

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2019/0239
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<b>Responsible Officer:</b>	Daniel Milliken
<b>Land to be developed (Address):</b>	Lot 1 DP 1001963, 638 Pittwater Road BROOKVALE NSW 2100
<b>Proposed Development:</b>	Demolition Works and construction of a mixed use development
<b>Zoning:</b>	Warringah LEP2011 - Land zoned B5 Business Development WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Marval Property Pty Ltd S & A Apartments Pty Ltd RNSAL Property Enterprises Pty Ltd
<b>Applicant:</b>	BBF Town Planners

<b>Application Lodged:</b>	08/03/2019
<b>Integrated Development:</b>	Yes
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Mixed
<b>Notified:</b>	20/03/2019 to 22/04/2019
<b>Advertised:</b>	23/03/2019
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 22.18%
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 16,546,098.00
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Northern Beaches Council is in receipt of Development Application No. DA2019/0239 for a three storey shop top housing development with basement car parking located at No. 638 Pittwater Road, Brookvale.

The subject site is zoned B5 Business Development under the provisions of the Warringah Local Environmental Plan 2011 (WLEP 2011). The proposed development is prohibited within the zone but is permissible with consent as the site is within "Area 5" in Schedule 1 Additional Permitted Uses.

The site adjoins an industrial zone, fronts a busy transport corridor, has three street frontages and a long southern boundary. This results in unique constraints for the design, particularly in relation to solar access. To the north of the site is No. 640 Pittwater Road, which has no vehicle access other than Pittwater Road and if redeveloped, would need access through one of its two neighbouring sites, the subject site being the most suitable.

The design includes small breaches of the height limit along parts of the development and one large non-compliance to create an illuminated light disk on the corner of Pittwater Road and Orchard Road. This results in the development exceeding the 11m height limit by a maximum of 2.44m.

The proposal is therefore reliant upon a variation to the maximum building height development standard prescribed by clause 4.3 of WLEP 2011, with a maximum variation of 22.18%.

The applicant's written request to vary this standard satisfactorily addresses the matters required, and overall, the consent authority can be satisfied that the relevant matters of clause 4.6 of WLEP 2011 have been properly addressed and the variation to the development standard is acceptable and worthy of support.

Other issues discussed further within this report include, the removal of a significant tree, two apartments being 2sqm undersized, the lack of a phase 2 site assessment and the front setback to a portion of Orchard Road.

The proposed development is a suitable architectural response to the context of the site. The development, despite the breach of the height limit, will be compatible with the height, bulk and scale of surrounding built form. The resultant development will provide a suitable level of amenity for future occupants, will not result in any adverse impacts upon the character of the streetscape or the amenity of adjoining properties, and will be an upgrade for the site.

As such, the proposal has been found to be consistent with the principles of State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP 65), the relevant objectives of the Apartment Design Guide, and the relevant provisions of the WLEP 2011 and Warringah Development Control Plan 2011 (WDCP 2011).

The public exhibition period generated no submissions and overall, there were no matters that would warrant the refusal of the application in the public's interest.

The application has been referred to the Northern Beaches Local Planning Panel for determination in accordance with the direction issued by the Minister for Planning on 23 February 2018, as the application seeks consent for a three-storey shop top housing development that is subject to the provisions of SEPP 65 and involves a variation to the building height development standard greater than 10%.

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposal includes:

1. The demolition of all existing structures on site and the removal of the large tree near the southern boundary.
2. The construction of a shop top housing development that includes:
  - Three levels of basement parking (RLs 4.7, 7.9 and 11.1) with 164 parking spaces, motorcycle and bicycle parking, and residential storage space.
  - Three ground floor (RL 15.1) retail/business tenancies with additional basement floor space for

the largest of the tenancies. Associated waste storage and service vehicle loading areas.

- The ground floor also contains the lower levels of eight SoHo style apartments.
- Two levels of residential apartments (RLs 20.1 and 20.2, and 23.15 and 23.25) containing 40 apartments in total.
- Awnings around the western, southern and eastern boundaries of the site.
- An illuminated light disk is proposed on the roof on the corner of Pittwater Road and Orchard Road.

3. Vehicular access is via Charlton Lane for residential, retail and business parking, and via Orchard Road for loading and services.

4. Communal open space is located on the podium level.

5. Associated landscaping works.

6. Provision has been made within the top basement level for access to No. 640 Pittwater Road, to the north west of the site, which does not have access other than from Pittwater Road.

7. No signage or uses for the tenancies are proposed under this application.

## **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**

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings

Warringah Local Environmental Plan 2011 - 2.5 Additional permitted uses for particular land

Warringah Local Environmental Plan 2011 - 6.2 Earthworks

Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land

Warringah Development Control Plan - B7 Front Boundary Setbacks

Warringah Development Control Plan - C3 Parking Facilities

**SITE DESCRIPTION**

<b>Property Description:</b>	Lot 1 DP 1001963 , 638 Pittwater Road BROOKVALE NSW 2100
<b>Detailed Site Description:</b>	<p>The site is located on the eastern side of Pittwater Road, the northern side of Orchard Street and the western side of Charlton Lane.</p> <p>The site is "L" shaped and has an area of 2662sqm. The site has boundaries of 16.21m with Pittwater Road, 7.365m with the corner, 90.61m with Orchard Road, 40.235m with Charlton Lane, 39.655m with No. 642 Pittwater Road, and 21.925m and 39.85m with No. 640 Pittwater Road.</p> <p>Existing on the site is a two storey building. The front portion is currently used for retail purposes and the rear as a loading dock. There is one large tree, located on the southern boundary near the rear of the site. There is a line of trees to the east of the site as well as some on the corner of Pittwater Road and Orchard Road.</p> <p>The surrounding development consists of industrial properties to the east and north, commercial properties to the west and the Brookvale bus depot to the south. Warringah Mall is located a few hundred metres to the south west.</p>

Map:



**SITE HISTORY**

The site was the subject of a Planning Proposal in 2012 that added the site to "Area 5" on the additional permitted uses map. This states:

**5 Use of certain land in the vicinity of Pittwater Road and Roger Street, Brookvale**

(1) This clause applies to land in the vicinity of Pittwater Road and Roger Street, Brookvale, shown as "Area 5" on the Additional Permitted Uses Map.

(2) Development for the following purposes is permitted with consent—

- (a) office premises,
- (b) retail premises,
- (c) shop top housing.

(3) Consent must not be granted under this clause to development for the purposes of shop top housing unless the consent authority is satisfied that the development will not have a significant adverse impact on any adjoining land in Zone IN1 General Industrial.

**PLM2018/0051**

A pre-lodgement meeting was held to discuss the current proposal. Relevant comments included:

*"The proposal exhibits a significant departure from the existing Height of Buildings Development Standard which cannot be supported via a variation under Clause 4.6 of the WLEP.*

*Furthermore, it is considered that the amalgamation of the site with the neighbouring site to the north (640 Pittwater Road) will provide a more comprehensive and consistent outcome. Should this option be considered, you are recommended to attend another pre-lodgement meeting to discuss the design, planning and technical outcomes of such a scheme."*

**DA2018/1912**

This development application was rejected by Council.

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

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

<b>Section 4.15 Matters for Consideration'</b>	<b>Comments</b>
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah 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)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This</p>

Section 4.15 Matters for Consideration'	Comments
	<p>documentation has been submitted.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to concerns raised by Council. Amended plans were submitted that lowered the height of the development and made other minor changes.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;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><b>(i) Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p><b>(ii) Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p><b>(iii) Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received in relation to this application.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition of the application, Council received no submissions.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Industrial)	<p><b>General Comments</b></p> <p>The proposal is for mixed development including residential units. This site and surrounding sites are light industrial where zoning is to allow activities that would likely create noise, in some cases 24/7, and not impact on a residential receiver. There are no buffer zones. The significant neighbouring bus depot operates 24/7.</p> <p>If residential premises are permitted to be introduced without noise consideration, then placing noise limits on future use of surrounding sites may not be possible and would be considered unreasonable, following introducing residential use immediately adjacent. .</p> <p>As stated in the submission: "An acoustic assessment has been undertaken for the Development Application by Wilkinson Murray Pty for the proposed mixed use development at 638 Pittwater Road, Brookvale. The following findings have been determined by this assessment:</p> <ul style="list-style-type: none"><li>• Site-specific noise emission criteria have been established for surrounding receivers. It is noted that mechanical services and plant have not been selected; however, it is envisaged that compliance with criteria can be achieved. Whilst unlikely to be needed, standard engineering noise controls can be implemented at design stage to meet established noise criteria if required.</li><li>• Traffic associated the development will not adversely impact on the</li></ul>

Internal Referral Body	Comments
	<p>acoustic amenity of surrounding residences.</p> <ul style="list-style-type: none"> <li>• Apartments facing Pittwater Road will require improved glazing to ensure that the acoustic amenity of future residences is protected. Preliminary recommendations provide options for glazing.</li> <li>• Improved glazing is recommended for apartments facing Charlton Lane to control noise emissions from the light industrial area.</li> <li>• No special glazing is required on all other apartments.</li> <li>• Internal noise isolation requirements in accordance with the NCC will be achieved by adopting appropriate constructions."</li> </ul> <p>Environmental Health believe despite the comments above that acoustic treatments should be provided to all external residential habitable rooms due to future, reasonably anticipated, light industrial noise and lack of buffer zones (otherwise refusal is recommended). Additionally windows may need to be closed at night, in particular to reduce noise for sleeping. Therefore, provision of air conditioning and adequate ventilation to residential apartments should also be required.</p> <p>On this basis then the proposal can be positively reviewed.</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to conditions</p>
Landscape Officer	<p>The Landscape Plan and Arborist's Report submitted with the application are noted.</p> <p>The Arborist's Report indicates that the majority of trees along the rear of the site are to be retained, which is supported. It is noted that a mature <i>Cinnamomum camphora</i> (Camphor Laurel Tree) on the north eastern corner of the site is to be one of the trees removed. <i>C. camphora</i> is an exempt species under WDCP Clause E1, whereby Council approval to remove the tree is not required. As such, no objections to removal are raised.</p> <p>The Arborist's Report identifies a mature <i>Eucalyptus microcorys</i> (Tallowood tree) located inside the site, near the southern boundary. The tree is described in the Arborist's Report as being 22m high, 18m canopy spread, of Good health and vigour, of High Retention/Significance value and with a Typical Form/Habit. The Arborist's Report further advises under Comments: Remove &amp; Replace: Tree is too close to line of excavation for underground parking.</p> <p>The conclusion therefore is that the tree is required to be removed due to the design of the development rather than due to any health or structural defects of the tree.</p> <p>Brookvale is noted as an area deficient in tree cover. Recently released data from the Office of Environment and Heritage on urban heat and tree canopy data indicates Brookvale to contain less than</p>



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	<p>10% tree canopy cover and receives a Vulnerability Score of 5 - Most Vulnerable in the Heat Vulnerability Index 2016.</p> <p>As such, it is considered that the tree should be retained and the development designed around the tree to enable retention with the inherent benefits such a tree brings to the site and the local environment.</p> <p>At this stage, the proposal is not supported with regard to landscape issues.</p> <p><b><u>Planners comment</u></b></p> <p>This site is within a B5 Business Development zone that allows nil or minimal setbacks, with the intention of developing all or the vast majority of the site to activate the streetscape, and create employment and homes along a busy transport corridor.</p> <p>It is noted that Council's Landscape Officer recommends the retention of the large tree on the southern boundary, towards the western side of the site.</p> <p>The retention of this tree would render a large portion of the site undevelopable including putting limitations on the basement and space available for access cores and vehicle movement through the three levels.</p> <p>In this regard, it is not considered viable to retain this tree on this site.</p> <p>The retention of the trees on the western side of the site (within the road reserve) will be ensured through conditions and will help to protect the urban forest of the Northern Beaches. In addition, the proposed landscape plan will add planting on the structure.</p>
NECC (Development Engineering)	<p>Reference is made to Development Engineering Referral Response 1 dated 15/4/19 and Response 2 dated 14/11/19 and the additional information provided by the Applicant.</p> <p><b><u>Note to Planner:</u></b></p> <p>Please ensure appropriate arrangements have been made for future vehicular access to the adjoining property 640 Pittwater Road. This may require the creation of a Right Of Way where one does not currently exist. Please consider this in your assessment and apply any appropriate condition.</p> <p>No objections are raised to the proposed development, subject to conditions.</p>
NECC (Water Management)	<p>This application was assessed under  Warringah DCP 2011 C4 – Stormwater  Warringah DCP 2011 C5 – Erosion and Sedimentation  Warringah Council PL 850 Water Management Policy</p>

