

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/1351
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<b>Responsible Officer:</b>	Danielle Deegan, DM Planning Pty Ltd
<b>Land to be developed (Address):</b>	Lot 5 DP 229309, 1 Bilambee Lane BILGOLA PLATEAU NSW 2107
<b>Proposed Development:</b>	Demolition works and construction of shop top housing
<b>Zoning:</b>	B1 Neighbourhood Centre
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	Yes
<b>Owner:</b>	The Boss NSW Pty Ltd
<b>Applicant:</b>	The Boss NSW Pty Ltd

<b>Application Lodged:</b>	27 October 2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Mixed
<b>Notified:</b>	06/11/2020 to 27/11/2020
<b>Advertised:</b>	06/11/2020
<b>Submissions Received:</b>	52
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings – Building 16% Plant room - 32% 4.5A Density Controls – 22.5%
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$6,810, 408
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### EXECUTIVE SUMMARY

This report provides an assessment of a proposed mixed-use (shop top housing) development at No. 1 Bilambee Lane, Bilgola Plateau (the site). The site is located with frontages to Bilambee Avenue, Bilambee Lane and Bilkurra Avenue and is situated within the B1 Neighbourhood Centre under Pittwater LEP 2014 (PLEP 2014).

The proposal involves the demolition of existing buildings and construction of a 3 storey development containing retail premises (436.8m<sup>2</sup>) at ground level, eight (8) residential apartments above and two levels of basement car parking (30 spaces).

The application is recommended for refusal due to the breach of building height and density development standards, inconsistency with character requirements embodied in the applicable planning controls and detrimental amenity impacts on surrounding residential dwellings. The proposal is not an appropriate or suitable response in its current form.

The application was referred to internal departments and external authorities. In the responses, there are issues raised in relation to the proposed development, which require further resolution before such a scheme can be fully supported by Council. It is noted that Council's Design and Sustainability Advisory Panel (DSAP) does not support the proposal in its current form.

The public exhibition of the DA resulted in a significant response from the community all objecting to the proposal. Concerns raised relate primarily to building height, bulk, scale and density and the consequent visual and amenity impacts. The proposal is inconsistent with the character and context of the locality.

While the redevelopment of the subject site would be a significant improvement in comparison to the existing situation (a disused vehicle repair station) and the proposal incorporates many features of good design, including a high level of articulation, landscaping treatments, and strongly defined architectural elements presenting to the retail frontage, the overall building bulk is inappropriate for the site's low-density context. The non-complying building height, density, building envelope and building setbacks are not supported. In addition, the relationship of the proposed development with its surrounding residential neighbours has not been successfully resolved.

On balance, the proposal (as lodged) is not sufficiently consistent with the applicable controls and the development will result in a height, density, bulk and scale of development that does not reflect the objectives and outcomes envisaged by the planning controls for the site. The design should be more respectful to its adjoining residential neighbours.

Therefore, it is recommended that substantial amendments be carried out to the built form to address the concerns raised in this assessment report, prior to any approval being given to the proposal.

Accordingly, the assessment concludes that proposal cannot be supported in its current form and is recommended for refusal.

## **PROPOSED DEVELOPMENT IN DETAIL**

The applicant seeks consent for the demolition of existing buildings and construction of a 3 storey development containing retail premises (436.8m<sup>2</sup>) at ground level, eight (8) residential apartments above and two levels of basement car parking (30 spaces). The proposed development also proposes associated site works, drainage and landscape within the road reserve.

## **ASSESSMENT INTRODUCTION**

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

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

## SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 – 4.3 Height of Buildings

Pittwater Local Environmental Plan 2014 – 4.5A Density Controls for certain residential development

Pittwater 21 Development Control Plan - A4.3 Bilgola Locality

Pittwater 21 Development Control Plan – C1.3 View Sharing

Pittwater 21 Development Control Plan - C1.4 Solar Access

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

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

Pittwater 21 Development Control Plan – D3.6 Front building line

Pittwater 21 Development Control Plan – D3.9 Building envelope.

