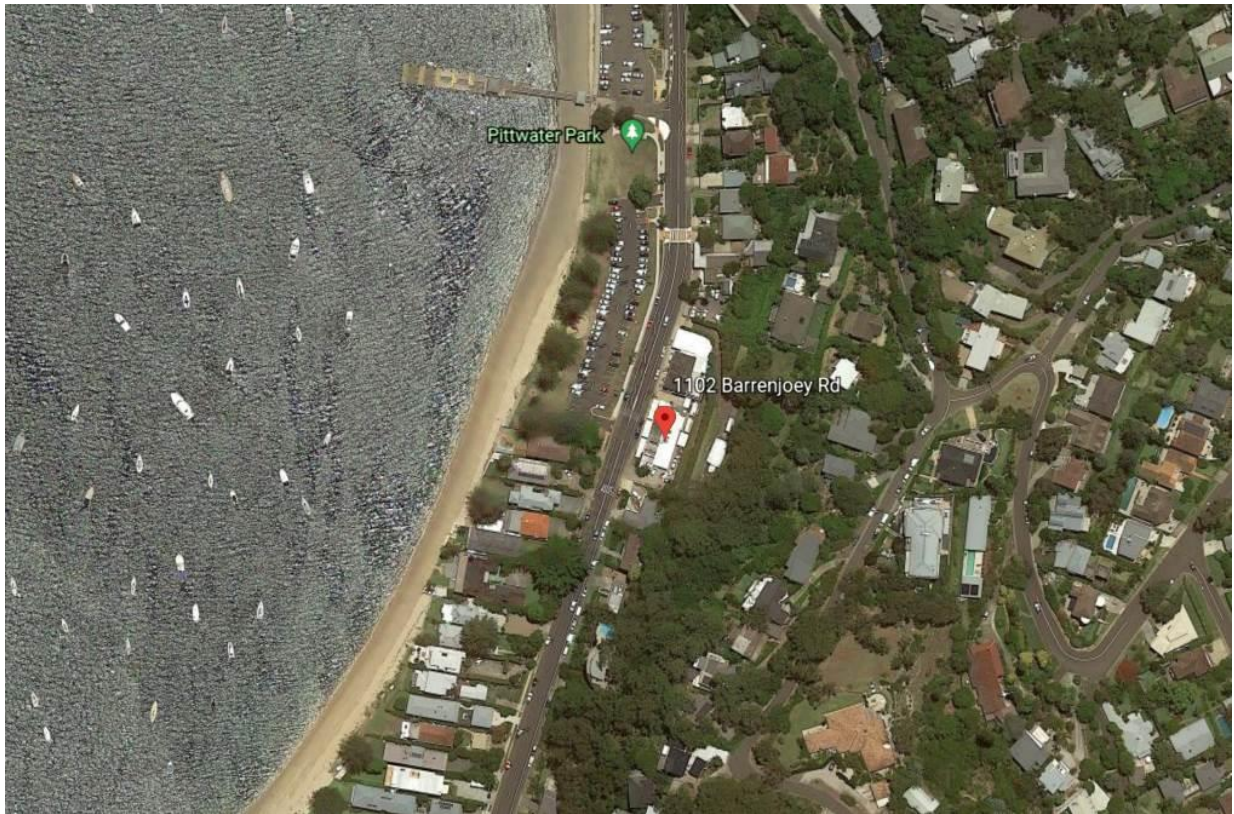


Figure 1 – Aerial location/ context photograph



Figure 2 – Aerial site photograph



Figure 3 – Subject property as viewed from opposite side of Barrenjoey Road



Figure 4 – Subject property as viewed from opposite side of Barrenjoey Road



Figure 5 – Subject property as viewed from north of site past Barrenjoey House

3 DESCRIPTION OF PROPOSED DEVELOPMENT

3.1 Detail of the Proposed Architectural Modifications

The development, as modified, is depicted on the following architectural plans prepared by Rob Mills Architecture:

ARCHITECTURAL DRAWING LIST		
Sheet No.	Sheet Name	Current Rev.
DA.00	COVER PAGE	1
DA.01	SITE PLAN ANALYSIS	1
DA.02	MASSING ENVELOPE PREVIOUS DA	1
DA.02a	MASSING ENVELOPE PROPOSED	1
DA.02b	MASSING ENVELOPE COMBINED	1
DA.03	DEMOLITION PLAN	1
DA.04	PROPOSED SITE PLAN / ROOF PLAN	1
DA.05	PROPOSED BASEMENT PLAN	1
DA.06	PROPOSED GROUND FLOOR PLAN	1
DA.07	PROPOSED FIRST FLOOR PLAN	1
DA.08	PROPOSED SECOND FLOOR PLAN	1
DA.10	PROPOSED ELEVATION - EAST & WEST	1
DA.11	PROPOSED ELEVATION - NORTH & SOUTH	1
DA.15	SECTION	1
DA.16	SECTION - DRIVEWAY	1
DA.50	SHADOW STUDIES	1
DA.51	SHADOW STUDIES	1
DA.52	SHADOW STUDIES	1
DA.60	MATERIALS AND FINISHES	1
DA.70	GFA & LANDSCAPE CALCULATIONS	1
DA.71	LANDSCAPE DIAGRAM	1
DA.72	SOLAR ACCESS ANALYSIS - PROPOSED	1
DA.73	OVERLOOKING ANALYSIS	1
DA.74	NATURAL VENTILATION DIAGRAMS	1

The modifications are detailed in the accompanying Architect Design Statement with a visual comparison between the approved and modified floor plates depicted as follows:

Basement Plan

- The approved basement and access driveway are reconfigured/ augmented to facilitate a double width driveway entrance and the provision of the required quantum of carparking and residential storage in accordance with the ADG. A 3 metre deep soil zone is maintained to the rear boundary. Bin storage remains in the basement in accordance with the original approval.