Internal Referral Body	Comments
	<p><b>Stormwater</b> The applicant has included adequate stormwater quality treatment for the site. An operation and maintenance plan must be provided and attached to the positive covenant. Conditions apply.</p> <p><b>Sediment</b> An appropriate soil and water management plan has been provided. Sediment and erosion controls must be established before any demolition on the site and maintained until all work is complete.</p> <p><b>Groundwater</b> The site is located over the coastal sands aquifer "Manly Coastal Sands", which is located in an area of moderately high vulnerability, being a significant source of water to both Curl Curl and Manly Lagoon catchments.</p> <p>General Terms of Approval have been provided by Water NSW, and these must be complied with. A dewatering permit must be obtained from Northern Beaches Council prior to any dewatering of groundwater from the site, as this must be included with the application to Water NSW. The application must include a dewatering management plan that addresses flow rates and water quality monitoring and treatment. Water discharges are only to the stormwater system and must be managed in a way that does not overwhelm the capacity of the local stormwater system. Conditions apply.</p> <p>Ongoing discharges from this development are not permitted. The basement must be tanked as designed.</p>
Strategic and Place Planning	<p>The proposal is considered acceptable in terms of Council's Strategic Planning, subject to suitable conditions to resolve matters related to SOHO units (no residential use at ground level), provision for possible future additional floors and a driveway connection to adjoining land at 640 Pittwater Road, and adequate acoustic and landscape treatment of apartments adjoining IN1 land to reduce conflict.</p> <p><b>Draft Brookvale Structure Plan</b> On 8 August 2017, Council endorsed the Draft Brookvale Structure Plan for public exhibition. The Draft Plan was exhibited for 6 weeks until 20 November 2017.</p> <p>The Draft Brookvale Structure Plan Map designates the subject site as Town Centre (Mixed Use) and indicates a Proposed Vehicle Connection along the site's eastern boundary to Charlton Lane. Orchard Road is also designated as a Green Street.</p> <p>The strategic intent for the Town Centre, expressed in the Draft Brookvale Structure Plan, is focused on revitalisation, activation, providing for employment growth and encouraging residential development in mixed use arrangements to assist viable commercial</p>

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	<p>redevelopment and provide housing choice and affordability.</p> <p>The Draft Brookvale Structure Plan recommends the following changes to the zoning, land use and development controls for the Town Centre (Mixed Use) area which includes the subject site:</p> <ul style="list-style-type: none"> <li>• rezoning from B5 Business Development to B4 Mixed Use, with a requirement for ground floor and first floor retail/business/office uses, and the option for residential uses (shop top housing) above first floor level</li> <li>• increasing the maximum building height from 11m (3 storeys) to 21m (6 storeys)</li> </ul> <p>Character and built form recommendations include:</p> <ul style="list-style-type: none"> <li>• active street frontages and enhanced pedestrian environment</li> <li>• two-storey podiums with setbacks above podium</li> </ul> <p>Submissions on the Draft Brookvale Structure Plan were made on behalf of the owners of the subject site. The submissions sought an increase in building heights to 8 storeys (27m). Reference was made to the site's size, prominent corner location and proximity to the B-line and Warringah Mall, making it suitable for more intensive, landmark development and a potential catalyst to the redevelopment of the town centre and the provision of housing choice and affordability.</p> <p>In response to over 100 submissions received on the Draft Brookvale Structure Plan, Council has engaged consultants to undertake a traffic and transport study for Brookvale-Dee Why. At the same time, LGA-wide housing and employment studies have commenced as part of the LEP review. These studies will assist in ensuring all options are considered for the future growth and development of Brookvale as a vital Strategic Centre for the region. Once the transport, housing and employment studies are complete, the Draft Brookvale Structure Plan will be revised and finalised for implementation through subsequent LEP and DCP amendments.</p> <p>The proposed development in a general sense does not preclude the strategic land use intent expressed in the Draft Brookvale Structure Plan. The site is a good location for residential and employment growth, particularly in terms of accessibility to public transport, provided impacts can be managed effectively at the interface with the IN1 General Industrial zone. Matters which require further consideration are outlined below.</p> <p><i>Future Expansion</i></p> <p>The proposed development at 3 storeys is potentially an under-utilisation of the site compared with the potential building height which</p>

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	<p>may ultimately be envisaged by the Brookvale Structure Plan.</p> <p>Although the Draft Brookvale Structure Plan recommends 6 storeys for the site, further studies are underway which may result in revisions to the final recommendations on building height and scale.</p> <p>The design of the proposed development incorporates provision for additional storeys, a future basement driveway connection to adjoining land at 640 Pittwater Road, and a basement commercial tenancy, which could be converted to future parking for additional floors and/or redevelopment of 640 Pittwater Road. It appears from the evidence submitted that the applicant has made a reasonable effort, albeit unsuccessful, to purchase the adjoining site at 640 Pittwater Rd for amalgamation with the subject site. The basement driveway connection to 640 Pittwater Rd is shown on drawing A04. Conditions of consent can secure this connection, along with the ability to convert the basement commercial area to future parking and an appropriate certification to ensure the structural design of the building can accommodate at least 2 additional floors in the future. Pre-lodgement advice suggested the applicant provide a concept plan for redevelopment of 640 Pittwater Road. Such a plan could illustrate how future development on 640 Pittwater Road could in concept integrate with the proposed development, and satisfy Council's concerns about potential sterilisation of that land, and the ability to achieve vehicular access and SEPP 65 Apartment Design Guide compliance.</p> <p><i>First Floor Residential</i></p> <p>Although the Draft Brookvale Structure Plan recommends mandatory retail/commercial uses on ground and first floor levels, the proposed residential apartments at first floor level are permissible under the site's current zoning and therefore cannot be reasonably opposed.</p> <p>Likewise, although the Draft Brookvale Structure Plan recommends mandatory setback of buildings levels above two storey podiums, the existing DCP controls do not require this.</p> <p><i>Ground Level Commercial and SOHO Units</i></p> <p>Suitable conditions will need to be imposed to ensure that the ground level commercial and SOHO unit spaces will not be used for residential purposes. With the possibility of the ground level SOHO units being rented out for commercial uses, separate to the residential uses above, consideration may need to be given to provision for amenities for commercial tenants. Appropriate allocation of parking spaces to each unit will also need to be considered.</p> <p><i>Basement Commercial</i></p> <p>An email from BBF Planners following the pre-lodgement meeting makes reference to self-storage units being considered for the</p>

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	<p>basement and ground floor commercial space of the development. Self-storage units are permissible under the site's B5 zoning.</p> <p>Self-storage units would be prohibited if the site were rezoned to B4 Mixed Use as recommended by the Draft Brookvale Structure Plan. A key reason for excluding self-storage units from a Mixed Use zone, with the potential for shop-top housing, is the need avoid potential conflicts between uses, particularly with regards to residential amenity and impacts associated with more intensive and potentially noisy or hazardous uses. These issues will need to be considered at such time that a development application/s is received for use of the basement and ground floor commercial spaces. If an application is received in the future for self-storage units, it may be pertinent to impose conditions designed to reduce potential conflict such as restrictions on storage materials and hours of operation. Fire risk may also be a consideration as it is difficult to control the materials stored in self-storage facilities.</p> <p><i>Industrial Interface</i></p> <p>Clause 5(3) of Schedule 1 of the Warringah LEP states:  <i>"Consent must not be granted under this clause to development for the purposes of shop top housing unless the consent authority is satisfied that the development will not have a significant adverse impact on any adjoining land in Zone IN1 General Industrial."</i></p> <p>Whilst the 6m building setback, retention of mature trees and landscaping to Charlton Avenue will assist with reducing noise and visual impacts, suitable conditions may be necessary to require acoustic treatment to the apartments adjoining the IN1 zone to ensure an adequate standard of residential amenity.</p> <p>Plans Master Set – Omission of A07</p> <p>It is noted that drawing A07 Second Floor Plan appears to be missing from the Master Set (drawing A06 First Floor Plan is included twice).</p> <p>Conclusion</p> <p>These comments are provided in relation to the strategic planning framework for Brookvale. They do not indicate any assessment of the application against relevant planning controls.</p> <p>Strategic Planning considers the proposal to be acceptable, subject to suitable conditions to resolve matters related to SOHO units (no residential use at ground level), provision for possible future additional floors and a driveway connection to adjoining land at 640 Pittwater Road, and adequate acoustic and landscape treatment of apartments adjoining IN1 land to reduce conflict.</p>
Strategic and Place Planning (Urban Design)	<b>Urban Design Comments - December 2019:</b>

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	<p>The amended proposal has addressed the issues from the previous Urban Design Comments satisfactorily.</p> <p><b>Urban Design Comments - October 2019:</b></p> <p>The proposal cannot be supported for the following reasons:</p> <ol style="list-style-type: none"> <li>1. “Illuminated light disk” roof feature should be integrated with the building design. More detailed information should be provided: <ol style="list-style-type: none"> <li>a. Proposed lighting design system/ concept design to illuminate the disk – types of colour lights, colour changes, frequency, etc. Will the disk be the only element illuminated on the overall building facade? Is there a time schedule for the disk to be lit up?</li> <li>b. Construction material of the disk to compliment the rest of the building material finishes.</li> <li>c. Service elements are integrated into the design for maintenance purposes.</li> </ol> </li> <li>2. There should be a knock-down wall panel located next to the service vehicle bay area to provide for possible future service entrance to the next door landlocked neighbour at 640 Pittwater Road. This is in addition to the basement level one knock-down panel to access future basement of the neighbouring site.</li> <li>3. The proposed awnings to the street frontages should be dimensioned on the drawings. Where street trees are required, the street awning should be set back from the kerb along its entire length by not less than 1.5m to accommodate the trees. The minimum width of awning should be 2m.</li> <li>4. To prevent visual and acoustic privacy issues in the small light well proposed, obscure glass block wall should be nominated for one side of the windows facing the light well at unit 13/14, 15/16, 19/20, 33/34, 35/36 and 39/40.</li> <li>5. The development should be designed around the existing ‘Tallowood’ tree to enable retention with the inherent benefits such a tree brings to the site and the local environment as per landscape officer comment.</li> </ol> <p><b>Urban Design Comments - April 2019:</b></p> <p>The proposal cannot be supported for the following reasons:</p> <ol style="list-style-type: none"> <li>1. The building height control of 11m has been breached by 0.7 to 3m. The additional building height and bulk will set an undesirable precedent for future development around the area. The site is located at a corner location and can justify a corner building element of exceeding the 11m height control by 1.1m at most. The “light disk” roof feature needs more clarification.</li> <li>2. The 4.75m floor to ceiling height on the ground floor is</li> </ol>