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 5 DP 229309 , 1 Bilambee Lane, Bilgola Plateau
<b>Site Description:</b>	<p>The subject site consists of one (1) allotment which has three street frontages to Bilambee Avenue, Bilambee Lane and Bilkurra Avenue.</p> <p>The site is irregular in shape with a frontage of 19.86m to Bilambee Lane, 19.81m to Bilambee Avenue and 32.19m to Bilkurra Avenue. The site has a surveyed area of 930m<sup>2</sup>.</p> <p>The site is currently occupied by a disused vehicle repair station. There are six (6) indented on-street spaces along the Bilambee Avenue frontage of the subject site.</p> <p>The site is part of the B1 Neighbourhood Centre zone under Pittwater LEP 2014 which currently accommodates several retail shops with one storey of residential and commercial uses above.</p> <p>The site is relatively flat with a slight cross-fall of 1.15m from the north-western corner to the south-eastern corner.</p>
<b>Detailed Description of Adjoining/Surrounding Development:</b>	<p>The neighbourhood centre includes a small grocery store, bottle shop, physiotherapist, beauty and massage, takeaway, cafe and a vacant premise. The main parking for the centre is 90-degree angled parking on Bilambee Avenue.</p> <p>The site shares a boundary is with 1 Bilambee Avenue, a mixed use development containing 7 strata units. Units 3 and 4 are residential units and have balconies facing the subject site.</p> <p>Development surrounding the neighbourhood centre comprises of predominately detached dwelling houses in landscaped settings.</p>



Map:



## SITE HISTORY

The subject site has been used for vehicle repair station from 1994 until recently and is now disused. Prior to 1994, the site was occupied by a BP service station.

### Pre-Lodgement Meeting

A pre-lodgement meeting for the demolition works and construction of a shop top housing development was held between the applicant and Council on 11 June 2020.

## DEVELOPMENT APPLICATION HISTORY

An opportunity was presented to the applicant to withdraw the application by letter dated 1 March 2021, with a view to addressing the specific concerns and preparing the required information, and resubmitting a new DA. The applicant was advised that failure to withdraw the application would result in Council reporting the application based upon the information provided at lodgement. The applicant has not responded to the above letter.

On 8 March 2021, an Appeal against the deemed refusal of the subject development application was lodged with the Land and Environment Court.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 06/11/2020 to 27/11/2020 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, Council received fifty-two (52) submissions from:

Name:	Address:
Mr David John Bracks	15 Bilambee Avenue BILGOLA PLATEAU NSW 2107
Mp Barrie Sutherland	3 / 1 Bilambee Avenue BILGOLA PLATEAU NSW 2107
Mr Bill Tulloch	9 Barrabooka Street CLONTARF NSW 2093
Ms Rosalind Anne Mulcahy	4 / 1 Bilambee Avenue BILGOLA PLATEAU NSW 2107
Mr John Andrew Garner	112 Plateau Road BILGOLA PLATEAU NSW 2107
Mrs Karin Bernice Wiese	106 Plateau Road BILGOLA PLATEAU NSW 2107
Ms Lisa Nicole Tyndall	2 Argyle Street BILGOLA PLATEAU NSW 2107
Mrs Gabrielle Anne Angles	12 Bilwara Avenue BILGOLA PLATEAU NSW 2107
Ms Anna Arruzza	110 Irrubel Road NEWPORT NSW 2106
Mr Nicholas Clark	3 Mia Place CLAREVILLE NSW 2107
Mrs Amber Corin Marsh	104 Plateau Road BILGOLA PLATEAU NSW 2107
Mr Donald Vincent Radford	17 Bilwara Avenue BILGOLA PLATEAU NSW 2107
Mrs Alexandra Louise Ellard	4 Bilberry Avenue BILGOLA PLATEAU NSW 2107
Mrs Chelsey Baker	24 Old Barrenjoey Road AVALON BEACH NSW 2107
Vita Carolin Eva Von Neumann-Cosel	10 Bilwara Avenue BILGOLA PLATEAU NSW 2107
David Adams	6 Bilkurra Avenue BILGOLA PLATEAU NSW 2107
Mrs Jane Angela Lean	20 Bilambee Avenue BILGOLA PLATEAU NSW 2107
Mr Stuart Carson Hipwell	131 Plateau Road BILGOLA PLATEAU NSW 2107
Mr Francis Roland Meier	30 Bilga Avenue BILGOLA PLATEAU NSW 2107
Jessica Lee Knight	3 Mariposa Road BILGOLA PLATEAU NSW 2107
Merryn Baker	24 Old Barrenjoey Road AVALON NSW 2107
Min Jane Freedman	47 The Outlook BILGOLA PLATEAU NSW 2107
Mrs Katherine Moss	20 Bilkurra Avenue BILGOLA PLATEAU NSW 2107
Peter Andrews	83 The Outlook BILGOLA PLATEAU NSW 2107
Ms Chantal Dray	26 Bilwara Avenue BILGOLA PLATEAU NSW 2107
Mr David Noel Loxley	12 Terama Street BILGOLA PLATEAU NSW 2107
Mrs Florence Anne Radford	17 Bilwara Avenue BILGOLA PLATEAU NSW 2107
Mrs Anna Louise Rudd	2 Bilkurra Avenue BILGOLA PLATEAU NSW 2107
Mr Warwick Mitchell Smith	74 The Outlook BILGOLA PLATEAU NSW 2107
Mr Nick Hart	Address Unknown
Ms Helen Anne Howie	71 The Outlook BILGOLA PLATEAU NSW 2107
Anne Rika-Heke	14 Bilambee Avenue BILGOLA PLATEAU NSW 2107
Chauntelle Maree Simpson Ready	19 Bilkurra Avenue BILGOLA PLATEAU NSW 2107
Mr Simon Leslie Carrington	26 Bilga Avenue BILGOLA PLATEAU NSW 2107
Mr Michael Fitchman	7 Bilwara Avenue BILGOLA PLATEAU NSW 2107
Claire Paula McCaffery	4 Bilga Avenue BILGOLA PLATEAU NSW 2107