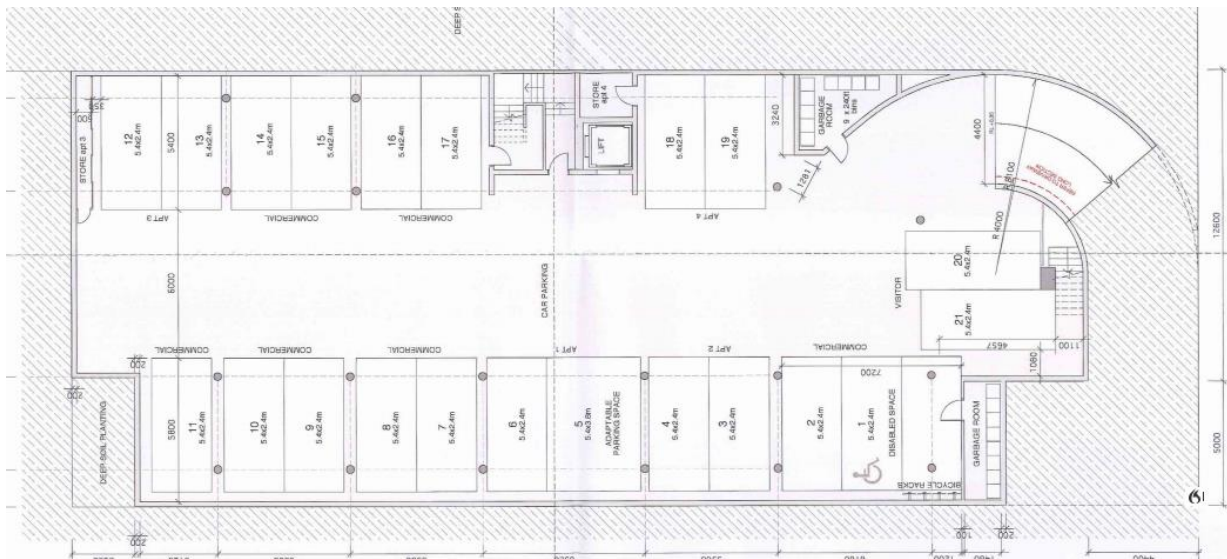


Figure 5 – Approved basement plan

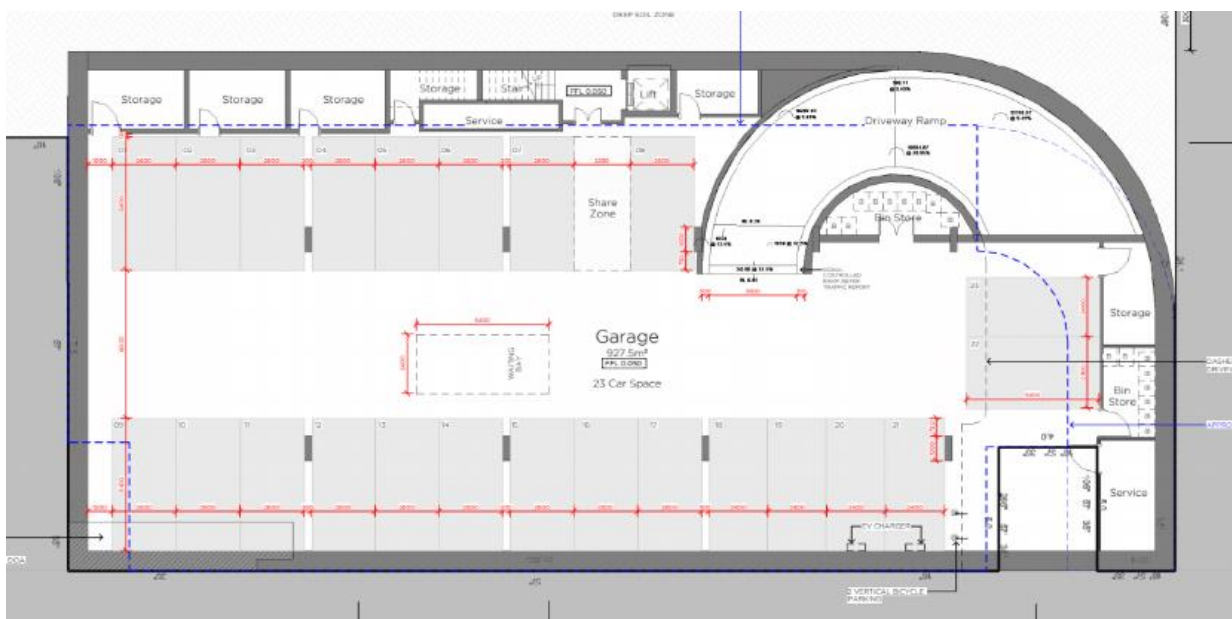


Figure 6 – Modified basement plan

Ground Level Floor Plan

- The 3 approved retail tenancies are consolidated into 2 with the residential entrance relocated to a central location on the site. An access ramp is provided from the front boundary to the retail and residential entry podium level to achieve the necessary level of accessibility with the floor level and driveway crest established by the required flood planning level. Additional deep soil landscaping is provided adjacent to both immediately adjoining properties.

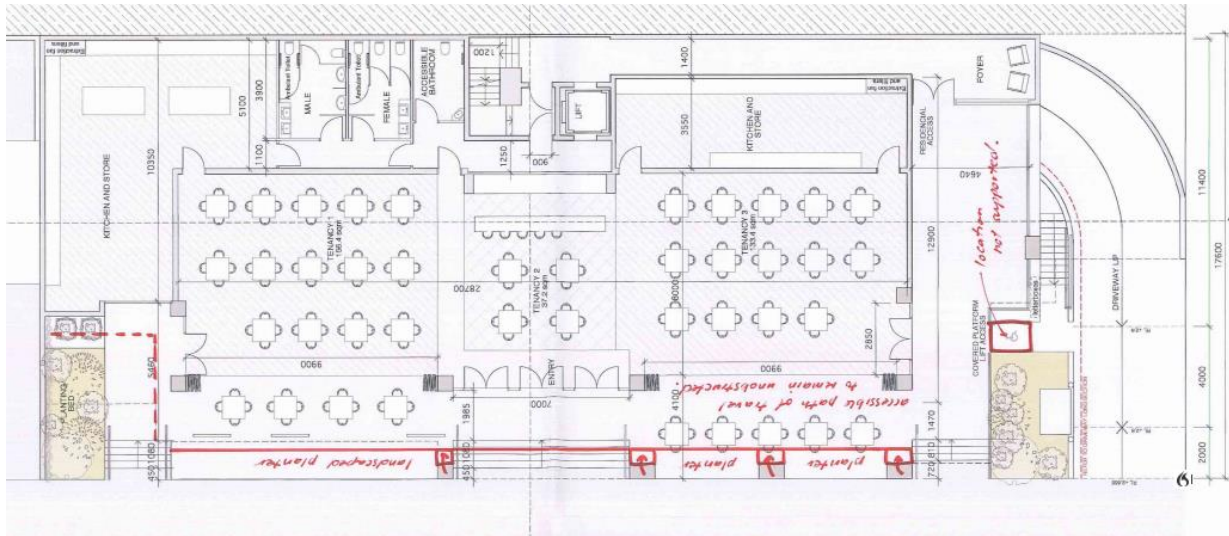


Figure 7 – Approved Ground floor plan

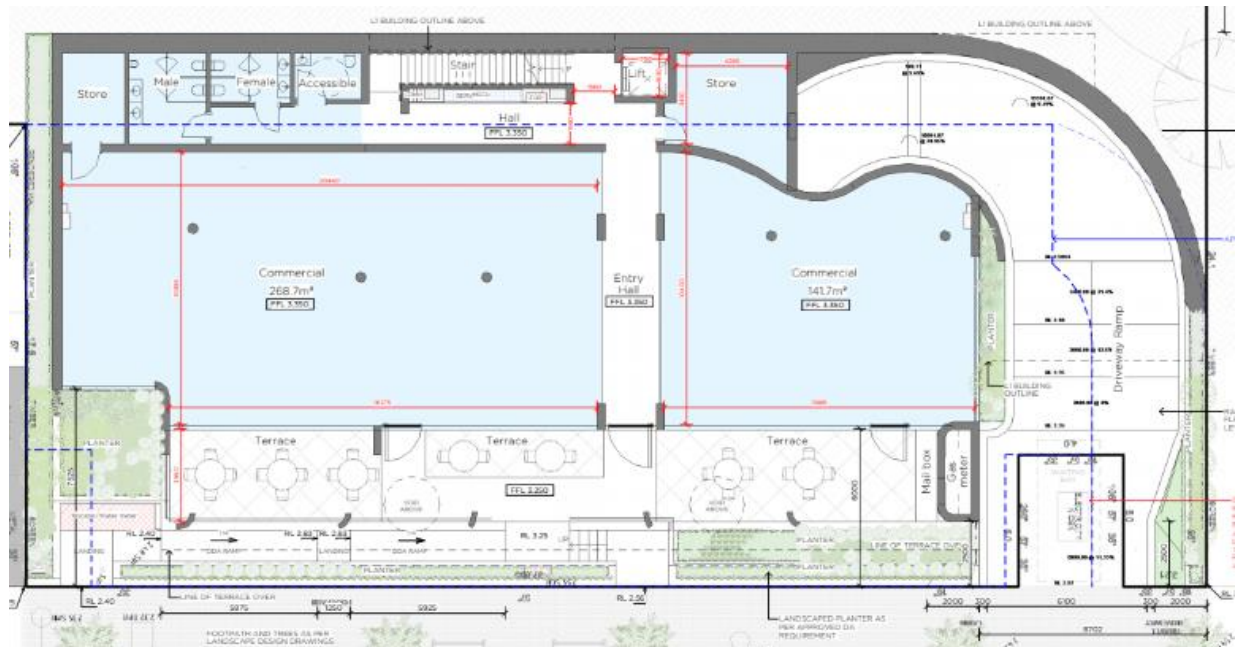


Figure 8 – Modified basement plan

Level 1 Floor Plan

- This floor plate is reconfigured to accommodate 1 x additional 3 bedroom apartment. The previously approved setbacks are generally maintained to both immediately adjoining properties with the floor plate extended towards the rear of the site whilst maintaining a 3 metre deep soil landscape zone to the rear boundary.