Internal Referral Body	Comments
	<p>excessive. Apartment Design Guide (ADG) recommends 3.3m minimum for shops/ commercial area. ADG recommends 3.1m floor to floor for residential area. Reducing the floor to ceiling height on the ground floor will help to reduce the overall building height breach.</p> <ol style="list-style-type: none"> <li>3. The Right-of-Way to benefit the next door landlocked neighbour (640 Pittwater Road) to the north needs to be a 6m wide minimum corridor all the way from Orchard Road to the common boundary on the ground floor to cater for service vehicle access and egress. This is in addition to the basement level one knock-down panel to access future basement of the neighbouring site.</li> <li>4. The basement commercial area for future car parking addition to cater for future Brookvale Structure Plan up-zone is unusual. It could be used as storage area for the commercial and residential units, which would make it more acceptable as an underground space.</li> <li>5. The acoustic impact for the new apartments will need to be justified with acoustic treatments to make it acceptable as a residential building located next to an industrial area.</li> <li>6. Facade treatment can be further improved to contribute greater visual interest of the building and the character of the local area through a balanced composition of building elements, textures, materials and colour selections.</li> <li>7. A light well could be created from the communal area courtyard to get sunlight to Soho units 2, 4 &amp; 6.</li> <li>8. Street trees are required so the street awning should be set back from the kerb along its entire length by not less than 1.5m to accommodate the trees. The minimum width of awning should be 2m.</li> <li>9. The second floor plan (Drawing no. A07) is missing.</li> </ol>
Traffic Engineer	<p>The Development proposes a total of 40 residential units and 2,124sqm of commercial office space.</p> <p>The site will provide:</p> <ul style="list-style-type: none"> <li>- 157 car parking spaces</li> <li>- 60 bicycle parking</li> <li>- 8 motorbike spaces</li> <li>- 2 service bays</li> </ul> <p><b>Traffic:</b> The assumptions regarding the traffic generation are deemed adequate. The generation of 42 vehicles in the peak AM and 32 in the peak PM periods is deemed negligible on the network. However due to the narrow nature of Charlton Lane, it is advised that either parking be removed along the full length of the road, or a one-way system be introduced.</p> <p>Any changes the road arrangements in this manner will require</p>

Internal Referral Body	Comments
	<p>approval of the Local Traffic Committee. The applicant will be conditioned to provide plans demonstrating both outcomes. This will require SIDRA assessment of both scenarios to be undertaken. As such, the applicant will be required to provide the SIDRA data prior to any Occupation Certificate.</p> <p><b>Parking:</b> The parking rates adopted as part of the applicant's report are deemed accurate. However, the layout of the parking does not appear to comply with AS2890. Aisle widths at critical locations seem to be more narrow. With the plans not being detailed, further information would be required. However, due to the surplus of parking being proposed, it is envisaged that spaces can be relocate, altered and removed to make the space compliant. This will be conditioned, provided the applicant does not reduce numbers below the minimum required being 106 spaces.</p> <p><b>Pedestrian:</b> Appropriate safety measures around the lift areas will be required. This should include bollards due to the exposed nature of the lift access to protect pedestrians. This will be conditioned.</p> <p><b>Servicing:</b> A loading bay management plan will be required/conditioned to ensure the appropriate use of the loading bay by the identified truck sizes only. The restrictions will need to be included in the site Operational Management Plan.</p>
Waste Officer	Bin room dimensions and access acceptable to Council. Bulky goods storage room acceptable to Council.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	Ausgrid raised no objections to approval subject to condition. These conditions have been included in the recommendation of this report.
NSW Roads and Maritime Services (Traffic Generating Development)	<p>TfNSW reviewed the application, raised no objection to approval and provided the following comments:</p> <ol style="list-style-type: none"> <li>1. The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1- 2004, AS2890.6-2009 and AS 2890.2 – 2002 for heavy vehicle usage. Parking Restrictions may be required to maintain the required sight distances at the driveway.</li> <li>2. All vehicles are to enter and leave the site in a forward direction.</li> <li>3. The proposed development will generate additional pedestrian movements in the area. Pedestrian safety is to be considered in the vicinity.</li> </ol>



External Referral Body	Comments
	TfNSW requested a number of conditions to be incorporated into any consent.
Nominated Integrated Development – Water NSW (Permit for Temporary Construction Dewatering)	<p>Water NSW responded on 15 April 2019, commenting:</p> <p><i>"Water NSW has determined that the proposed development is likely to encounter groundwater during the excavation process, and is subject to a Water Supply Work Approval under the Water Management Act 2000 for dewatering during the construction phase. This determination is subject to appropriate construction methods to be employed to minimise volume of groundwater take during the construction phase. Water NSW provides General Terms of Approval attached.</i></p> <p><i>On the basis of limited information available, Water NSW considers that the take of water may be required during construction. A water supply work approval under S92 of the water Management Act 2000, and, subject to exemptions, a water access licence may be required to account for the water take."</i></p> <p>The GTAs will form part of the consent.</p>

## 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 SEPP 55 requires the consent authority to consider whether land is contaminated.

In response to the above requirements of the SEPP, the applicant has submitted a Phase 1 Environmental Site Investigation dated May 2010, prepared by Environmental Strategies. It is noted that the report is from 2010. However, as the site has not changed in the interim (i.e. no building works or new uses that may cause contamination) and the legislation has not been altered since before 2010, the age of the report is acceptable in this instance.

In its conclusion, the investigation states:

*"Based on the results of the Stage 1 Environmental Site Assessment, it is understood the site has been used for a range of commercial/light industrial purposes since 1902.*

*It is anticipated that the site is underlain by up to 1m of fill, overlying natural sands. Groundwater was recorded to occur at 2m below grade within 800m of the site.*

*No significant contaminating activities were observed in the area surrounding the site.*

*A Phase 2 Environmental Site Assessment is recommended based on the results of this Phase 1 ESA to assess the quality of the fill on the site and to determine whether previous site use has impacted the soil and groundwater beneath the site.*

*If the proposed development of the site requires soil to be excavated and removed, ES advises that this material will be required to be classified in accordance with the DECCW (2009) Waste Classification Guidelines prior to disposal off-site. The material is required to be disposed to an appropriately licensed landfill. Similarly, if material is to be imported on to the site it will require a certificate showing it's suitability as clean fill supported by a laboratory analytical report."*

Therefore, as the Investigation indicates that there is a potential for contaminants to exist on the site, Clauses 7(1)(b) and 7(1)(c) of the SEPP must be considered.

Clause 7(1)(b) stipulates that "*if the land is contaminated, it [Council] is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out*".

Given the claimed potential of contamination on the site as noted in the Phase 1 Investigation, a Phase 2 Environmental Site Assessment must be done for the site to confirm whether contamination is actually present, at what levels and at what locations.

No Phase 2 Environmental Site Assessment has been provided at DA stage, however, it is difficult to conduct one due to the presence of the buildings.

It is critical that a Phase 2 be done prior to construction but it does not need to be done prior to demolition. As such, it is recommended that a condition be imposed requiring a Phase 2 to be done and provided to Council for approval, after demolition but prior to the start of any excavation or construction. If that report recommends any remediation work, this must also be done prior to any excavation or construction.

Clause 7(1)(c) stipulates that "*if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose*".

The extent of any potential remediation of the site is uncertain due to the lack of a Phase 2 Environmental Site Assessment. Therefore, before any remediation of the site could be recommended and undertaken, a Phase 2 Environmental Site Assessment would be required in accordance with the SEPP and the Contaminated Lands Management Act 1997 to confirm the presence of contamination, what any such contamination may actually consist of and the precise locations and depths of any contamination. This will be addressed via a condition of consent and, as such, the development can be supported.

## **SEPP 65 - Design Quality of Residential Apartment Development**

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment

Development (SEPP 65) stipulates that:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

(a) the development consists of any of the following:

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

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and

(c) the building concerned contains at least 4 or more dwellings.

As previously outlined, the proposed development is for the erection of a three storey shop top housing development plus basement car parking for the provisions of 40 self-contained dwellings.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

As previously outlined within this report, Clause 50(1A) of the Environmental Planning and Assessment 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.

Clause 28 of SEPP 65 requires:

(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- (a) the advice (if any) obtained from the design review panel, and
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and
- (c) the Apartment Design Guide.

## **DESIGN REVIEW PANEL**

Northern Beaches Council does not have an appointed Design Review Panel.

## **DESIGN QUALITY PRINCIPLES**

### **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:

The site sits within a B5 Business Development zone. Residential accommodation (and by extension shop top housing) is prohibited in this zone. However, the site sits within "Area 5" under Schedule 1 Additional permitted uses of WLEP2011. This area allows shop top housing with the aim of increasing the number of homes along this busy transport corridor.

While there are no large shop top housing developments on any adjoining or nearby sites (the closest are approximately 100m away in Roger Street), shop top housing is envisaged for this site and will help to set the future context and neighbourhood character for the area.

As a result, the development meets this principle.

**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 bulk and height of the proposal have been assessed in detail below in this report. Both are considered acceptable.

The development will help set the desired future character of the area, is of a suitable scale for the site and the current controls. The design displays sufficient articulation and manipulation of building elements to suit the site and the broader industrial/commercial nature of Brookvale. The development will activate the public domain, will improve the streetscape and will be an upgrade to the site.

As a result, the development meets this principle.

**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:

The floor plans, and the use of the north facing courtyard and communal area, have allowed every apartment to receive some direct sunlight. This is despite the site having a long southern boundary. This design will allow a high level of amenity for most apartments. No apartments will be left with inadequate amenity.

The site is located along a busy transport corridor and close to numerous shops and services, including employment lands. Overall, the density of the proposal is suitable.

As a result, the development meets this principle.

#### **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:

98% of the apartments are naturally cross ventilated and all receive some direct sunlight. A waste management plan was submitted with the application and suitable conditions will be imposed to ensure the development will generally comply with this plan. The proposal was also submitted with a Building Sustainability Assessor Certificate, the specifications of which are shown on the plans.

As a result, the development meets this principle.

#### **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 usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.*

#### Comment:

The development does not require any deep soil areas, however, the 6.0m setback to the eastern boundary, containing existing trees, will remain and will continue to enhance the site. The planting on the structure, within the communal area and courtyard is suitable for the building and its location.

As a result, the development meets this principle.

#### **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:

The apartment layouts are sensible and have suitable dimensions. The use of the north facing courtyard and communal area have allowed every apartment to receive some direct sunlight. This is despite the site having a long southern boundary. This design will allow a high level of amenity for most apartments.

No apartments will be left with inadequate amenity.

The site is located along a busy transport corridor and close to numerous shops and services, including employment lands. Overall, the density of the proposal is suitable.

As a result, the development meets this principle.

### **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 development will activate the streetscape with the provision of the new retail tenancies. In addition, the new apartments will allow casual surveillance of the public domain.

The entrances to the building will be secure and the vehicle entries are suitably located and will allow secure residential parking and accessible visitor/customer spaces.

As a result, the development meets this principle.

### **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, providing opportunities for social interaction amongst residents.*

#### Comment:

The proposal includes a mix of studio, and one, two and three bedroom apartments. This will provide a variety of accommodation types and choices for different demographics, living needs and household budgets.

The development includes a north facing communal space accessible to all residents.

As a result, the development meets this principle.

### **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 well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.*

Comment:

Brookvale is a mainly industrial area with older style low rise commercial buildings fronting Pittwater Road. The visual appearance of the development will fit within this context and help shape the desired future character.

Articulation along the facades and a mix of colours and materials have been provided. The illuminated light disk will add an additional feature to the building that will increase the visual interest.

Overall, the design of the building is compatible with the context in which it sits and will be an upgrade to the site.

As a result, the development meets this principle.