Ms Nicole Elizabeth Johnson	34 Plateau Road BILGOLA PLATEAU NSW 2107
Ms Lorraine Joan Islaub	11 Bilga Avenue BILGOLA PLATEAU NSW 2107
Tilly Gray	4 Bilkurra Avenue BILGOLA PLATEAU NSW 2107
Ms Sorcha Nina Kaufmann	25 The Circle BILGOLA PLATEAU NSW 2107
Mrs Merinda Joan Gray	4 Bilkurra Avenue BILGOLA PLATEAU NSW 2107
Mrs Lisa Anne Evans	23 The Circle BILGOLA PLATEAU NSW 2107
Ms Melanie Jane Stancliffe	16 Bilga Avenue BILGOLA PLATEAU NSW 2107
Mrs Ellen Amy Couchman	86 Plateau Road BILGOLA PLATEAU NSW 2107
Ms Camilla Charlotte Florence Barklem	8 Bilberry Avenue BILGOLA PLATEAU NSW 2107
Ms Alison Louise Starr	61A Wandeen Road CLAREVILLE NSW 2107
Ms Marisa Alexis Kanthak	26 Bilkurra Avenue BILGOLA PLATEAU NSW 2107
Mr Benjamin Arnold Blundell	6 / 1 Bilambee Avenue BILGOLA PLATEAU NSW 2107
Mrs Penelope Jackson	38 Wandeen Road CLAREVILLE NSW 2107
Mr Steven Peter Koolloos	1 Bilkurra Avenue BILGOLA PLATEAU NSW 2107
Mp Peter George Ferguson	5 Bilga Avenue BILGOLA PLATEAU NSW 2107
Ms Claire Cardno	36 Heath Street MONA VALE NSW 2103

## Assessment of Residents Issues

The matters raised within the submissions have been considered and are addressed as follows:

- **The character of the development is not in keeping with the locality and the bulk and scale are not appropriate for the site**

A large number of submissions received have raised concern that the development is out of character for the Bilgola Locality and the bulk and scale of the development is not appropriate for the site. Concerns have also been raised regarding inadequate boundary setbacks resulting in unacceptable visual privacy, overshadowing and amenity concerns.

### Comment:

These issues are discussed in detail throughout this report. In summary, the assessment finds that the design of the proposed development is inconsistent with the character of the area, and the development in its current form is excessive in terms of bulk and scale. These issues are included as a reason for refusal.