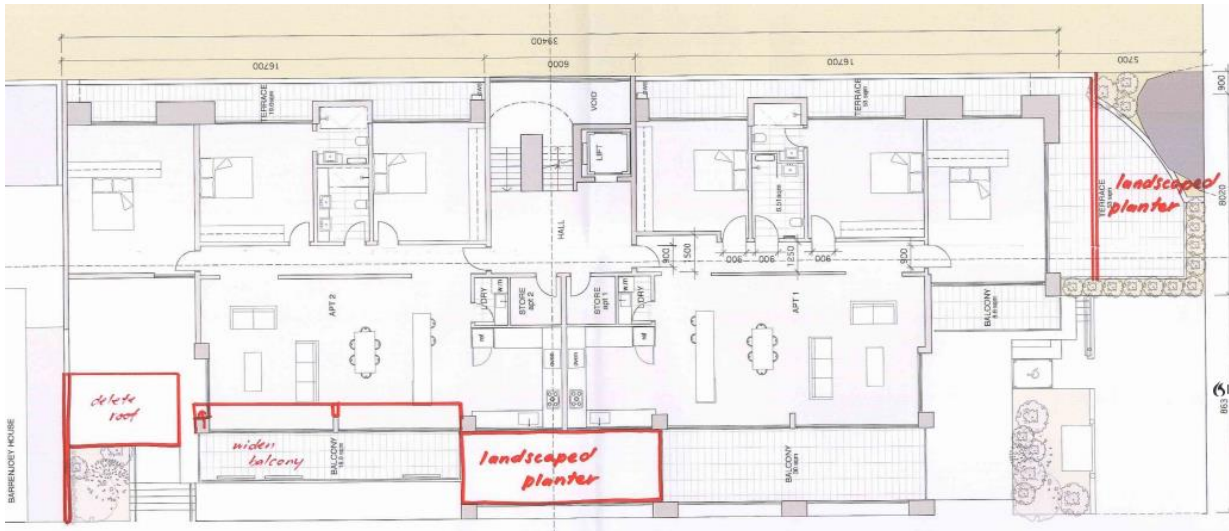


Figure 9 – Approved first floor plan

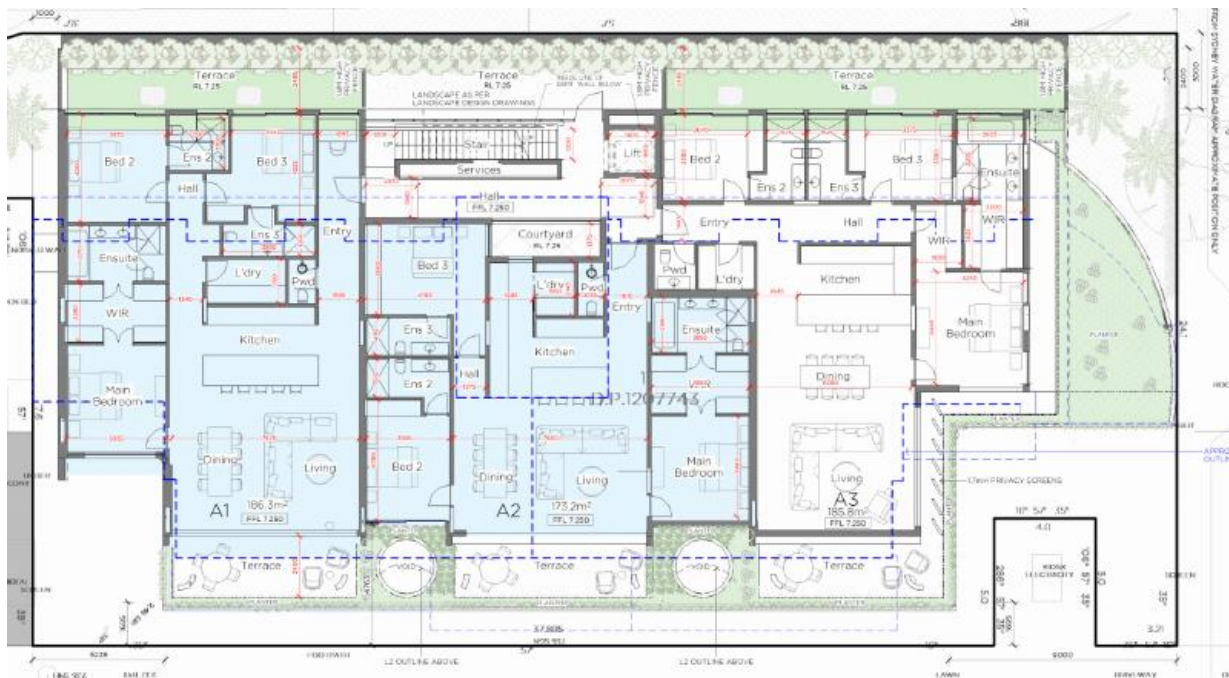


Figure 10 – Modified first floor plan

Level 2 Floor Plan

- This floor plate is reconfigured to accommodate 1 x additional 3 bedroom apartment. The previously approved setbacks are generally maintained to both immediately adjoining properties with the floor plate extended towards the rear of the site whilst maintaining a 3 metre setback to the rear boundary. We note that additional skylights are provided to the roof together with mechanical plant and solar panels located along its rear edge where they will not be visually discernible as viewed from outside the site

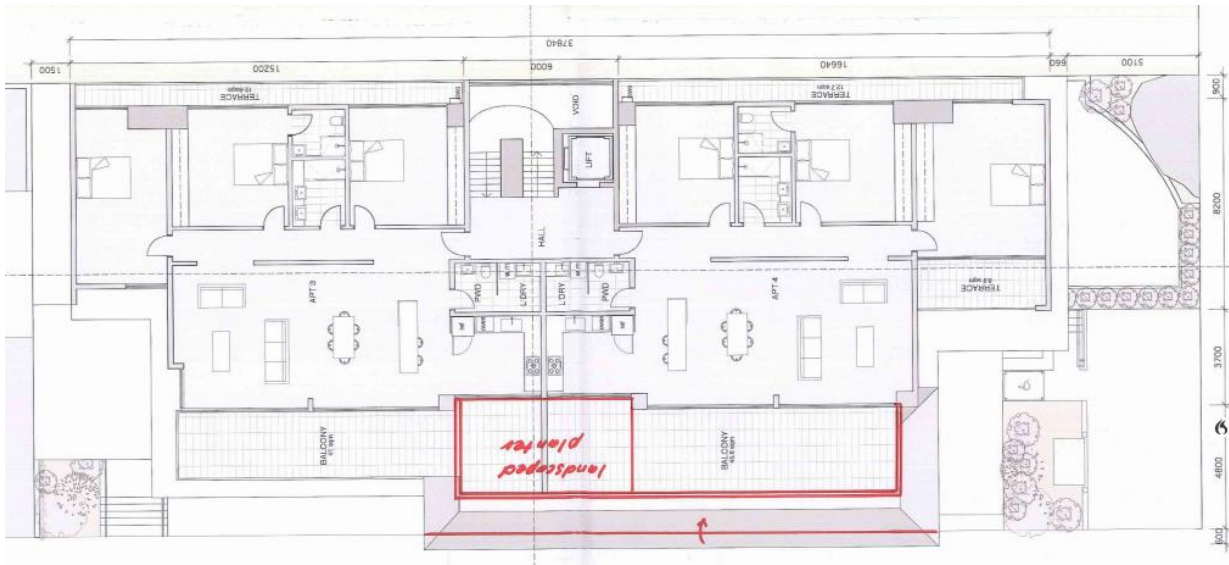


Figure 11 – Approved second floor plan



Figure 12 – Modified second floor plan

We note that all proposed/ modified apartments have access to Pittwater waterway facing balconies. We confirm that 66.7% of apartments receive at least 2 hours of direct sunlight between 9am and 3pm in midwinter with 100% of apartments naturally cross ventilated although the overall design quality and amenity of the apartments is superior to that originally approved due to compliance with ADG guidelines in terms of ceiling heights and apartment design.

The architectural plans demonstrates that the proposal generally maintains the above ground setbacks approved pursuant to the original scheme with the front façade articulated in an alternative manner whilst maintaining complimentary and compatible setbacks consistent with those originally approved. The reduced set back to the rear boundary is deemed acceptable due to there being no adverse geotechnical consequences with a 3 m wide deep soil landscape zone maintained.