**APARTMENT DESIGN GUIDE**

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

<b>Development Control</b>	<b>Criteria / Guideline</b>	<b>Comments</b>
<b>Part 3 Siting the Development</b>		
<b>Site Analysis</b>	Does the development relate well to its context and is it sited appropriately?	Yes, the proposal is one of the first large shop top housing developments in the area and will help to set the desired future context.
<b>Orientation</b>	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Yes, the development is orientated with the site, which unfortunately has a long southern boundary, meaning access to sunlight is an issue, however, the design has dealt with this by providing courtyards to allow sunlight to penetrate into most apartments.
<b>Public Domain Interface</b>	Does the development transition well between the private and public domain without compromising safety and security?  Is the amenity of the public domain retained and enhanced?	Yes, the activation of the streetscape along all three street frontages.
<b>Communal and Public Open Space</b>	Appropriate communal open space is to be provided as follows:	Yes, communal open space has been provided

	<ol style="list-style-type: none"> <li>Communal open space has a minimum area equal to 25% of the site</li> <li>Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid-winter)</li> </ol>	<p>on the podium level with good access to sunlight from the north and north west.</p>												
<p><b>Deep Soil Zones</b></p>	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1" data-bbox="440 629 1062 1171"> <thead> <tr> <th>Site area</th> <th>Minimum dimensions</th> <th>Deep soil zone (% of site area)</th> </tr> </thead> <tbody> <tr> <td>Less than 650m<sup>2</sup></td> <td>-</td> <td rowspan="4">7%</td> </tr> <tr> <td>650m<sup>2</sup> – 1,500m<sup>2</sup></td> <td>3m</td> </tr> <tr> <td>Greater than 1,500m<sup>2</sup></td> <td>6m</td> </tr> <tr> <td>Greater than 1,500m<sup>2</sup> with significant existing tree cover</td> <td>6m</td> </tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m <sup>2</sup>	-	7%	650m <sup>2</sup> – 1,500m <sup>2</sup>	3m	Greater than 1,500m <sup>2</sup>	6m	Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m	<p>No, while the controls for the site do not envisage any landscaping, a deep soil zone is provided along the Charlton Lane 6.0m setback.</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m <sup>2</sup>	-	7%												
650m <sup>2</sup> – 1,500m <sup>2</sup>	3m													
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Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m													
<p><b>Visual Privacy</b></p>	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1" data-bbox="440 1357 1062 1715"> <thead> <tr> <th>Building height</th> <th>Habitable rooms and balconies</th> <th>Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>Up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> <tr> <td>Over 25m (9+ storeys)</td> <td>12m</td> <td>6m</td> </tr> </tbody> </table> <p><b>Note:</b> Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>The development has nil setbacks to the northern, southern and western boundaries. This is appropriate for the site. The setback to the eastern boundary is 6.0m, however, this adjoins a lane and therefore provides suitable separation.</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												
<p><b>Pedestrian Access and entries</b></p>	<p>Do the building entries and pedestrian access connect to and addresses the public domain and</p>	<p>Yes, the retail tenancies have separate entries to</p>												



	are they accessible and easy to identify?  Large sites are to provide pedestrian links for access to streets and connection to destinations.	the residential units.
<b>Vehicle Access</b>	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	Yes, the car parking and loading/service entries have been separated.
<b>Bicycle and Car Parking</b>	<p>For development in the following locations:</p> <ul style="list-style-type: none"> <li>On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</li> </ul> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	The development provides adequate car parking.
<b>Part 4 Designing the Building</b>		
<b>Amenity</b>		
<b>Solar and Daylight Access</b>	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> <li>Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter.</li> <li>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.</li> </ul>	<p>Yes, Despite the long southern boundary, the use of the communal open space and a courtyard has allowed 32 of the 40 (80%) of apartments to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter.</p> <p>No apartments will receive no sunlight in mid-winter.</p>
<b>Natural Ventilation</b>	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"> <li>At least 60% of apartments are naturally</li> </ul>	Yes, 39 of the 40 (98%) of the apartments are naturally cross ventilated.

	<p>cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</p> <ul style="list-style-type: none"> <li>Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</li> </ul>													
<p><b>Ceiling Heights</b></p>	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table border="1" data-bbox="440 707 1062 1294"> <thead> <tr> <th colspan="2">Minimum ceiling height</th> </tr> </thead> <tbody> <tr> <td>Habitable rooms</td> <td>2.7m</td> </tr> <tr> <td>Non-habitable</td> <td>2.4m</td> </tr> <tr> <td>For 2 storey apartments</td> <td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td> </tr> <tr> <td>Attic spaces</td> <td>1.8m at edge of room with a 30 degree minimum ceiling slope</td> </tr> <tr> <td>If located in mixed used areas</td> <td>3.3m for ground and first floor to promote future flexibility of use</td> </tr> </tbody> </table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	<p>Yes, the ground floor has a floor to ceiling height of 4.6m. The apartments are 2.7m.</p>
Minimum ceiling height														
Habitable rooms	2.7m													
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Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope													
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use													
<p><b>Apartment Size and Layout</b></p>	<p>Apartments are required to have the following minimum internal areas:</p> <table border="1" data-bbox="440 1447 1062 1671"> <thead> <tr> <th>Apartment type</th> <th>Minimum internal area</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>35m<sup>2</sup></td> </tr> <tr> <td>1 bedroom</td> <td>50m<sup>2</sup></td> </tr> <tr> <td>2 bedroom</td> <td>70m<sup>2</sup></td> </tr> <tr> <td>3 bedroom</td> <td>90m<sup>2</sup></td> </tr> </tbody> </table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p>	Apartment type	Minimum internal area	Studio	35m <sup>2</sup>	1 bedroom	50m <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>	<p><b>No</b>, variation supported.</p> <p>The one studio apartment has an area of 41sqm. The one bedroom apartments have a minimum area of 50sqm. Two of the two bedroom apartments have a minimum area of 68sqm, the remaining six are more than 70sqm. The three bedroom apartments have a minimum area of 91sqm.</p> <p>The 2 x two bedroom apartments below 70sqm still have an adequate layout to result in acceptable amenity.</p>		
Apartment type	Minimum internal area													
Studio	35m <sup>2</sup>													
1 bedroom	50m <sup>2</sup>													
2 bedroom	70m <sup>2</sup>													
3 bedroom	90m <sup>2</sup>													

	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.	Yes															
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Yes															
	In open plan layouts (where the living, dining and kitchen are combined), the maximum habitable room depth is 8m from a window.	Yes															
	Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space).	Yes															
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	Yes															
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> <li>• 3.6m for studio and 1 bedroom apartments</li> <li>• 4m for 2 and 3 bedroom apartments</li> </ul>	Yes															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Yes															
<b>Private Open Space and Balconies</b>	All apartments are required to have primary balconies as follows: <table border="1" data-bbox="440 1323 1064 1585"> <thead> <tr> <th>Dwelling Type</th> <th>Minimum Area</th> <th>Minimum Depth</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m<sup>2</sup></td> <td>-</td> </tr> <tr> <td>1 bedroom apartments</td> <td>8m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>2 bedroom apartments</td> <td>10m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>12m<sup>2</sup></td> <td>2.4m</td> </tr> </tbody> </table>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m <sup>2</sup>	-	1 bedroom apartments	8m <sup>2</sup>	2m	2 bedroom apartments	10m <sup>2</sup>	2m	3+ bedroom apartments	12m <sup>2</sup>	2.4m	Yes  The studio has a 12sqm balcony. The one bedroom apartments have minimum balconies of 10sqm. The two bedroom apartments have minimum balconies of 10sqm. The three bedroom apartments have minimum balconies of 13sqm.
	Dwelling Type	Minimum Area	Minimum Depth														
	Studio apartments	4m <sup>2</sup>	-														
	1 bedroom apartments	8m <sup>2</sup>	2m														
2 bedroom apartments	10m <sup>2</sup>	2m															
3+ bedroom apartments	12m <sup>2</sup>	2.4m															
	The minimum balcony depth to be counted as contributing to the balcony area is 1m																
	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 <sup>2</sup> and a minimum depth of 3m.	Yes, the apartments that directly adjoin the communal open space have allocated areas of at least 15sqm.															
<b>Common Circulation and Spaces</b>	The maximum number of apartments off a circulation core on a single level is eight.	Yes, six is the maximum.															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A															
<b>Storage</b>	In addition to storage in kitchens, bathrooms and	Yes, all apartments have															

bedrooms, the following storage is provided:

Dwelling Type	Storage size volume
Studio apartments	4m <sup>2</sup>
1 bedroom apartments	6m <sup>2</sup>
2 bedroom apartments	8m <sup>2</sup>
3+ bedroom apartments	10m <sup>2</sup>

At least 50% of the required storage is to be located within the apartment.

internal storage plus storage spaces within the basement.

<b>Acoustic Privacy</b>	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Yes, an Acoustic Assessment has been provided outlining recommendations to protect the amenity of the residents.										
<b>Noise and Pollution</b>	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Yes										
<b>Configuration</b>												
<b>Apartment Mix</b>	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Yes, the proposal provides all types of apartments from a studio to three bedroom apartments.										
<b>Ground Floor Apartments</b>	Do the ground floor apartments deliver amenity and safety for their residents?	N/A										
<b>Facades</b>	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Yes										
<b>Roof Design</b>	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	Yes										
<b>Landscape Design</b>	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Yes										
<b>Planting on Structures</b>	When planting on structures the following are recommended as minimum standards for a range of plant sizes:  <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">Plant</th> <th style="width: 15%;">Definition</th> <th style="width: 15%;">Soil</th> <th style="width: 15%;">Soil</th> <th style="width: 15%;">Soil Area</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Plant	Definition	Soil	Soil	Soil Area						Yes
Plant	Definition	Soil	Soil	Soil Area								

	<b>type</b>		<b>Volume</b>	<b>Depth</b>	
	Large Trees	12-18m high, up to 16m crown spread at maturity	150m <sup>3</sup>	1,200mm	10m x 10m or equivalent
	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m <sup>3</sup>	1,000mm	6m x 6m or equivalent
	Small trees	6-8m high, up to 4m crown spread at maturity	9m <sup>3</sup>	800mm	3.5m x 3.5m or equivalent
	Shrubs			500-600mm	
	Ground Cover			300-450mm	
	Turf			200mm	
<b>Universal Design</b>	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features				Yes
<b>Adaptable Reuse</b>	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.				N/A
<b>Mixed Use</b>	Can the development be accessed through public transport and does it positively contribute to the public domain?  Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.				Yes
<b>Awnings and Signage</b>	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.  Signage must respond to the existing streetscape character and context.				Yes, awnings are provided. No signage is proposed.
<b>Performance</b>					
<b>Energy Efficiency</b>	Have the requirements in the BASIX certificate been shown in the submitted plans?				Yes
<b>Water Management</b>	Has water management taken into account all the				Yes

<b>and Conservation</b>	water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	
<b>Waste Management</b>	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	Yes
<b>Building Maintenance</b>	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Yes

## STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

*(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:*

- (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,*
- (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,*
- (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.*

**Note.** The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

### Comment:

The proposal is recommended for approval.

*(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:*

- (a) the design quality principles, and*
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.*

*(3) To remove doubt:*

- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and*
- (b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.*

**Note.** The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment:

The development has demonstrated that adequate regard has been given to the design quality principles, and the objectives specified in the Apartment Design Guide for the relevant design criteria. As such, the proposal is worthy of support.

**SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. 962606M\_02 dated 11 March 2019).

The BASIX Certificate indicates that the development will achieve the following:

<b>Commitment</b>	<b>Required Target</b>	<b>Proposed</b>
<b>Water</b>	40	40
<b>Thermal Comfort</b>	Pass	Pass
<b>Energy</b>	45	45

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

**SEPP (Infrastructure) 2007**

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid who responded on 4 April 2019. Ausgrid consented to the application, subject to conditions.

Roads and Maritime Service (RMS)

**Clause 101 - Development with frontage to classified road states:**

*The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—*

*(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*

*(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*

*(i) the design of the vehicular access to the land, or*

- (ii) the emission of smoke or dust from the development, or  
 (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

Comment:

The site fronts Pittwater Road. Vehicle access is proposed via Orchard Road and Charlton Lane. In this regard, the safety, efficiency and ongoing operation of Pittwater Road will not be adversely affected by the development. Council's Traffic Engineers have reviewed the number of vehicle movements and have not raised any objections to approval.

In relation to noise and emissions, the application was accompanied by an Acoustic Report. This report made an assessment of traffic noise, industrial noise and mechanical noise. The report recommended additional glazing and other design solutions to reduce the noise impact to the future residents.

**Clause 102 - Impact of road noise or vibration on non-road development states:**

- (2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.
- (3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—  
 (a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,  
 (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.

Comment:

The site fronts Pittwater Road, meeting the criteria for assessment under this clause.

The application was accompanied by an Acoustic Report. This report specifically addressed Clause 102 of the SEPP, and the *Development near rail corridors and busy roads* guidelines, and made recommendation for additional glazing and other design solutions to reduce the dB(A) levels to meet the requirements of 35 dB(A) at any time between 10 pm and 7 am in any bedroom in the residential accommodation, and 40 dB(A) at any time anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway).

The application was also referred to the RMS who did not raise any objection to the proposal, subject to conditions.