- **The building height is excessive.**

Concerns are raised that the development does not comply with the 8.5m height limit.

### Comment:

As discussed in detail in the Pittwater Local Environmental Plan 2014 section of this report, the proposed variation to the building height development standard is not supported. Non-compliance with building height is included as a reason for refusal.

- **The development has insufficient parking and will cause excessive traffic**

A number of submissions raised concerns regarding the additional traffic generated by the proposed development given insufficient parking provided by the development, and the location of the basement entry exist in Bilambee Lane. Concern was also raised that the additional traffic and parking will jeopardise pedestrian safety.



Comment:

Council's Traffic Engineer has reviewed the proposed development and has raised not raised any concerns in relation to traffic and carparking impacts.

- **The development causes unacceptable impacts on existing views.**

The concerns relate to view loss from the adjoining residential apartments at units 3 and 4, 1 Bilambee Avenue.

Comment:

These two residential units enjoy district views, including some distant water views, over the subject site, in a south-easterly direction, from their adjoining courtyards. The proposed development will present a brick wall to their courtyards and will completely block their views.

The impacts on the above properties have been assessed in accordance with the principles of *Tenacity Consulting v Warringah Council 2004*. As the view loss is a result of non-complying building height, the view loss is unacceptable.

Consequently, view loss is included as reason for refusal.

- **The extent of excavation is excessive**

Concern has been raised that the extent of excavation is excessive.

Comment:

The application includes a Geotechnical Report (STS Geotechnics Pty Ltd). This report has addressed the potential impacts to surrounding buildings due to vibrations from excavation and includes recommendations to limit any risk in this regard. Subject to the recommendations of this report, the proposal is considered acceptable in this regard. If the application was to be approved, a condition of consent requiring all recommendations of this report to be carried out would be included.

- **The development will generate unacceptable noise**

Concerns have been raised that the development will generate unacceptable noise. In particular, concerns with the garbage collection for the proposed development.

Comment:

The proposal is accompanied by a Mechanical Plant Noise Assessment Report (prepared by Noise and Sound Services). While the report finds noise impacts generally acceptable, (subject to recommendations) the report has failed to identify the residential units in the adjoining mixed use development (units 3 & 4, 1 Bilambee Ave) as being the nearest neighbouring premises and therefore has not assessed noise impacts on these dwellings.

- **The development has insufficient landscaping**

Comment:

The issue of landscaping is addressed in detail within the landscape referral comments in this report. In summary, while the proposal lacks deep soil planting, there is adequate plantings proposed in planter boxes and the surrounding public domain to provide adequate vegetation.

- **Impacts on amenity of adjoining residential units at 3 & 4, 1 Bilambee Ave**

The residents of these two residential units have raised overshadowing, privacy and view loss concerns.

Comment:

As discussed throughout this report, the proposed development will result in unacceptable amenity impacts on the two directly adjoining residential units. The interface with the building at 1 Bilambee Avenue has not been adequately resolved.

- **Impacts on amenity of 1 Bilkurra Ave (overlooking)**

Comments:

This property has raised concerns regarding overlooking from the level 1 balconies and level 1 terrace which are on a nil setback to the laneway. Given there is a window in the southern wall of 1 Bilkurra Ave which is within the 9m required by P21 DCP, the proposed balcony setbacks are assessed as unsatisfactory.

**Inappropriate vehicle entry point**

Comment:

The owner of 1 Bilkurra Ave has claimed that the ingress/egress point in the Bilambee Lane is inappropriate. However, Council's Development Engineer has not raised issue with the location of the driveway.

- **Construction impacts on properties in the retail centre**

Comment:

The Construction Management Plan (CMP) submitted with the development application outlines site practice and safety measures during construction. In the event of an approval the recommendations of the CMP, along with other conditions of consent (including the requirement for a dilapidation report) will ensure impacts on adjoining properties are managed appropriately during the construction process.

- **Additional retail space is not required in the area**

Comment:

The amount of proposed retail floor space represents 35% of the total gross floor area proposed and therefore complies with the minimum of 25% required under Clause the P21 DCP. The amount of retail floor space proposed is assessed as satisfactory.