The proposal involves the implementation of a modified and enhanced site landscape regime as depicted on the accompanying plans prepared by Pod Landscaping with the use of both at-ground and elevated on-slab planting utilised to soften and screen the edges of the development.

The modified palette of materials and finishes accompanying the application provides for the use of natural and contemporary building materials and facade treatments consistent with those originally approved and as endorsed by the project heritage consultant.

The additional excavation proposed is addressed within the accompanying geotechnical report with the site deemed suitable for the level of excavation proposed provided the recommendations contained within the report are adopted. No objection is raised to the imposition of a suitably worded condition of consent requiring compliance with the same. The acceptability of the modified car parking layout is detailed in the accompanying Traffic and Parking Impact Assessment prepared by McLaren Traffic Engineering and Road Safety Consultants. All stormwater will be disposed of to the street drainage system as detailed on the accompanying hydraulic plans prepared by Van der Meer Consulting.

3.2 Detail of the Proposed Condition Modifications

The proposed modifications include the deletion/modification of the following conditions:

- Condition 5 to be modified to reference a Flood Planning Level of 3.2m AHD.
- Condition 32 to be deleted based on the design outcomes achieved by the modified plans.
- Condition 16 to be modified to reflect the current contribution plan.
- Condition 20 to be deleted based on the design outcomes achieved by the modified plans.
- Condition 21 to be deleted based on the design outcomes achieved by the modified plans.
- Condition 22 to be deleted based on the design outcomes achieved by the modified plans.
- Condition 23 to be deleted based on the design outcomes achieved by the modified plans.
- Condition 24 to be deleted based on the design outcomes achieved by the modified plans.
- Condition 25 to be deleted based on the design outcomes achieved by the modified plans.

4 STATUTORY PLANNING FRAMEWORK

The following section of the report will assess the proposed development having regard to the statutory planning framework and matters for consideration pursuant to Section 4.15(1) of the Environmental Planning & Assessment Act, 1979 as amended. Those matters which are required to be addressed are outlined, and any steps to mitigate against any potential adverse environmental impacts are discussed below.

4.1 Environmental Planning and Assessment Act 1979

Section 4.55(2) of the Act provides that:

- (2) *A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if:*
 - (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

.....

In answering the threshold question as to whether the proposal represents “substantially the same” development the proposal must be compared to the development for which consent was originally granted, and the applicable planning controls. In order for Council to be satisfied that the proposal is “substantially the same” there must be a finding that the modified development is “essentially” or “materially” the same as the (currently) approved development - *Moto Projects (no. 2) Pty Ltd v North Sydney Council* [1999] 106 LGERA 298 per Bignold J.

A consideration of whether the development is substantially the same development has been the subject of numerous decisions by the Land & Environment Court and by the NSW Court of Appeal in matters involving applications made pursuant to S.96 of the Act. *Sydney City Council v Ilenc Pty Ltd* (1984) 3 NSWLR 414 drew a distinction between matters of substance compared to matters of detail. In *Moto Projects (No.2) Pty Ltd v North Sydney Council* (1999) 106 LGERA 298 Bignold J referred to a requirement for the modified development to be substantially the same as the originally approved development and that the requisite finding of fact to require a comparison of the developments. However, Bignold noted the result of the comparison must be a finding that the modified development is 'essentially or materially' the same as the (currently) approved development. Bignold noted;

The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the development being compared in their proper contexts (including the circumstances in which the development consent was granted).

In Basemount Pty Ltd & Or v Baulkam Hills Shire Council NSWLEC 95 Cowdroy J referred to the finding of Talbot J in Andari - Diakanastasi v Rockdale City Council and to a requirement that in totality the two sets of plans should include common elements and not be in contrast to each other. In North Sydney Council v Michael Standley & Associates Pty Ltd (1998) 43 NSWLR 468; 97 LGRERA 443 Mason P noted:

Parliament has therefore made it plain that consent is not set in concrete. It has chosen to facilitate the modification of consents, conscious that such modifications may involve beneficial cost savings and/or improvements to amenity. The consent authority can withhold its approval for unsuitable applications even if the threshold of subs (1) is passed.

We agree with Bignold J in Houlton v Woollahra Municipal Council (1997) 95 LGRERA 201 who (at 203) described the power conferred by s.102 as beneficial and facilitative.

The risk of abuse is circumscribed by a number of factors. Paragraphs (a), (b) and (c) of subs (1) provide narrow gateways through which those who invoke the power must first proceed. Subsection (1A) and subs (2) ensure that proper notice is given to persons having a proper interest in the modified development. And there is nothing to stop public consultation by a Council if it thinks that this would aid it in its decision making referable to modification.

Finally, subs (3A), coupled with the consent authorities discretion to withhold consent, tend to ensure that modifications will not be enterprised, nor taken in hand, unadvisedly, lightly or wantonly. Naturally some modifications will be controversial, but decision making under this Act is no stranger to controversy.

Senior Commission Moore in Jaques Ave Bondi Pty Ltd v Waverly Council (No.2) (2004) NSWLEC 101 relied upon Moto Projects in the determination, involving an application to increase the number of units in this development by 5 to a total of 79. Moore concluded the degree of change did not result in a development which was not substantially the same, despite the fact that in that case the changes included an overall increase in height of the building. Moore relied upon a quantitative and qualitative assessment of the changes as determined by the Moto test.

We note that the current application is similar in that it seeks to increase the number of apartments by 2 to a total of 6 with changes in building height also proposed to achieve compliance with the more contemporary requirements of the ADG. We note that the additional dwelling yield satisfies the 1 dwelling per 150 m² of site area residential density standard a clause 4.5A of PLEP 2014.

In our opinion a quantitative and qualitative assessment of the application is that it remains substantially the same. Quantitatively, the nature of the approved land use is not altered as a consequence of the changes as proposed. The approved height, bulk and scale of the building remains within the ambit of the consent and the plans as approved albeit the additional height is necessary to achieve ADG compliant floor to floor clearances and to improve buildability generally. The form of the approved development is not significantly altered with complimentary and compatible setbacks maintained to both immediately adjoining properties including the heritage listed Barrenjoey House. We consider impacts limited to a consideration in relation to the additional excavation, amended façade detailing and materiality, landscaping and the improved vehicular access arrangement. The proposal maintains an appropriate relationship with the adjoining heritage item as detailed in the accompanying Heritage Impact Statement prepared by Urbis with compliant flood planning levels also maintained to the ground floor retail space and driveway crest.

Qualitatively, the physical appearance of the development remains consistent with the consent as issued. The approved residential amenity outcomes in terms of solar access are not compromised with the modifications affording/ maintaining appropriate visual privacy between properties whilst also maintaining a view sharing scenario with surrounding development. In such circumstances the changes may be considered minor.

On the basis of the above analysis, we regard the proposed application as being of minimal environmental impact and “essentially or materially” the same as the approved development such that the application is appropriately categorised as being “substantially the same” and appropriately dealt with by way of Section 4.55(2) of the Act.

4.2 Pittwater Local Environmental Plan 2014

4.2.1 Zoning

The subject property is zoned B1 Neighbourhood Centre pursuant to Pittwater Local Environmental Plan 2014 (PLEP 2014) with shop top housing permissible with consent in the zone.

The stated objectives of the R3 zone are as follows:

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

Shop top housing is defined as one or more dwellings located above ground floor retail premises or business premises.

The development incorporates dwellings located above ground floor retail premises with all residential apartments located within a single building form. Accordingly, the development as modified is appropriately defined as shop top housing and permissible with consent in the zone.

The proposed development, as modified, continues to meet the relevant zone objectives given the retention of ground floor retail uses. The height and scale of the development is responsive to context, compatible with that of adjoining development and will not result in unacceptable or jarring residential amenity, streetscape or heritage conservation impacts.

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

4.2.2 Height of Buildings

Pursuant to clause 4.3 PLEP 2014 the height of any building on the land shall not exceed 8.5 metres above ground level (existing) as detailed on the heights of building map. The stated objectives of this clause are:

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

The dictionary to the LEP defines building height to mean:

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

ground level (existing) means the existing level of a site at any point.