**Warringah Local Environmental Plan 2011**

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:	11m	13.44m	22.18%	No



## Compliance Assessment

<b>Clause</b>	<b>Compliance with Requirements</b>
2.5 Additional permitted uses for particular land	Yes
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

## Detailed Assessment

### **2.5 Additional permitted uses for particular land**

The site is within 'Area 5 on the Additional Permitted Uses Map. This clause states:

*Development for the following purposes is permitted with consent:*

- (a) office premises,*
- (b) retail premises,*
- (c) shop top housing.*

Comment: The proposal is for shop top housing.

*Consent must not be granted under this clause to development for the purposes of shop top housing unless the consent authority is satisfied that the development will not have a significant adverse impact on any adjoining land in Zone IN1 General Industrial.*

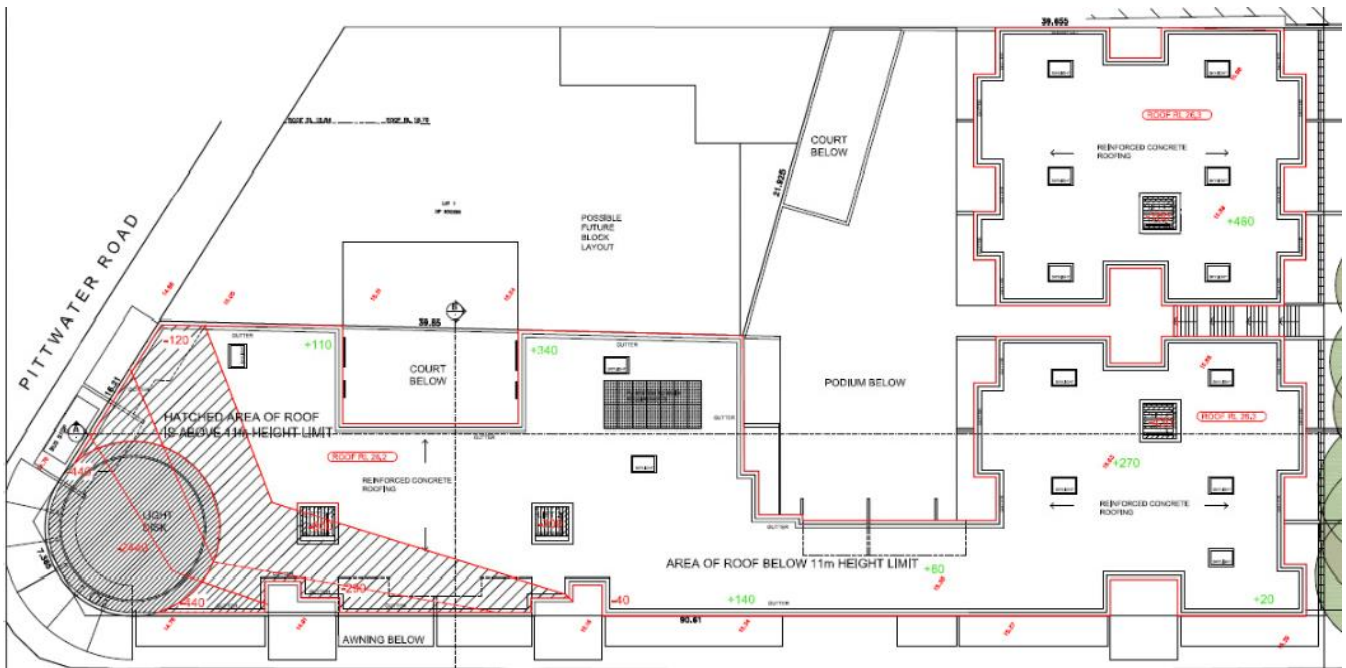
Comment: The impacts on adjoining land is discussed below in this report. In summary, the proposal will not have a significant adverse impact on the adjoining IN1 General Industrial zoned properties. This is achieved by the 6m building setback, retention of mature trees and landscaping to Charlton Lane to assist with reducing noise and visual impacts. Suitable conditions requiring compliance with the acoustic report, to reduce the impacts to the apartments adjoining the IN1 zone, have been included in the recommendation.

### **4.6 Exceptions to development standards**

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	11m
Proposed:	Maximum of 13.44m
Percentage variation to requirement:	22.18%

It should be noted that the maximum height is only reached by the architectural light disk. While there are some elements of the rest of the building that breach the 11m height limit, the majority of the proposal is below it. The hatched area on the roof plan, below, shows the portion of the building above the 11m height limit.



Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

- (1) *The objectives of this clause are as follows:*
  - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
  
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

Clause 4.3 – Height of Buildings development standard is not expressly excluded from the operation of this clause.

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

*(a) the consent authority is satisfied that:*

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*(b) the concurrence of the Secretary has been obtained.*

**Clause 4.6 (4)(a)(i) (Justification) assessment:**

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

*'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'*

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

*(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,  
(c) to promote the orderly and economic use and development of land,  
(d) to promote the delivery and maintenance of affordable housing,  
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,  
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),  
(g) to promote good design and amenity of the built environment,  
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,  
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,  
(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicant's written request argues, in part:

*"Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development, in particular the non-compliant portions of the building, offensive, jarring or unsympathetic in a streetscape context.*

*We have also formed the considered opinion that the proposal will maintain appropriate amenity in terms of solar access and privacy and will not give rise to any adverse public or private view affectation. In this regard, the development satisfies the objectives of the height of buildings standard and accordingly strict compliance is unreasonable and unnecessary under the circumstances.*

*In our opinion, there are sufficient environmental planning grounds to justify the variation including the desire to provide 4.75 metre ground floor ceiling heights to provide greater flexibility in terms of future commercial uses (consistent with the zone objectives), the slight fall across the surface of the land and the desire for single level floor plates and the appropriateness of an architectural roof feature to reinforce the visual importance of the site as the southern gateway to the Brookvale Business precinct. The building heights proposed are compatible with the heights established by development along Pittwater Road and those anticipated by the 11 metre/ 3 storey height standard.*

*Further, the architectural roof feature and future proofing of the building represent a skilful response to the prominent corner location of the site and the future proofing of the development having regard to the informally exhibited Brookvale Structure Plan. Such outcomes also promote/ facilitate the orderly and economic use and development of the land consistent with objectives 1.3(c) and (g) of the Act."*

It is agreed that the non-compliant portions of the building will not be offensive, jarring or unsympathetic in a streetscape context, and that the proposal will not result in any adverse amenity impacts.

It is agreed that floor to ceiling heights and the architectural roof feature will be a benefit to the site, and that the slight fall of the land contributes to the non-compliance.

It is also agreed that the building heights proposed are compatible with the heights established by development along Pittwater Road and those anticipated by the 11 metre/ 3 storey height standard.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

**Clause 4.6 (4)(a)(ii) (Public Interest) assessment:**

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the B5 Business Development zone. An assessment against these objectives is provided below.

**Objectives of development standard**

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the WLEP 2011 are:

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

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

Comment:

The development mostly sits under the height limit. The element with the greatest height breach is the light disk. This will provide an architectural element on the prominent corner that will add visual interest to the area.

The surrounding development has a mix of heights (from the open bus depot to the south, to four storey shop top housing developments on Roger Street). The proposal will sit comfortably amongst the existing development and will help set the future character of the area.

Overall, the building will be compatible with the height and scale of surrounding and nearby development.

*b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*

Comment:

The breach of the height limit to accommodate the light disk will add visual interest to the site and the area without resulting in any disruption of views, loss of privacy and loss of solar access.

*c) to minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*

Comment:

The site is located in a commercial/industrial area. The development will not unreasonably impact on the scenic quality of Warringah's coastal and bush environments.

*d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,*

Comment:

As above, the breach of the height limit will add visual interest to the development when viewed from the public streets around the site.

## **Zone objectives**

The underlying objectives of the B5 Business Development zone

- *To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of, centres.*

Comment:

The proposal will provide new business uses for the site, as well as residential accommodation, that will support and enhance the viability of Brookvale.

- *To provide for the location of vehicle sales or hire premises.*

Comment:

While the proposal does not specifically seek consent for a vehicle sales or hire premises, the site does not prohibit this use or impact on other sites from providing this use.

- *To create a pedestrian environment that is safe, active and interesting by incorporating street level retailing and business uses.*

Comment:

The proposal will adequately activate the streetscape, providing a better pedestrian environment. The driveways are suitably designed to minimise safety concerns.

## Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B5 Business Development zone.

## **Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:**

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

## 6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*
- (b) to allow earthworks of a minor nature without requiring separate development consent.*

In this regard, before granting development consent for earthworks, Council must consider the following matters:

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

Comment: The proposal is likely to disrupt existing drainage patterns as the excavation will require de-watering. This has been reviewed by the NSW Office of Water who have issued General Terms of approval that will form part of the consent.

- (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 proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report 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. A condition has been included in the recommendation of this report requiring 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 watercourse, drinking water catchment or environmentally sensitive area*

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **6.4 Development on sloping land**

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

*(a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and*

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective and therefore, Council is satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

*(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and*

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not cause significant detrimental impacts because of stormwater discharge from the development site.

*(c) the development will not impact on or affect the existing subsurface flow conditions.*

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not result in adverse impacts or effects on the existing subsurface flow conditions.

#### **Warringah Development Control Plan**

##### Built Form Controls

<b>Built Form Control</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation</b>	<b>Complies</b>
B5 Side Boundary Setbacks	Northern boundaries - Merit Assessment	Nil	N/A	Yes



B7 Front Boundary Setbacks	Front portion (Pittwater Road and Orchard Road) - consistent with adjacent buildings	Nil	N/A	Yes (consistent with adjacent buildings)
	Rear portion (Orchard Road and Charlton Lane) - 4.5m	Orchard Road - Nil Charlton Lane -  Basement - 6.0m Above ground levels - 6.0m	100%  N/A N/A	<b>No</b>  Yes Yes
B9 Rear Boundary Setbacks	Merit Assessment - The site does not have a rear boundary. This control does not apply.	N/A	N/A	N/A

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B6 Merit Assessment of Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B10 Merit assessment of rear boundary setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	No	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

### Detailed Assessment

#### **B7 Front Boundary Setbacks**

##### Description of non-compliance

The proposal has a nil setback to Orchard Road.

The control requires a minimum of 4.5m.

##### Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To create a sense of openness.*
- *To maintain the visual continuity and pattern of buildings and landscape elements.*
- *To protect and enhance the visual quality of streetscapes and public spaces.*
- *To achieve reasonable view sharing.*

##### Comment:

The 4.5m setback is aimed at industrial sites/buildings that have their main frontage to Orchard Road. In this case, the proposal is for shop top housing, which requires street activation along all frontages. A nil setback along Pittwater Road and a 4.5m setback along Orchard Road is impractical for this development and would not result in sufficient space to provide retail tenancies to activate the streetscape.

In this regard, the proposed nil setback along Orchard Road is acceptable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **C3 Parking Facilities**

##### Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To provide adequate off street carparking.*

Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Shop top housing - Residential	1 space per 1 bedroom dwelling 1.2 spaces per 2 bedroom dwelling 1.5 spaces per 3 bedroom dwelling 1 visitor space per 5 units or part of dwellings	26 x 1B = 26 10 x 2B = 12 4 x 3B = 6 40 units = 8 visitor	Residential = 88 Visitor = 9	+45
Commercial/retail	1 space per 40 m2 GFA	2,124sqm = 54	62	+8
<b>Total</b>		106	159	+53

The development provides adequate carparking, including a large surplus of spaces.

It is noted that additional capacity has been proposed to cater for any future redevelopment of this site, should the site be rezoned/granted a height increase as part of a future Brookvale Master Plan.

The applicant has not provided any indication of the number of potential future dwellings that could be accommodated using the 53 spaces plus the basement area underneath the main retail tenancy.

In order to ensure these additional spaces will be available for any future development, a condition has been recommended requiring that, the surplus 53 carparking spaces are not allocated to strata allotments (associated with the development approved under this consent) and that they not be used or leased out for 'public parking' purposes. The surplus parking spaces may be allocated as common property until such time as any future development occurs on the site.