- **No architectural merit; the facade is not consistent with the environment, and is the wrong material and colouring**

Comment:

The proposed materials, colours and incorporation of planters are supported. However, the Design and Sustainability Advisory Panel have advised that the long continuous parapet, large commercial-scale vertical louvres and lack of articulation, are not consistent with a 'local centre' character and are not supported.

## REFERRALS

Internal Referral Body	Comments
Building Assessment – Fire and Disability upgrades	<p><b>Supported (subject to conditions)</b></p> <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>



Internal Referral Body	Comments
Environmental Health (Contaminated Lands)	<p><b>Supported (subject to conditions)</b> Demolition of a historic petrol station and existing auto service centre and construction of shop top housing requires significant excavation.</p> <p>Contamination report indicates sub-surface contamination to be unlikely, but further investigation is required once hard stands are removed. The Construction Management Plan describes the layered approach to removing soil; between each layer an assessment will be made.</p> <p>Approval is satisfactory with conditions.</p> <p><b>Recommendation</b> APPROVAL - subject to conditions</p>
Environmental Health (Industrial)	<p><b>Supported (subject to conditions)</b> Acoustic report provides "noise goals" and recommendations in sections 4 &amp; 5 -these are to be the foundation for conditions. A private enclave in the adjoining building is perhaps the closest place where noise from mechanical plant may become an issue.</p> <p><b>Recommendation</b> APPROVAL - subject to conditions</p>
Landscape Officer	<p><b>Supported (subject to conditions)</b> The development application is for the demolition of existing structures on site and construction of a shop top housing development comprising of two retail shops at ground level and residential apartments above. Outdoor dining is proposed along the Bilkurra Avenue frontage with additional on street parking and landscaping proposed within the Bilambree Avenue and Bilkurra Avenue road reserves.</p> <p>The application is assessed by Landscape Referral against State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP65), and associated Apartment Design Guide (ADG), and Pittwater Local Environmental Plan (PLEP) and Pittwater Development Control Plan (PDCP), including but not limited to the following clauses:</p> <ul style="list-style-type: none"> <li>• Principle 5: Landscape, of SEPP65 requires " that ... landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. ... well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood. Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity ..."</li> <li>• ADG: Part 3E Deep Soil Zones.</li> <li>• PDCP: clause C1.1 and C2.1 Landscaping and clause C2.20 Public Road Reserve - Landscaping and Infrastructure.</li> </ul> <p>No deep soil is proposed as part of this development to the ground floor area. On merit this can be supported as the development proposes accessible retail occupancy that includes outdoor dining and this will have social benefits for the community and as such satisfies the useability, equitable access and opportunities for social interaction that is a key principal objective of the SEPP65 policy.</p> <p>A Landscape Plan is provided that includes public domain works consisting of road works, ramps, street furniture, paving, and planting within the road reserve verge. Works within the road reserve verge is</p>