The approved development has a maximum building height of 10.155 metres measured to the top of the western edge of the upper most floor plate and roof form. Such building height exceeded the standard by 1.655 metres or 19.4%.

The development, as modified, has a maximum building height of 10.972 metres measured to the western edge of the upper most floor plate and roof form representing an 817mm increase in the approved building height. This represents an overall maximum building height exceedance of 2.472 metres or 29%. The balance of the development, including the roof plant, sit comfortably below the 8.5 metre height of building standard consistent with the original approval on the site as depicted in Figures 13 and 14 over page.

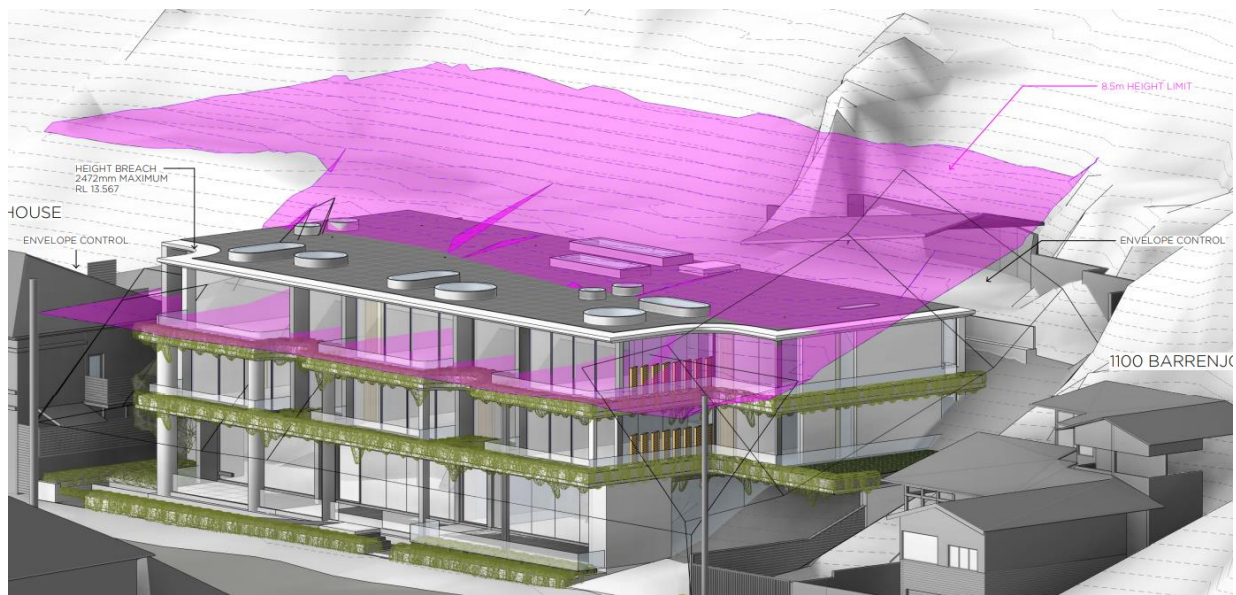


Figure 13 – Building height diagram showing non-compliant building height elements projecting through the 8.5 metre height blanket.

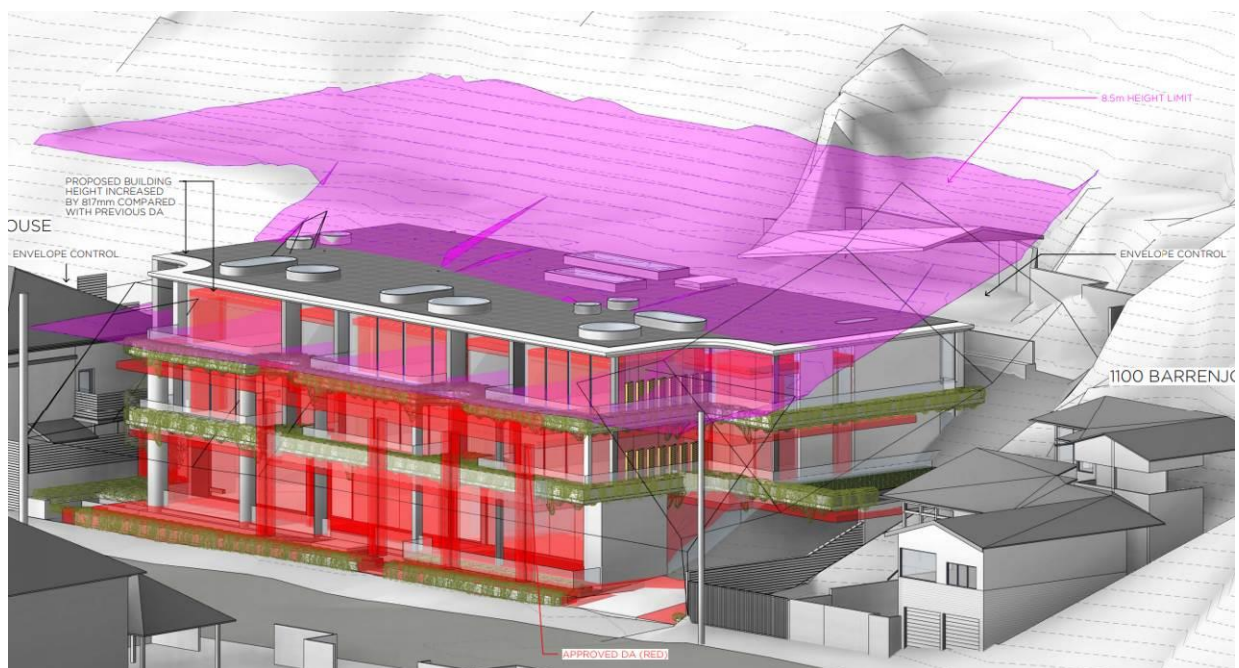


Figure 14 - Comparative height blanket diagram showing the approved and modified schemes

Although the clause 4.6 MLEP variation provisions do not apply to an application involving the modification of a consent we had undertaken an analysis as to the acceptability of the additional building height having regards to the objectives of the standard as follows.

Whilst the clause 4.6 PLEP development standard variation mechanism does not apply to an application seeking to modify a consent the acceptability of the increase in building height has been assessed against the objectives of the standard as follows:

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

Comment: The proposed increase in building height is to achieve ADG compliant floor to floor heights and sufficient structural depth to accommodate an appropriately designed, detailed and constructed roof form.

The breaching elements will not impact on the design quality of the development or its streetscape, heritage conservation or residential amenity outcomes and to that extent the building, by virtue of its height and scale, will remain consistent with the desired character of the locality being an outcome accepted in the approval of the original scheme. The proposal is consistent with this objective.

- (b) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

Comment: The height of the building is not significantly increased with the acceptability of the modified building height and form as it relates to the development's immediate proximity to the heritage listed Barrenjoey House addressed in the accompanying Heritage Impact Statement prepared by URBIS with the report containing the following conclusions:

The proposed new structure has been designed with consideration of the surrounding heritage items. The bulk of the new building has been reduced from the primary streetscape with the massing concentrated to the rear. Additionally, the new structure's terraced façade would be set back from the front boundary, consequently reducing its appearance from the streetscape. This design element would also reduce the appearance of the new works against the aforementioned adjacent heritage items. Furthermore, the selected colour scheme, including neutral tones, natural wood, natural zinc and soft landscaping would respond well to both the surrounding development and existing natural vegetation. the above considered, it is assessed that the proposed development would not engender a negative heritage impact. Accordingly, the proposal is considered a positive heritage outcome and recommended for approval on heritage grounds.

This submission demonstrates that the modified development is of exception design quality with the development maintaining the previously approved spatial relationship to adjoining development albeit with enhanced intervening landscape treatments proposed. The proposed development, notwithstanding the increase building height proposed, will remain complimentary and compatible with the height and scale of surrounding and nearby development as depicted in the montage at Figure 15 over page.

The proposal is consistent with this objective.