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

Comment:

The proposed parking is within a basement and will have a minimal visual impact on the street and surrounding public space.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment:

The proposed parking is within a basement and will not dominate the street or surrounding public space.

## **E1 Preservation of Trees or Bushland Vegetation**

Merit consideration:

The development is considered against the underlying Objectives of the Control as follows:

- *To protect and enhance the urban forest of the Northern Beaches.*
- *To effectively manage the risks that come with an established urban forest through professional management of trees.*
- *To minimise soil erosion and to improve air quality, water quality, carbon sequestration, storm water retention, energy conservation and noise reduction.*
- *To protect, enhance bushland that provides habitat for locally native plant and animal species, threatened species populations and endangered ecological communities.*
- *To promote the retention and planting of trees which will help enable plant and animal communities to survive in the long-term.*
- *To protect and enhance the scenic value and character that trees and/or bushland vegetation provide.*

Comment:

This site is within a B5 Business Development zone that allows nil or minimal setbacks, with the intention of developing all or the vast majority of the site to create employment and homes along a busy transport corridor.

It is noted that Council's Landscape Officer recommends the retention of the large tree on the southern boundary, towards the western side of the site.

The retention of this tree would render a large portion of the site undevelopable including putting severe limitations on the basement and space available for vehicle movement through the three levels.

In this regard, it is not considered viable to retain this tree on this site.

The retention of the trees on the western side of the site (within the road reserve) will be ensured through conditions. In addition, 11 new street trees, being native tuckeroos, are proposed along the Orchard Road frontage, with one tree proposed on Pittwater Road. Council's Road Assets Team have raised no objections to their location. This outcome will help to enhance the urban forest of the Northern Beaches.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

The proposal will not significantly effect 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 2019**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$165,461 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$16,546,098.

## **ACCESS TO 640 PITTWATER ROAD**

No. 640 Pittwater Road has a single frontage to Pittwater Road. To the sides and rear, this lot is surrounded by the subject site to the south and east, and No. 642 Pittwater Road to the north. This results in problems for the redevelopment of No. 640 Pittwater Road given that a future driveway crossing from Pittwater Road (there is an existing one, however, this will have to be removed if the site is redeveloped) is prohibited.

The solution to this issue is for the site to be amalgamated with either No. 638 Pittwater Road and/or No. 642 Pittwater Road. Failing this, future access to No. 640 Pittwater Road will need to be provided.

In *Karavellas v Sutherland Shire Council [2004] NSWLEC 251* Commissioner Tuor addressed the issue of amalgamation of sites through a Planning Principle as follows:

*"The general questions to be answered when dealing with amalgamation of sites or when a site is to be isolated through redevelopment are:*

- *Firstly, is amalgamation of the sites feasible?*
- *Secondly, can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?"*

Comment:

### **Is amalgamation feasible?**

The documentation submitted with the application includes details of the attempted purchase of No. 640 Pittwater Road by the owners of No. 638 Pittwater Road. A market valuation is provided, along with a formal offer to the owner of No. 640 Pittwater Road, to purchase the property at 10% above the market valuation. This attempt was unsuccessful.

### **Can orderly and economic use and development of the separate sites still be achieved?**

To ensure No. 640 Pittwater Road can still be developed, the current proposal includes the ability for the upper level of the basement to be knocked through, to provide access to No. 640 Pittwater Road should it be developed independently in the future.

Given the size of No. 640 Pittwater Road, a single level basement knock through within the subject site is not considered sufficient for No. 640 Pittwater Road to be able to achieve a development of appropriate urban form and with acceptable level of amenity. This is because what would be a multi-level basement on No. 640 Pittwater Road will require space for ramps, allowing access to the lower levels of a future basement. With only one knock through, the required ramps within No. 640 Pittwater Road would take up a disproportionate amount of the basement area, thereby limiting the number of parking spaces that could be provided.

To solve this, it is recommended that all three levels of the proposed basement have the ability to be accessed by a future development on No. 640 Pittwater Road. It is recommended that a condition be included in the consent to ensure this, but that this condition only comes into force should No. 640 Pittwater Road be developed independently (i.e. not with No. 642 Pittwater Road).

Overall, subject to the additional knock throughs, the proposal will enable reasonable development of the No. 640 Pittwater Road to occur while maintaining the amenity of both developments.

The application is consistent with this Planning Principle.

## **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;
- Warringah Local Environment Plan;
- Warringah 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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

The application seeks consent for a three storey shop top housing development with basement car parking located at No. 638 Pittwater Road, Brookvale.

The site adjoins an industrial zone, fronts a busy transport corridor, has three street frontages and a long southern boundary. This results in unique constraints for the design, particularly in relation to solar access. To the north of the site is No. 640 Pittwater Road, which has no vehicle access other than Pittwater Road and if redeveloped, would need access through one of its two neighbouring sites, the subject site being the most suitable. This issue has been resolved via a condition of consent.

The proposal is reliant upon a variation to the maximum building height development standard prescribed by clause 4.3 of WLEP 2011, with a maximum variation of 22.18%, as a result of the slight slope of the land and the addition of an architectural feature to the main corner of the site. The variation to the development standard is acceptable and worthy of support.

The other critical issues discussed within this report include, the removal of a significant tree, two apartments being 2sqm undersized, the lack of a phase 2 site assessment and the front setback to a portion of Orchard Road.

The removal of the tree, while not recommended by Council's Landscape Officer, is necessary for the proper redevelopment of the site in line with the controls. The two undersized apartments have a suitable layout, adequate storage, receive adequate sunlight and are acceptable. The lack of a phase 2 assessment has been resolved via a condition requiring the assessment to be completed prior to any construction work or excavation on the site but post demolition. The proposed front setback to Orchard Road is suitable for the site and the development.

The proposed development is a suitable architectural response to the context of the site. The development, despite the breach of the height limit, will be compatible with the height, bulk and scale of surrounding built form. The resultant development will provide a suitable level of amenity for future occupants, will not result in any adverse impacts upon the character of the streetscape or the amenity of adjoining properties, and will be an upgrade for the site.

The public exhibition period generated no submissions and overall, there were no matters that would warrant the refusal of the application in the public's interest.

The development has been assessed against SEPP 65 and the Apartment Design Guide and has been found to satisfactorily meet the design principles and the relevant numerical requirements. The development meets the aims and reasonably complies with the controls within the WLEP 2011 and the WDCP 2011.

The development is a high quality urban design that will minimise the impacts to surrounding properties, activate the streetscape, and bring an attractive building onto this prominent corner site within the neighbourhood centre.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be approved subject to conditions attached to this report.

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

## RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the WLEP 2011 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly, the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2019/0239 for Demolition Works and construction of a mixed use development on land at Lot 1 DP 1001963, 638 Pittwater Road, BROOKVALE, 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
A02	5 December 2019	Barry Rush & Associates Pty Ltd
A03	5 December 2019	Barry Rush & Associates Pty Ltd
A04	5 December 2019	Barry Rush & Associates Pty Ltd
A05	4 October 2019	Barry Rush & Associates Pty Ltd
A06	4 October 2019	Barry Rush & Associates Pty Ltd
A07	4 October 2019	Barry Rush & Associates Pty Ltd
A08	4 October 2019	Barry Rush & Associates Pty Ltd
A09	4 October 2019	Barry Rush & Associates Pty Ltd
A10	4 October 2019	Barry Rush & Associates Pty Ltd
A11	4 October 2019	Barry Rush & Associates Pty Ltd
A14	4 October 2019	Barry Rush & Associates Pty Ltd
A17	4 October 2019	Barry Rush & Associates Pty Ltd



A18	4 October 2019	Barry Rush & Associates Pty Ltd
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<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Construction Impact & Management Statement	August 2018	"Growing My Way" Tree Consultancy
Access Assessment Report	15 November 2018	BCA Logic
DA Noise Assessment	January 2019	Wilkinson Murray Pty Ltd
Geotechnical Investigation Report	17 August 2018	Morrow Geotechnics Pty Ltd
Phase 1 Environmental Site Assessment	May 2010	Environmental Strategies

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

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

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Sheet 0 - Masterplan Revision D	4 September 2018	Conzept Landscape Architects
Public Domain Plan 01 Revision D	4 September 2018	Conzept Landscape Architects
Public Domain Plan 02 Revision D	4 September 2018	Conzept Landscape Architects
GF Landscape Plan 03 Revision D	4 September 2018	Conzept Landscape Architects
GF Landscape Plan 04 Revision D	4 September 2018	Conzept Landscape Architects
L1 Landscape Plan 05 Revision D	4 September 2018	Conzept Landscape Architects
Detail & Specification Revision B	16 August 2018	Conzept Landscape Architects

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plan	November 2018	APEX Engineers

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. Water NSW GTAs

The development must be carried out in compliance with the following General Terms of Approval from Water NSW:

1. A Water Supply Work Approval from WaterNSW must be obtained prior to commencing dewatering activity on the proposed site. Please complete an Application for approval for water supply works, and/or water use.
2. An application for a Water Supply Works Approval will only be accepted upon receipt of supporting documentation, and payment of the applicable fee (see Application fees for New or amended Works and/or Use Approvals). The information required for the processing of the water supply work application may include preparation of a dewatering management plan. Please refer to checklist attached.
3. If approved, the Approval will be issued for a period of up to 24 months to cover the dewatering requirements during the construction phase. It will include conditions to ensure that impacts are acceptable and that adequate monitoring and reporting procedures are carried out. The Approval will be issued subject to the proponent meeting requirements of other agencies and consent authorities. For example, an authorisation by either Sydney Water or the local Council, depending where the water will be discharged. If contaminants are likely, or are found to be present in groundwater, and are being discharged to stormwater, including high salinities, a discharge licence under the Protection of the Environment Operations Act 1997 (NSW) may also be required.
4. WaterNSW prefers “tanking” (i.e. total water proofing below the seasonal high water table) of basement excavations, and avoids the ongoing extraction of groundwater after the initial construction phase. It is also advised to adopt measures to facilitate movement of groundwater post construction (eg. a drainage blanket behind the water-proof membrane).
5. If the basement is not “tanked”, the proponent will require a Water Access Licence (WAL) and need to acquire groundwater entitlements equivalent to the yearly ongoing take of groundwater. Please note: Acquiring groundwater entitlements could be difficult, and may cause delay in project completion. If a WAL is required, please complete an Application for a new water access licence with a zero share component.

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

### **3. Transport for NSW Conditions**

The development must be carried out in compliance with the following conditions from Transport for NSW:

1. TfNSW has previously resumed & dedicated a splay corner of land as road along the Pittwater Road frontage of the subject property, as shown by grey colour on the attachment A Aerial – “X”.

All buildings and structures (other than pedestrian footpath awnings), together with any improvements integral to the future use of the site are wholly within the freehold property (unlimited in height or depth), along the Pittwater Road boundary.

2. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to TfNSW for approval, prior to the commencement of any works. Documents should be submitted to [Development.Sydney@rms.nsw.gov.au](mailto:Development.Sydney@rms.nsw.gov.au)

A plan checking fee will be payable and a performance bond may be required before TfNSW approval is issued.

3. TfNSW advises that current practice is to limit the number of vehicular conflict points along the arterial road network to maintain network efficiency and road safety. This current practice is reflected in Section 6.2.1 of TfNSW current publication of the Guide to Traffic Generating Developments, which states 'access across the boundary with a major road is to be avoided wherever possible'.

Pittwater Road is a major arterial road, which carries a high volume of traffic, where transport efficiency of through traffic is of great importance.

Further to the above, clause 101(2a) of State Environmental Planning Policy (Infrastructure) 2007, which reads as follows:

"The consent authority must not grant consent to development on land that has frontage to a classified road unless it is satisfied that:

(a) where practicable, vehicular access to the land is provided by a road other than the classified road".

Therefore the proposed 'future vehicle access to adjoining Lot 1 DP 900686' Right of Way as shown on page 4 of the Master Plan should be restricted until existing driveway to 406 Pittwater Road, Brookvale is made redundant.

4. A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council for approval prior to the issue of a Construction Certificate.
5. All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on Pittwater Road.
6. A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on Pittwater Road during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>

Reason: To ensure compliance with Transport for NSW.