Internal Referral Body	Comments
	<p>not part of this application approval and is subject to a separate application to Council in the form of the following: Infrastructure Works on Council Roadway - Section 138A application, or any other application as advised, applicable for the approval to construct kerb &amp; gutter, footpath, pavement and any other encroachment works on Council's road reserve.</p> <p>The works as shown within the public domain are generally acceptable subject to amendments to ensure compliance with Council's Draft Public Domain Design Guidelines, section C.3 Neighbourhood Centres, that provides a list of design materials for the public domain. This shall be demonstrated by the issue of a Public Domain Plan for the Section 138A application.</p> <p>Landscape planter works are proposed to level 2 consisting of 1.5 metre deep planters (as documented on the architectural plans) and the planting scheme as shown on the Landscape Plan is suitable to soften the development edge.</p> <p>An Arboricultural Impact Assessment is provided with the application. The existing site supports a small garden bed at the corner with shrub planting that is exempt from requiring Council Consent as the vegetation is less than 5 metres in height, and a street tree within the road verge is located along the Bilkurra Avenue road reserve. The Arboricultural Impact Assessment recommends the removal of the garden planting within the site for development works and removal of the street tree for public domain works as well as to replace with more appropriate street tree planting. No objectives are raised to the recommendations of the Arboricultural Impact Assessment.</p> <p>Additionally, any approval for the development application does not provide approval for outdoor dining, and this is a separate application to be submitted by the retail occupant under 'Outdoor Dining Area Approval Application 20/21'.</p>
NECC (Bushland and Biodiversity)	<p><b>Supported (subject to conditions)</b></p> <p>Council's biodiversity referrals team have assessed this development application for compliance against relevant biodiversity legislation and controls, including the following:</p> <p>Biodiversity Conservation Act 2016 (BC Act) Pittwater Local Environmental Plan (PLEP)</p> <ul style="list-style-type: none"> <li>7.6 Biodiversity Protection</li> </ul> <p>Pittwater Development Control Plan (PDCP)</p> <ul style="list-style-type: none"> <li>B4.6 Wildlife Corridors</li> </ul> <p>The application seeks to remove a single prescribed tree, <i>Callistemon salignus</i> (ref: Tree 1 ; Advanced Treescape Consulting 2020). To offset the removal of Tree 1, suitable replacement trees should be selected from the Pittwater Ward section of the Native Gardening Booklet available on Council's website <a href="https://www.northernbeaches.nsw.gov.au/node/34932">https://www.northernbeaches.nsw.gov.au/node/34932</a>. Subject to conditions, Council's biodiversity referral team find the application to be consistent against relevant environmental controls.</p>
NECC (Development Engineering)	<p><b>Refusal</b></p> <p>The stormwater drainage plans have been reviewed and the following information is required to complete the assessment:</p> <ol style="list-style-type: none"> <li>1) Submission of the DRAINS model for Council review to verify the detention volume and storage requirements.</li> <li>2) Cross-section drawn to a suitable scale of the stormwater outlet pipe in relation to all services located within Council's footpath area.</li> </ol>

Internal Referral Body	Comments
	3) Hydraulic Calculations are to be provided to demonstrate Hydraulic Grade Line of the outlet pipe connection to Council's existing pit in Bilkurra Avenue is not affected by tailwater conditions.
NECC (Water Management)	<p><b>Refusal</b></p> <p>This applicant is not required to provide water quality treatment because the lot is under 1000sqm and is not increasing impervious area (the lot is currently 100 percent impervious). It is very disappointing that this development has chosen to not take any steps to reduce the impact of this development on the environment or increase its sustainability. Re-development of a lot is a perfect opportunity to reduce the impact a site is having on waterways, at the very least by removing coarse sediments and organic matter from stormwater prior to discharge from the lot. Equally disappointing is that an obvious opportunity has been missed in directing rainwater captured from the roof to the planters around the perimeter of the upper level. It is instead intended that these be irrigated with potable water. The applicant is strongly encouraged to consider incorporating Water Sensitive Urban Design and at the very least direct rainwater captured from the roof to the planter boxes, and install a sediment filter pit to remove coarse sediments prior to discharging stormwater from the property.</p> <p>Due to the low risk of groundwater contamination due to previous use of the site as a petrol station, any groundwater removed from excavations must be tested for the presence of hydrocarbons, and can only be discharged to Council's stormwater system if levels are lower than 5ppm and there is no visible sheen on the water.</p>
Strategic and Place Planning (Urban Design)	<p><b>Refusal</b></p> <p>The proposal has responded well to the issues brought up in the Pre-Lodgement Meeting held on July 2020 (reproduced below). The proposal could be further improved with more fine-grain architectural design recommendations that can be provided by Council's Design Sustainability Advisory Panel.</p> <p>Urban Design Comments:</p> <p>1. The proposal exceeds the 8.5m building height control. Looking at the floor to floor height proposed, the retail component on the ground floor could be reduced to 3.7m (3.3m retail + 0.4m services) to minimise the overall height. The third storey component which is above the height limit should be setback away from the building edges by 6m to make it less visible when viewed from the surrounding streets especially from the far end of Plateau Road. The built form should present predominantly as a two-storey building surrounded by street trees and landscaping verges to fit into the verdant character of the surrounding low density residential area.</p> <p><b>Response:</b> The overall building height has been reduced with the top storey breaching the 8.5m building height by about 1m and the rooftop plant by about 2.5m. The top storey has been set back from the building edge by about 3.6 to 3.72m. The overall impression of the building reads well as a two-storey built form with a well-recessed top storey and rooftop plant area. Perimeter planter boxes have been provided on the roof terraces as well as street trees and landscaped verges on the ground floor alfresco dining area/ footpath. Planter box width on the roof terraces, indicated on the architectural drawings, should be widened to the planter widths shown on the landscape drawings.</p> <p>2. The 3.5m building setback required has not been provided at the Bilambee Avenue boundary. The footpath should also be widened to 3.5m and wider breakout spaces created for potential alfresco dining area taking advantage of the street trees and landscaped street verges. The entry to the residential lift lobby could also be made more</p>