Figure 15 - Montage demonstrating the maintenance of a compatible built form outcome having regards to the height and scale of surrounding and nearby development

(c) to minimise any overshadowing of neighbouring properties,

Comment: The accompanying shadow diagrams clearly demonstrate the additional shadowing impacts associated with the modifications sought with compliant levels of solar access maintained to both immediately adjoining properties. Notwithstanding the building height non-compliance, overshadowing has been minimised to neighbouring properties to the extent that compliant solar access is maintained.

The proposal is consistent with this objective.

(d) to allow for the reasonable sharing of views,

Comment: Having inspected the site and surrounds to determine available view lines we have formed the considered opinion that the view sharing outcomes achieved through approval of the original application particularly in relation to No. 1100 Barrenjoey Road. The proposal is consistent with this objective.

(e) to encourage buildings that are designed to respond sensitively to the natural topography,

Comment. The additional building height breach is not a consequence of the desire to further alter the natural topography of the site and to that extent the proposal, as modified, is consistent with this objective.

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

Comment. The height of the building is not significantly increased with the acceptability of the modified building height and form as it relates to the development's immediate proximity to the heritage listed Barrenjoey House addressed in the accompanying Heritage Impact Statement prepared by URBIS with the report containing the following conclusions:

The proposed new structure has been designed with consideration of the surrounding heritage items. The bulk of the new building has been reduced from the primary streetscape with the massing concentrated to the rear. Additionally, the new structure's terraced façade would be set back from the front boundary, consequently reducing its appearance from the streetscape. This design element would also reduce the appearance of the new works against the aforementioned adjacent heritage items. Furthermore, the selected colour scheme, including neutral tones, natural wood, natural zinc and soft landscaping would respond well to both the surrounding development and existing natural vegetation. the above considered, it is assessed that the proposed development would not engender a negative heritage impact. Accordingly, the proposal is considered a positive heritage outcome and recommended for approval on heritage grounds.

The proposal is consistent with this objective.

Given the ability to satisfy the objectives of the height of buildings standard we have formed the considered opinion that the strict compliance with the numerical standard is both unreasonable and unnecessary under the circumstances.

4.2.3 Density Controls for Certain Residential Accommodation

Pursuant to clause 4.5A(2) of PLEP 2014 development consent must not be granted to development for the purpose of shop top housing in the B1 Neighbourhood Centre Zone unless development does not have a dwelling density exceeding 1 dwelling per 150m² of site area. Based on a site area of 1141.5m² a maximum dwelling density of 7 dwellings is prescribed for development on the site.

The modified application proposes 6 dwellings which is compliant with the development standard and accordingly there is no statutory impediment to the granting of consent.

4.2.4 Heritage Conservation

Pursuant to clause 5.10(4) of PLEP 2014 the consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.

Further, pursuant to clause 5.10(5) the consent authority may, before granting consent to any development:

- (a) on land on which a heritage item is located, or*
- (b) on land that is within a heritage conservation area, or*
- (c) on land that is within the vicinity of land referred to in paragraph (a) or (b),*

require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

The subject property is not heritage listed or located within a heritage conservation area however is located immediately adjacent to the heritage listed Barrenjoey House.

The final design reflects a measured response to the issues arising from formal pre-DA discussions with Council (PLM2020/0276) in particular the maintenance of the approved built form relationship with both immediately adjoining properties including the heritage listed Barrenjoey House. In this regard the final design detailing has been prepared in consultation with Urbis – Heritage with the accompanying Heritage Impact Statement containing the following conclusion:

The proposed new structure has been designed with consideration of the surrounding heritage items. The bulk of the new building has been reduced from the primary streetscape with the massing concentrated to the rear. Additionally, the new structure's terraced façade would be set back from the front boundary, consequently reducing its appearance from the streetscape. This design element would also reduce the appearance of the new works against the aforementioned adjacent heritage items. Furthermore, the selected colour scheme, including neutral tones, natural wood, natural zinc and soft landscaping would respond well to both the surrounding development and existing natural vegetation. The above considered, it is assessed that the proposed development would not engender a negative heritage impact. Accordingly, the proposal is considered a positive heritage outcome and recommended for approval on heritage grounds.

Accordingly, there is no statutory impediment to the granting of consent to the proposed works in this instance.

4.2.5 Acid Sulfate Soils

Pursuant to clause 6.1 PLEP 2014 the site is mapped as Class 5 and to that extent we rely on the findings contained within the accompanying preliminary acid sulphate soil investigations prepared by JKE Environments we can switch contains the following conclusions:

Based on the results of the investigation, there is considered to be a low potential for ASS materials (AASS or PASS) to be disturbed during the proposed development described in Section 1.2 of this report. On this basis, an ASSMP is not considered necessary for the proposed development.

JKE note that the eastern portion of the site above the cut-wall was unable to be sampled due to access restrictions. Any organic, peaty or soils containing shell material within this area should be stockpiled separately and inspected by an environmental consultant if encountered during development works.

4.2.6 Flood Planning

Pursuant to clause 7.3 PLEP 2014 the site is identified as being affected by flooding and to that extent

is at or below the flood planning level. This regard, the application is accompanied by a Flood Report prepared by Van de Meer consultants which address the impacts associated with the overland flows from Barrenjoey Road and confirms:

This report has sought to assess the flood risk for the proposed mixed-use development at 1102 Barrenjoey Road, Palm Beach NSW. Whilst the site is impacted by flooding in the 1% AEP and PMF floods, the majority of the proposed development lies outside the extents of flooding. Floor levels and the design of the building frontage means that the development will not be adversely affected by flooding and will not affect 1% AEP flood storage or flood behaviour. The proposed floor levels and basement vehicular access ramp crest level are higher than the Flood Planning Level of 3.2m AHD. The proposed building is to be floodproofed in its structure, materials and utilities connections up to the Flood Planning Level as detailed in this report.

This report demonstrate that the proposal appropriately managed the risk to property and life with regard to potential flood impacts.

4.2.7 Earthworks and geotechnical hazards

In relation to the clause 7.2 and 7.7 PLEP 2014 provisions we rely on the geotechnical risk assessment prepared by JKEvironments in support of the application.

4.2.8 Biodiversity

Having regard to the clause 7.6 Biodiversity provisions we confirm that the development as modified does not compromise the developments performance when assessed against the biodiversity provisions noting that the modified scheme does not result in any additional biodiversity related impacts.

4.3 Pittwater 21 Development Control Plan 2013

P21 DCP contains development controls for the design and construction of buildings and the development of land in Pittwater. The proposed development has been assessed against the relevant provisions of P21 DCP as outlined in the following sections of this report.

4.3.1 Palm Beach Locality

The property is located within the Palm Beach Locality. The desired future character of the locality described as:

The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancy dwellings will be located on the lowlands and lower slopes that have less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, community and recreational facilities will serve the community.

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

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

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

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.

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.

Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved.

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

Palm Beach will remain an important link to the offshore communities.

The application seeks to refine the architectural detailing of the development application to provide superior streetscape, residential amenity, heritage conservation and broader urban design outcomes, to enhance buildability and economic viability and to better meet the more contemporary design guidelines contained within the Apartment Design Guide (ADG) as they relate to floor to floor heights, room sizes and layouts. Of most significance is the reconfiguration and augmentation of residential floor space to accommodate 6 apartments compared to the 4 as originally proposed noting that the increased residential yield remains compliant with the prescribed residential density standard whilst also securing the economic viability of the project to enable it to progress to construction. Further, the electrical substation adjacent to the frontage of the property is proposed to be relocated to facilitate a double width driveway entrance into the basement which will significantly enhance both vehicular and pedestrian safety and access and egress efficiencies.

The final design reflects a measured response to the issues arising from formal pre-DA discussions with Council (PLM2020/0276) in particular the maintenance of the approved built form relationship with both immediately adjoining properties including the heritage listed Barrenjoey House. In this regard the final design detailing has been prepared in consultation with Urbis – Heritage with the accompanying Heritage Impact Statement containing the following conclusion:

The proposed new structure has been designed with consideration of the surrounding heritage items. The bulk of the new building has been reduced from the primary streetscape with the massing concentrated to the rear. Additionally, the new structure's terraced façade would be set back from the front boundary, consequently reducing its appearance from the streetscape. This design element would also reduce the appearance of the new works against the aforementioned adjacent heritage items.