#### **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) 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) 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.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) 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.
- (j) 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.

- (k) 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 2008
  - (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 2019

A monetary contribution of \$165,460.98 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 2019. The monetary contribution is based on a development cost of \$16,546,098.00.

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 2019 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](http://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 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, 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](http://www.northernbeaches.nsw.gov.au)).

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

## **8. Construction, Excavation and Associated Works Bond (Road)**

The applicant is to lodge a Bond with Council as security against any damage or failure to completion of the construction of civil infrastructure works within Pittwater Road, Orchard Road and Charlton Lane as part of this consent.

The bond shall be valued at 120% the cost of civil infrastructure works. The cost of works shall be determined in consultation with Council by submission of written quote(s) from a suitably qualified, licensed and insured contractor independent from the Applicant.

Details demonstrating 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 Bond (Drainage)**

A Bond of \$10,000 as security against any damage or failure to complete the construction of Stormwater drainage works as part of this consent.

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 for the construction of civil infrastructure works within Kenneth Road and Condamine Street.

The bond is valued at 10% the cost of civil infrastructure works. The value of the bond shall be determined in consultation with Council.

The Maintenance Bond will only be refunded on 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: Protection of Council's infrastructure.

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

### **11. On slab landscape planting and associated works**

- a) Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing to all internal walls and slab, and drainage of the concrete slab over which soil and planting is being provided.
- b) Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil volume, soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.
- c) The following soil depths are required in order to be counted as landscaping:
  - 300mm for lawn
  - 600mm for shrubs
  - 1metre for trees

Reason: To ensure appropriate and secure waterproofing and drainage is installed to direct water flow into the drainage system, and away from habitable areas.

### **12. Detailed Design of Stormwater Quality System**

A certificate from a Civil Engineer, stating that the stormwater quality management system has been designed in accordance with the Stormwater Plans Rev C (Oct 2019) by Alpha Engineering and Development and the Council's Water Management Policy.

The certificate shall be submitted to the Certifying Authority prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment

### **13. 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.

**14. Building Code of Australia Report**

The recommendations made in the Building Code of Australia Report prepared by BCA Logic Revision 110121 Dated 15 November 2018 are to be carried out to the building.

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

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

**15. Pump-Out System Design for Stormwater Disposal**

The design of the pump-out system for Stormwater disposal will be permitted for drainage of hard surfaces areas such as driveways and basement pavement areas only, and must be designed in accordance with AS/NZS 3500. Engineering details demonstrating compliance with this requirement and certified by an appropriately qualified and practising hydraulic engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for the discharge of Stormwater from the excavated parts of the site.

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

The Applicant is to submit an application for approval for Infrastructure works on Councils roadway. Engineering plans for the new development works within the road reserve within 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 civil infrastructure works within Pittwater Road, Orchard Road and Charlton Lane, which shall be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer.

The design must include the following information:

Pittwater Road

- i. Removal of redundant layback and vehicular crossing.
- ii. Provision of a minimum 1.5m wide footpath and upgrade of any associated pram ramps.
- iii. Provision of any streetscape works in accordance with Council's Warringah Public Space Design Guidelines, including any paving, street furniture etc.
- iv. Concurrence shall be obtained from the RMS, including for the stormwater drainage connection.

Orchard Road

- i. Provision of a layback and vehicular crossing 6.5 metres wide. Removal of any redundant vehicular crossings and laybacks.
- ii. Provision of a minimum 1.5m wide footpath and upgrade of any associated pram ramps.
- iii. Provision of any streetscape works in accordance with Council's Warringah Public Space Design Guidelines, including any paving, street furniture etc.

## Charlton Lane

- i. Provision of a layback 6 metres wide.

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.

### **17. Tanking of Basement Level**

The basement area is to be permanently tanked. Details of the tanking are to be prepared by a suitably qualified Engineer. Where temporary dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Office of Water. The bore license must be obtained prior to commencement of dewatering works. All requirements of the NSW Office of Water are to be complied with and a copy of the approval must be submitted to the Principal Certifying Authority. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements

### **18. On-site Stormwater Detention**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Warringah Water Management Policy PL850, and generally in accordance with the concept drainage plans prepared by Alpha Engineering and Development, drawing number A8256 - SW01 to SW07, revision D, dated 11/12/19. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

Detailed drainage plans, including engineering certification, 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 development.

### **19. 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.

**20. Sub-Soil Seepage**

All sub-soil seepage drainage shall be discharged via a suitable silt arrester pit, directly to the kerb inlet pit within Pittwater 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:

- Australian/New Zealand Standard AS/NZS 3500.3 - 2003 Plumbing and drainage - Stormwater drainage
- 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.

**21. Shoring of Adjoining Property**

Should the proposal require shoring to support an adjoining property or Council land, owner's consent for the encroachment onto the affected property owner shall be provided with the engineering drawings.

Council approval is required if temporary ground anchors are to be used within Council land. A Temporary Ground Anchors (Road Reserve) Application is to be submitted with Council for assessment and approval subject to Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Principal 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.

**22. Traffic Management and Control**

An application for Traffic Management Plan is to be submitted to Council for approval. The Traffic Management Plan shall be prepared to RMS standard by an appropriately certified person. An approval is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community

**23. Basement Carpark Ramp Crest**

The Applicant is to ensure the basement carpark ramp provides a crest a minimum 200mm above the edge of bitumen level adjoining the property in Charlton Lane. Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: Protection of the basement carpark from surface flows.

**24. Structures Located Adjacent to Council Pipeline or Council Easement**

All structures are to be located clear of any Council pipeline or easement. The Applicant is to ensure footings of any new development within this development consent adjacent to an easement or pipeline are to be designed in accordance with Northern Beaches Council's

Warringah Water Management Policy PL850. Details and certification prepared by a suitably qualified Civil Engineer demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

**25. Noise reduction measures - design**

In addition to the recommendations in the Acoustic Assessment by Wilkinson Murray Pty that prior to commencement, a further review be carried out by an acoustic engineer to require:

1. Windows to all habitable rooms be upgraded to reduce noise to residents from potential future light industrial uses on neighbouring premises and reflected noise from hard surfaces within the Development.
2. Air conditioning (or alternative air supply to National Building Code requirements) being provided to habitable rooms to allow for adequate ventilation when windows are closed.
3. Review proposed mechanical plant and equipment, fans, and air conditioning before installation to ensure noise compliance with assessment by Wilkinson Murray Pty Ltd.

Reason: To provide acoustic amenity for residential residents from surrounding light industry and main road.

**26. Tree protection and pruning**

(a) Existing trees which must be retained

All trees unless exempt or noxious in in the relevant planning instruments

(b) Tree protection and pruning

- i) No tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree protection measures, including fencing, are to be in place prior to commencement of works
- v) Tree pruning within the subject site is approved to enable construction in accordance with the approved plans.
- vi) Tree pruning is not to exceed 15% of any existing tree canopy
- vii) All tree pruning to be in accordance with AS4373-2007 Pruning of amenity trees.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.

**27. Pre-Construction Stormwater Assets Dilapidation Report**

Survey a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at:

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering->

specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.

The pre-construction / demolition dilapidation report must be submitted to Council for approval and the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's Infrastructure

**28. Pre-commencement Dilapidation Report**

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public and private properties and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

Reason: Protection of Council's and Private Party's Infrastructure during construction.

**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. 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](http://www.sydneywater.com.au) for:

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- 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.

**31. 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.

Due to heavy traffic congestion throughout the town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The CTMP must address following:-

- The proposed phases of construction works on the site, and the expected duration of each construction phase;
- 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;

- Make provision for all construction materials to be stored on site, at all times;
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- 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;
- 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;
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic.
- 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.
- 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.
- 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.
- 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;
- 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.
- 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;
- Proposed protection for Council and adjoining properties;
- The location and operation of any on site crane; and

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. Confirming appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner’s property rights and protects amenity in the locality, without unreasonable inconvenience to the community. The CTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic

(including traffic flow and parking) and pedestrian amenity adjacent to the site.

**32. Pedestrian Safety - Bollards**

The applicant is to ensure appropriate safety measures are implemented surrounding the lift access to protect pedestrians within the basement levels.

Plans demonstrating safety bollards and yellow painted hatching must be submitted to and approved by the accredited certifier prior to the issue of any Construction Certificate.

Reason: To ensure pedestrian safety is maintained around lifts.

**33. Phase 2 Environmental Site Assessment**

A Phase 2 Environmental Site Assessment must be conducted for the site and provided to Council.

The assessment must be undertaken prior to any excavation or construction work on the site. Demolition can occur prior to the assessment being done.

No excavation or construction may commence until Council has given written approval. If the assessment requires the site to be remediated, this must be done prior to any excavation or construction work.

Details demonstrating compliance must be provided to the Principal Certifying Authority prior to the commencement of any excavation or construction work.

Reason: To ensure the site is suitable for the proposed development.

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

**34. 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.

Property / Properties: Nos. 640 and 642 Pittwater Road.

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report 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.

**35. 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**

**36. Road Reserve**

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

Reason: Public Safety.

**37. 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.

**38. 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.

**39. Civil Works Supervision**

All civil works approved in the Roads Act Approval are to be supervised by an appropriately qualified and practising Civil Engineer. 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.

**40. Vehicle Crossings**

The provision of one vehicle crossing layback 6 metres wide in Charlton Lane and one vehicle crossing 6.5 metres wide on Orchard Road in accordance with Northern Beaches Council Drawing No A4-3330/1 N and specifications. 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 footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

Any works within Pittwater Road will require approval from the RMS.

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

Reason: To facilitate suitable vehicular access to private property.

**41. Substitution of Stormwater Treatment Measure**

The substitution of an "equivalent" device for the stormwater treatment measure approved in the Development Application process must first be approved by the Principal Certifying Authority.

Details must be submitted to the Principal Certifying Authority for approval prior to installation.

Reason: To ensure stormwater is appropriately managed and in accordance with the Water Management Policy.

**42. Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

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

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

**43. Excavation, de-watering and construction noise**

Noise from excavation, de-watering and construction shall be kept to a minimum to neighbouring businesses through use of best practice methods and equipment. Should Council receive complaints (which it considers valid) then the immediate services of an acoustic engineer are to be engaged by the site controller and any recommendations implemented before work continues. Where de-watering pumps are to be used overnight noise is not to be audible in any residential premises at night.

Reason: To minimise the noise impact of site works and comply with legislation.

**44. De-watering of excavation**

A system is to be utilised to ensure that all sediment, colour and pollutants are removed from all ground water before disposal to any storm water drainage.

Reason: To eliminate potential water pollution.

**45. Trees Condition**

During the construction period, the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard, all protected plants on this site shall not exhibit:

- (a) A general decline in health and vigour.
- (b) Damaged, crushed or dying roots due to poor pruning techniques.
- (c) More than 10% loss or dieback of roots, branches and foliage.
- (d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
- (e) Yellowing of foliage or a thinning of the canopy untypical of its species.
- (f) An increase in the amount of deadwood not associated with normal growth.
- (g) An increase in kino or gum exudation.
- (h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
- (i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of Trees.

**46. Installation and Maintenance of Sediment Control**

Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Council's Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

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

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

**47. Installation and Maintenance of Sediment and Erosion Control**

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prepared by Alpha Engineering and Development.

Erosion and sediment controls 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.

**48. Dewatering Management**

If groundwater is encountered during excavations of greater than one metre depth from the existing ground surface level and dewatering is required to continue work, work must cease until the applicant has provided a dewatering management plan to Northern Beaches Council that details planned discharges of groundwater to Council's stormwater network, including expected flow rates and treatment methods. This information must be provided to WaterNSW when making an application for a dewatering permit.

The dewatering management plan must be certified by a suitably qualified civil engineer who

has membership of Engineers Australia and appears on the National Engineering Register (NER). Council must issue a permit based on the plan and general terms of approval from WaterNSW, and a dewatering permit provided by WaterNSW prior to dewatering commencing.

Discharges must achieve the following water quality targets in addition to any conditions/documentation of this consent, any requirements of the General Terms of Approval/Controlled Activity permit issued by WaterNSW, and legislation including Protection of The Environment Operations Act 1997 and Contaminated Lands Act 1997.

Parameter	Criterion	Method	Time Prior to Discharge
<b>Oil and grease</b>	No visible	Visual inspection	<1 hour
<b>pH</b>	6.5- 8.5	Probe/meter	<1 hour
<b>Total Suspended Solids (TSS)</b>	<50mg/L	Meter/grab sample measures as NTU	<1 hour

*NOTE: The correlation between NTU and TSS must be established by a NATA accredited laboratory prior to the commencement of dewatering activities.*

All records of water discharges and monitoring results are to be documented and kept on site. Copies of all records shall be provided to the appropriate regulatory authority, including Council, upon request.

Groundwater/tailwater must be discharged to the nearest stormwater pit in accordance with Council's Auspec1 Design Manual and must not spread over any road, footpath and the like. Discharge to the kerb and gutter will not be accepted.

Reason: Protection of groundwater aquifers, groundwater dependent ecosystems and receiving environments.

**49. Protection of stormwater treatment measures**

Stormwater treatment measures must not be installed or must be kept offline until the site has been fully stabilised to prevent damage from sediment during construction works.

Reason: Protection of stormwater treatment measures.

**50. Waste/Recycling Requirements (Materials)**

During demolition and/or construction, the following materials are to be separated for recycling –

timber – bricks – tiles – plasterboard – metal – concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible.

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

### **51. Landscape completion certification (PLEP)**

Condition:

Landscaping is to be implemented in accordance with the Landscape Plans referenced in condition 1.

a) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the approved landscape plan and inclusive of any conditions of consent.

b) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been established and maintained in accordance with the approved landscape plan.

Reason: To ensure that the landscape treatments are installed to provide landscape amenity.

### **52. Landscape Maintenance**

Evidence of an agreement for the maintenance of all plants for a period of twelve (12) months from the date of practical completion of the building is to be provided to the Principal Certifying Authority prior to issue of the final Occupation Certificate.

Reason: To ensure landscaping will be appropriately maintained.

### **53. 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.

### **54. Certification for the Installation of Stormwater Quality System**

A certificate from a Civil Engineer, who has membership to the Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures have been installed in accordance with the Stormwater Plans Rev C (Oct 2019) by Alpha Engineering and Development.

The certificate shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment

### **55. Stormwater Quality Operation and Maintenance Plan**

An Operation and Maintenance Plan is to be prepared to ensure proposed stormwater quality system remain effective.

The Plan must be attached to the Positive Covenant and contain the following:

- a) Inspection and maintenance schedule of all stormwater treatment measures
- b) Maintenance requirements for establishment period
- c) Routine maintenance requirements
- d) Funding arrangements for the maintenance of all stormwater treatment measures
- e) Identification of maintenance and management responsibilities
- f) Vegetation species list associated with each type of vegetated stormwater treatment measure
- g) Waste management and disposal
- h) Traffic control (if required)
- i) Maintenance and emergency contact information
- j) Renewal, decommissioning and replacement timelines and activities of all stormwater treatment measures (please note that a DA may be required if an alternative stormwater treatment measure is proposed)
- k) Work Health and Safety requirements
- l) Requirements for inspection and maintenance records, noting that these records are required to be maintained and made available to Council upon request.

Details demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment

#### **56. Works as Executed Drawings - Stormwater Quality System**

Works as Executed Drawings for the stormwater quality system must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

#### **57. Installation of Rainwater Tanks**

Rainwater tanks shall comply with the following:

- a) Be fitted with a first-flush device that causes initial rainwater run-off to bypass the tank and must drain to a landscaped area. The first flush device will not be permitted to connect to the stormwater system
- b) Have a sign affixed to the tank stating the contents is rainwater
- c) Be constructed or installed in a manner that prevents mosquitoes breeding, such as the use of mesh to protect inlets and overflows
- d) Have its overflow connected to an existing stormwater drainage system that does not discharge to an adjoining property, or cause a nuisance to adjoining owners
- e) Pumping equipment must be housed in a soundproof enclosure
- f) Where the rainwater tank is interconnected to a reticulated water supply, it must be installed in accordance with Plumbing Code of Australia, particularly backflow/cross connection prevention requirements

A certificate from a licenced plumber shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: To conserve potable water.

**58. Installation of Water Efficient Fittings**

The following Water Efficiency Labelling and Standards (WELS) Scheme rated fittings must be installed:

- a) 4 star dual-flush toilets
- b) 3 star showerheads
- c) 4 star taps (for all taps other than bath outlets and garden taps)
- d) 3 star urinals
- e) 3.5 star washing machines
- f) 4 star dishwashers

A certificate from a licenced plumber shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate demonstrating compliance with this condition.

Reason: To conserve potable water.

**59. 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 report must:

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

**60. Loading Dock Management Plan**

A Loading Dock Management Plan shall be prepared by the applicant and submitted to and approved by the accredited certifier prior to the issue of any Occupation Certificate. The Plan will need to demonstrate how loading dock will be managed to ensure that there will be only one vehicle entering and exiting the loading dock access in any period and how safe servicing arrangements including waste collection will be undertaken without interrupting general traffic. Vehicle queuing on public road(s) is not permitted.

Reason: to ensure the loading dock is managed appropriately and that tenants are aware of the conditions of use.

**61. Certification of Structures Located Adjacent to Council Pipeline or Council Easement**

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed footing works have been constructed in accordance with this consent, Northern Beaches Council's Warringah Water Management Policy PL850 and the approved Construction

Certificate plans. Civil Engineer demonstrating compliance is to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of Council's Infrastructure.

**62. Positive Covenant for the Maintenance of Stormwater Pump-out Facilities**

A Positive Covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the property title to ensure the on-going maintenance of the stormwater pump-out facilities on the property being developed. Northern Beaches Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the NSW Land Registry Services. 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 adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard

**63. Positive Covenant and Restriction as to User for On-site Stormwater Detention**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements 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 restriction.

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 the on-site detention and/or pump system is maintained to an appropriate operational standard.

**64. Protection of stormwater treatment measures during construction**

Stormwater treatment measures must not be installed or must be kept offline until the site has been fully stabilised.

A certificate from a Civil Engineer, who has membership to the Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures are in new condition and do not contain sediment. The certificate shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of stormwater treatment measures.

**65. Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Quality System**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater treatment measures in accordance with the standard requirements of

Council, the manufacturer and as required by the Stormwater Treatment Measures Operation and Maintenance Plan.

A restriction as to user shall be created on the title over the stormwater treatment measures, restricting any alteration to the measures.

The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements, (available from Council), at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To identify encumbrances on land, ensure ongoing maintenance, and ensure modification to the stormwater treatment measures is not carried out without Council's approval.

**66. Post-Construction Road Reserve Dilapidation Report**

The applicant must submit a post-construction dilapidation report prepared by suitably qualified civil engineer. The report must clearly detail the final condition of all public property, infrastructure, natural and man-made features that were originally recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council, any other owners of public infrastructure.

The post-construction / demolition dilapidation report must be submitted to Council for review after the completion of all building works. Any damage to Council's infrastructure is to be rectified to the satisfaction of Council prior to the refund of any security deposits.

Reason: To ensure security against possible damage to Council.

**67. Prior to occupation certificate - Noise compliance**

Prior to final occupation a review of noise compliance conditions of approval and referencing the Acoustic Assessment by Wilkinson Murray REPORT NO. 19035 VERSION A shall be carried out by a suitably qualified person to ensure compliance with noise criteria.

Reason: To ensure noise reduction measures are compliant prior to occupation.

**68. Post-Construction Dilapidation Survey**

A post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2>.

The post construction dilapidation report must be submitted to the Council for review and the Principal Certifying Authority prior to the issue of the Occupation Certificate. Any damaged to Council's stormwater infrastructure is to be rectified in accordance with Council's technical specifications prior to the release of the security bond. Reason: Protection of Council's Infrastructure



**69. Certification of Civil Works and Works as Executed Data on Council Land**

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 plans. Works as Executed data certified by a registered surveyor prepared in accordance with Council's 'Guideline for preparing Works as Executed data (details overdrawn on a copy of the approved civil plans) for Council Assets' in an approved format shall be submitted to Council for approval prior to the release of any security deposits.

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

**70. Garbage and Recycling Facilities**

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

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

Reason: To prevent pollution of the environment and to protect the amenity of the area.

**71. 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](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.

**72. Waste Management Confirmation**

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

**73. Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

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

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement, which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

**74. Visitor/Customer Parking**

The visitor and retail customer parking must be accessible at all times. These spaces must not be behind a locked gate or the like.

The allocated residential spaces may be behind a secure gate.

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

Reason: To ensure visitors and customers can use the parking.

**75. Road Way configuration**

The applicant is to prepare 2 options for the configuration of Charlton Lane as follows:

- a two-way configuration with parking removed from both sides of the lane way
- a one-way configuration with 'no parking' restrictions maintained along one side of the lane way

These configurations must be accompanied by SIDRA analysis undertaken by an accredited traffic engineer demonstrating the impacts of both options on the local network, including the intersections of;

- Charlton Lane and Sydenham Road
- Charlton Lane and Orchard Road
- Orchard road and Pittwater Road
- Sydenham Road and Pittwater Road

The applicant must submit and have approved by Council's Local Traffic Committee, detailed drawings of the options, including signage and line marking, SIDRA data and report prior to the issue of any Occupation Certificate.

Reason: To determine the most appropriate configuration of the lane way to optimise traffic being generated by the proposed development.

**76. Signage and Line Marking plan - Implementation**

The applicant is to install the treatment approved by the Local Traffic Committee, at no cost to

Council, prior to the issue of any Occupation Certificate.

Reason: To ensure the configuration of the lane way is operational prior to tenants moving in.

**77. Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with Warringah Development Control Plan – Part C9 Waste Management

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.

**78. 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.

**79. Positive Covenant for Waste Services**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to provide access to the waste storage facilities prior to the issue of an Interim/Final Occupation Certificate. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.

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

**80. Authorisation of Legal Documentation Required for Waste Services**

The original completed request form (Department of Lands standard 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**

**81. Maintenance of Stormwater Quality System**

The stormwater quality system must be maintained at all times in accordance with the Stormwater Quality Operation and Maintenance Plan, manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

**82. Allocation of Spaces**

159 car parking spaces shall be provided, made accessible, and maintained, at all times (unless they must be removed to comply with the condition requiring vehicle access to No. 640 Pittwater Road).

Car-parking provided shall be used solely in conjunction with the uses contained within the development. Each car parking space allocated to a particular unit / tenancy shall be line marked and numbered or signposted to indicate the unit / tenancy to which it is allocated.

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

Reason: To ensure that adequate parking facilities to service the development are provided on site.

**83. Customers and Visitors Sign**

A sign, legible from the street, shall be permanently displayed to indicate that customer and visitor parking is available on the site. These spaces shall be clearly marked as such.

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

**Reason:** To ensure that customers and visitors are aware that parking is available on site and to identify those spaces.

**84. Right of Access (through-site vehicle link)**

A right of access (under the provisions of Section 88B of the Conveyancing Act) is to be created on the final plan of subdivision and the accompanying 88B instrument to ensure a through site vehicle access on all basement levels to No. 640 Pittwater Road.

The right of access must be of suitable dimensions (height and width) for vehicles to pass through in both directions (i.e. it must not be so narrow that it only allows one way access).

The terms of the right of access (available from Northern Beaches Council), are to be prepared by a registered surveyor at the applicants expense.

The right of access only needs to be activated should No. 640 Pittwater Road redevelop without consolidating with any other neighbouring sites.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issue of the Strata Subdivision Certificate.

Reason: To allow the reasonable development of the neighbouring site.

**85. Surplus Parking Spaces**

The 53 surplus car parking spaces must not be allocated to strata allotments (associated with the development approved under this consent) and that they must not be used or leased out for 'public parking' purposes.

The surplus parking spaces may be allocated as common property until such time as any future development occurs on the site.

Reason: To ensure the site is suitably developed in the future and adequate car parking is provided.