Furthermore, the selected colour scheme, including neutral tones, natural wood, natural zinc and soft landscaping would respond well to both the surrounding development and existing natural vegetation. the above considered, it is assessed that the proposed development would not engender a negative heritage impact. Accordingly, the proposal is considered a positive heritage outcome and recommended for approval on heritage grounds.

This submission demonstrates that the modified development is of exception design quality which will afford superior levels of amenity for future occupants whilst maintaining appropriate amenity to surrounding development in relation to privacy, views and solar access. Whilst the previously approved building heights are increased by 817mm to accommodate ADG compliant floor to floor heights the additional height is justified having regard to the superior building design, amenity and broader urban design outcomes achieved.

The design, scale and treatment of the proposed development is compatible with that anticipated in this precinct and is generally consistent in scale with the existing development to be demolished on the site. External materials and finishes will be consistent with the colours and materials anticipated in the locality. The development will be safe form hazards. In this regard, the development responds positively to the desired future character of the Palm Beach locality and will contribute positively to the streetscape and visual amenity of the immediate locality.

4.3.2 Stormwater Management – On-site Stormwater Detention

All stormwater will be disposed of to the street drainage system as detailed on the accompanying hydraulic plans prepared by Van der Meer Consulting.

4.3.3 Off-street Vehicular Parking Requirements

The acceptability of the modified car parking layout is detailed in the accompanying Traffic and Parking Impact Assessment prepared by McLaren Traffic Engineering and Road Safety Consultants. Site Works Management

Development Type Controls

4.3.4 View Sharing

Pursuant to clause C1.3 all new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties.

Having inspected the site and surrounds to determine available view lines we have formed the considered opinion that the view sharing outcomes achieved through approval of the original application particularly in relation to No. 1100 Barrenjoey Road. The proposal is consistent with this objective.

The modified design outcome achieves a view sharing scenario having regard to the view sharing principles established by the Land and Environment Court in the matter of Tenacity Consulting v Warringah [2004] NSWLEC 140.

4.3.5 Solar Access

In accordance with Clause C1.4 the main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st. Windows to the principal living areas of the proposal and windows to the principal living area of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st to at least 50% of the glazed area.

The accompanying shadow diagrams clearly demonstrate the additional shadowing impacts associated with the modifications sought with compliant levels of solar access maintained to both immediately adjoining properties. Notwithstanding the building height non-compliance, overshadowing has been minimised to neighbouring properties to the extent that compliant solar access is maintained.

4.3.6 Visual Privacy

Pursuant to clause C1.5 private open space, recreation areas and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9m by building layout, landscaping, screening devices or greater spatial separation. Elevated decks, verandas and balconies should incorporate privacy screens where necessary and should, where possible, be located at the front or rear of the building. Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.

The proposed modifications maintain the previously approved visual privacy relationship between adjoining development with the provision of integrated privacy screening and landscape treatments ensuring such outcome is achieved.

4.3.7 Acoustic Privacy

The juxtaposition of living and bedroom spaces results in a development that satisfies the outcomes of Clause C1.6 of the policy.

4.3.8 Private Open Space

Pursuant to Clause C1.7, a minimum area of 15% of the floor area of the dwelling with no dimension less than 2.5 metres and a grade no steeper than 1 in 10 shall be provided. Dwellings should be designed so that private open space is directly accessible from living areas enabling it to function as an extension of internal living spaces.

The provision of terrace and courtyard spaces satisfies the requirements of the Council policy as detailed on the architectural plans.

4.3.9 Accessibility

Pursuant to clause C1.9, 20% of units shall be adaptable pursuant to the Liveable Housing Guideline. Further, development shall include the design and construction of works in the public domain to ensure accessibility for the full frontage of the site to any public road and to ensure access to the site from the public domain.

We confirm that the development, as modified, provides the necessary quantum of accessible units in strict accordance with Council policy as detailed on the architectural plans.

4.3.10 Waste and Recycling Facilities

We confirm that the modified scheme maintains the previously approved waste storage and collection outcome as detailed in the accompanying waste management plan.

4.3.11 Storage Facilities

In accordance with clause C1.15, a lockable storage area of minimum 8 cubic metres per dwelling shall be provided.

In addition to the internal storage spaces within the individual apartments separate storage areas for each unit are provided in the basement in accordance with the Council policy as detailed on the architectural plans.

Locality Specific Development Controls

The subject site is located in the Palm Beach Locality. The developments performance against the relevant locality specific controls is discussed below.

4.3.12 Character as Viewed from Public Place

These outcomes have been addressed in 4.2.1 previously. The application seeks to significantly refine the architectural detailing of the application to provide a superior streetscape, residential amenity and broader urban design outcome. The modified proposal better achieves the design principles contained within State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) and the guidelines and associated objectives contained within the Apartment Design Guide (ADG).

The outcome is a building of exceptional design quality which appropriately addresses the street frontages, makes a positive contribution to the streetscape whilst maintain the residential amenity and heritage conservation outcomes afforded to adjoining development through approval of the original scheme.

4.3.13 Scenic protection

For the reasons outlined the development as modified satisfies the scenic protection provisions of the DCP.

4.3.14 Building Colours, Materials and Construction

The modified palette of materials and finishes accompanying the application provides for the use of natural and contemporary building materials and facade treatments consistent with those originally approved and as endorsed by the project heritage consultant.

4.3.15 Building Line and Side and Rear building alignments and Building Envelope

The development as modified maintains the previously approved front and side boundary setbacks with a 3 metre deep soil landscape setback maintained to the rear boundary in strict accordance with the control.

4.4 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65) aims to improve the design quality of residential flat developments to provide sustainable housing in social and environmental terms that is a long-term asset to the community and presents a better built form within the streetscape.

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

SEPP 65 applies to new residential flat buildings, the substantial redevelopment/refurbishment of existing residential flat buildings and conversion of an existing building to a residential flat building.

Clause 3 of SEPP 65 defines a residential flat building as follows:

“Residential flat building means a building that comprises or includes:

- a) 3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and*
- b) 4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops), but does not include a Class 1a building or a Class 1b building under the Building Code of Australia.”*

The proposed development involves the construction of a new residential flat (in the form of shop top housing) which will be 3 storeys in height and contain 6 residential apartments.

As per the definition of a ‘Residential Flat Building’ and the provisions of Clause 4 outlining the application of the Policy, the provisions of SEPP 65 are applicable to the proposed development.

Clause 28(2)(b) SEPP 65 requires any development application for residential flat development to be assessed against the 9 design quality principles contained in Schedule 1. The proposal’s performance when assessed against the design quality principles as detailed in the accompanying SEPP 65 Architectural Design/ Verification Statement.

Pursuant to clause 28(2)(c) of SEPP 65 in determining a development application for consent to carry out residential flat development the consent authority is required to take into consideration the Apartment Design Guide. In this regard an Apartment Design Guide compliance table prepared by the project Architect also accompanies this application.

These documents demonstrate that the proposal satisfies the design quality principles contained within SEPP65 and the applicable objectives and design guidelines contained within the ADG.

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies to the residential component of the development and aims to encourage sustainable residential development.

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

4.6 State Environmental Planning Policy (Coastal Management) 2018

State Environmental Planning Policy (Coastal Management) 2018 is applicable to the land. The Act is supported by the State Environmental Planning Policy (Coastal Management) 2018 which came into effect on 3 April 2018. It is applicable because the site is within the designated:

- coastal environment area (Clause 13)
- coastal use area (Clause 14)

Clause 13 (1) of the SEPP, coastal environment area, states the following:

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) coastal environmental values and natural coastal processes,*
- (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*

- (f) *Aboriginal cultural heritage, practices and places,*
- (g) *the use of the surf zone.*

The proposed development, as modified, will have no impact on the natural coastal processes and environment, marine flora and fauna, public access to the beach and is not within the surf zone.

Clause 14 (1) of the SEPP, Coastal Use Area, states the following:

- (1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
 - (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - (iv) *Aboriginal cultural heritage, practices and places,*
 - (v) *cultural and built environment heritage, and*
 - (b) *is satisfied that:*
 - (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
 - (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
 - (c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

The proposed development does not impact on the foreshore processes, access or the amenity of the foreshore area. The dwelling has been demonstrated to be consistent with the desired future character and with the scale of development along the foreshore area.

Clause 15 of the SEPP states:

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

The consent authority can be satisfied that proposed works will not risk coastal hazards on the site or in the local area.

4.7 Matters for Consideration pursuant to section 4.15(1) of the Environmental Planning and Assessment Act 1979 as amended

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15(1) of the Environmental Planning and Assessment Act 1979 (as amended). Guidelines (in *italic*) to help identify the issues to be considered have been prepared by the Department of Planning and Environment. The relevant issues are:

4.7.1 The provision of any planning instrument, draft environmental planning instrument, development control plan or regulations

This report clearly and comprehensively addresses the statutory regime applicable to the application pursuant to the Manly LEP 2013 and Manly DCP 2013.

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

Context and Setting

i. What is the relationship to the region and local context in terms of:

- *The scenic qualities and features of the landscape*
- *The character and amenity of the locality and streetscape*
- *The scale, bulk, height, mass, form, character, density and design of development in the locality*
- *The previous and existing land uses and activities in the locality*

These matters have been discussed in the body of this report.

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

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

These matters have been discussed in detail earlier in this report. The potential impacts are considered to be acceptable with regard to the applicable legislation.

Access, transport and traffic:

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

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

These issues have been discussed in detail in the report. The development provides adequate carparking facilities in conformity with the standards of the policy.

Public Domain

The proposed development will have no adverse impact on the public domain.

Utilities

This matter has been discussed in detail in the body of this report.

Flora and Fauna

The site will be landscaped. The planting and landscaping treatments will enhance the landscape quality of the locality.

Waste Collection

No change to approved.

Natural hazards

Flooding and geotechnical hazards have been addressed.

Economic Impact in the locality

The proposed development will have a positive economic impact in the locality through the creation of jobs both during the construction and post construction/retail management operations.

Site Design and Internal Design

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

These matters have been discussed in detail earlier in this report. The potential impacts are considered to be minimal and within the scope of the desired future character and built form controls of the DCP.

- ii) *How would the development affect the health and safety of the occupants in terms of:*
 - *lighting, ventilation and insulation*
 - *building fire risk – prevention and suppression*
 - *building materials and finishes*
 - *a common wall structure and design*
 - *access and facilities for the disabled*
 - *likely compliance with the Building Code of Australia*

The proposed development can comply with the provisions of the Building Code of Australia as detailed within the accompanying report. The proposal complies with the relevant standards pertaining to health and safety and will not have any detrimental effect on the occupants.

Construction

- i) *What would be the impacts of construction activities in terms of:*
 - *The environmental planning issues listed above*
 - *Site safety*

Normal site safety measures and procedures will ensure that no safety or environmental impacts will arise during construction.

4.7.3 The suitability of the site for the development

- *Does the proposal fit in the locality*

- *Are the constraints posed by adjacent development prohibitive*
- *Would development lead to unmanageable transport demands and are there adequate transport facilities in the area*
- *Are utilities and services available to the site adequate for the development*
- *Are the site attributes conducive to development*

The adjacent development does not impose any unusual or impossible development constraints. The site is well located with regards to public transport and utility services. The development will not cause excessive or unmanageable levels of transport demand.

The development responds to the topography of the site, is of adequate area, and has no special physical or engineering constraints is suitable for the proposed development

4.7.4 Any submissions received in accordance with this act or regulations

It is envisaged that Council will appropriately consider any submissions received during the notification period.

4.7.5 The public interest

It is considered that the development is sensitive both to the natural and built environments and is consistent with the provisions of the Pittwater LEP and DCP.

5 CONCLUSION

The application seeks to refine the architectural detailing of the development application to provide superior streetscape, residential amenity, heritage conservation and broader urban design outcomes, to enhance buildability and economic viability and to better meet the more contemporary design guidelines contained within the Apartment Design Guide (ADG) as they relate to floor to floor heights, room sizes and layouts. Of most significance is the reconfiguration and augmentation of residential floor space to accommodate 6 apartments compared to the 4 as originally proposed noting that the increased residential yield remains compliant with the prescribed residential density standard whilst also securing the economic viability of the project to enable it to progress to construction. Further, the electrical substation adjacent to the frontage of the property is proposed to be relocated to facilitate a double width driveway entrance into the basement which will significantly enhance both vehicular and pedestrian safety and access and egress efficiencies.

The final design reflects a measured response to the issues arising from formal pre-DA discussions with Council (PLM2020/0276) in particular the maintenance of the approved built form relationship with both immediately adjoining properties including the heritage listed Barrenjoey House. In this regard the final design detailing has been prepared in consultation with Urbis – Heritage with the accompanying Heritage Impact Statement containing the following conclusion:

The proposed new structure has been designed with consideration of the surrounding heritage items. The bulk of the new building has been reduced from the primary streetscape with the massing concentrated to the rear. Additionally, the new structure's terraced façade would be set back from the front boundary, consequently reducing its appearance from the streetscape. This design element would also reduce the appearance of the new works against the aforementioned adjacent heritage items. Furthermore, the selected colour scheme, including neutral tones, natural wood, natural zinc and soft landscaping would respond well to both the surrounding development and existing natural vegetation. the above considered, it is assessed that the proposed development would not engender a negative heritage impact. Accordingly, the proposal is considered a positive heritage outcome and recommended for approval on heritage grounds.

This submission demonstrates that the modified development is of exception design quality which will afford superior levels of amenity for future occupants whilst maintaining appropriate amenity to surrounding development in relation to privacy, views and solar access. Whilst the previously approved building heights are increased by 817mm to accommodate ADG compliant floor to floor heights the additional height is justified having regard to the superior building design, amenity and broader urban design outcomes achieved. The ultimate outcome is a building of exceptional design quality which will make a positive contribution to the streetscape whilst maintain the heritage conservation and residential amenity outcomes afforded to adjoining development through approval of the original scheme.

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

- The application provides for superior streetscape, residential amenity and broader urban design outcomes on this particular site. The modified scheme exhibits design excellence.

- The proposal maintains the general massing of the approved development in relation to heights and setbacks with the proposed residential density compliant with the associated standard.
- The proposed building height, as modified, continues to satisfy the objectives of the standards and accordingly strict compliance is unreasonable and unnecessary under the circumstances.
- The development, as modified, better achieves the design quality principles contained within State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP65) and the objectives and guidelines contained within the Apartment Design Guide (ADG).
- The proposed development, as modified, will not compromise the residential amenity or heritage conservation outcomes afforded to surrounding development through approval of the original scheme.
- The development will remain free from flooding and geotechnical hazards.

On the basis of the above analysis we regard the proposed application as being “essentially or materially” the same as the approved development such that the application is appropriately categorised as being “substantially the same” and is appropriately dealt with by way of Section 4.55(2) of the Act.

BOSTON BLYTH FLEMING PTY LIMITED



Greg Boston
 B Urb & Reg Plan (UNE) MPIA
 B Env Hlth (UWS)
Director

Attachment 1

Council confirmation of physical commencement



6 November 2019

Nathaniel Murray
NSW Town Planning Pty Ltd
Level 12, 95 Pitt Street
SYDNEY NSW 2000

Via email: nmurray@nswtownplanning.com.au

Development consent N0119/14 - 1102 Barrenjoey Road, Palm Beach

Dear Nathaniel,

Council has received correspondence dated 30 October and 6 November 2019 requesting confirmation of the physical commencement of works associated with development consent N0119/14, which approved the construction of a shop top housing development at 1102 Barrenjoey Road, Palm Beach.

Council has reviewed the submitted Geotechnical Report (prepared by WITT Consulting, dated November 2019) and is of the opinion that the geotechnical works undertaken thus far constitute the physical commencement of works at the site. Noting that these works were undertaken prior to 13 November 2019, development consent N0119/14 will not lapse.

If you require any further information, please contact Rebecca Englund on 9970 1250.

Regards,

A handwritten signature in black ink, appearing to read "Matthew Edmonds".

Matthew Edmonds
Manager, Development Assessment

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