Internal Referral Body	Comments
	<p>direct and welcoming from the public footpath instead of the narrow corridor proposed. The hydrant booster and chamber substation should also be located on the Bilambee Lane side to provide an uninterrupted shopfront address and clear footpath all the way to the laneway. The fire stairs (FS1) should be relocated into the retail area to free up the corner for alfresco dining and landscape area.</p> <p><b>Response:</b> The footpath width has been widened to about 3.9m with wider areas provided for alfresco dining. The retail shop fronts is now continuous from the neighbouring shops and will activate the footpath area well. Entry to the residential lobby is now more direct and welcoming. The chamber sub-station, fire stairs and fire services area are now well tucked away towards the service laneway side.</p> <p>3. The solar access for the residential units should comply with the two hour to living rooms and private open spaces as per Apartment Design Guide (ADG) requirement. Units with no solar access should be less than 15% of total unit count. The light-well proposed should be tested with the future northern neighbouring development being 10m tall as the proposal will set a precedent for building height breach.</p> <p><b>Response:</b> The solar analysis submitted indicates adequate solar access have been provided.</p> <p>4. Future refinement of the design should look at integrating the balcony design into the façade treatment with a rich material palette to help break up the bulk and scale of the building. The triangular shaped balconies should be made more functional and purposeful with planters and indents that will form part of the façade articulation. They should also be more generous in size as communal open space has not been provided for. The corner site location should be celebrated with a more iconic architectural response that is integrated with the landscaping concept creating a community gathering place to counter balance the issue of exceeding the building height control.</p> <p><b>Response:</b> The suggested refinements have been incorporated.</p> <p>5. The awning design should provide some street amenity/ shelter. They should form a unified element within the streetscape, respond to streetscape conditions and complement the architectural style of the host building. They should be uncomplicated, regular forms and constructed from high quality materials with simple detailing to reduce visual clutter in the streetscape and to provide visual continuity to the pedestrian realm. New awnings are to be setback minimum 1000mm from the face of the kerb to accommodate utility poles and traffic /parking in the kerbside lane. Where street trees are required, the minimum awning to setback is 1500mm.</p> <p><b>Response:</b> The awning design can be supported.</p>
Traffic Engineer	<p><b>Supported (subject to conditions)</b></p> <p><u>Proposal:</u> The development application is for demolition of the existing site structures and the construction of a mixed-use development. The mixed-use development is proposed to comprise the following:</p> <ul style="list-style-type: none"> <li>• Two retail tenancies on the ground floor comprising 119.1m<sup>2</sup> and 317.7m<sup>2</sup> of floor space;</li> <li>• Two storeys of residential apartments, comprising the following: <ul style="list-style-type: none"> <li>- 5 two-bedroom dwellings; and</li> <li>- 3 three-bedroom dwellings.</li> </ul> </li> <li>• Two levels of underground parking containing 30 parking spaces (including two accessible spaces)</li> <li>• Vehicular access to the two levels of basement parking is proposed via a single combined ingress / egress driveway connecting with Bilambee Lane adjacent to the northern corner of the site.</li> </ul>



Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>• Pedestrian access to the development is proposed via a footpath connecting Bilambee Avenue and Bilkurra Avenue adjoining the eastern, southern and southwestern facades of the proposed building.</li> <li>• Some public domain modifications are proposed facilitating the provision of an additional indented parking space situated within Bilambee Avenue and two indented parking spaces within Bilkurra Avenue (one of which is to double as a time limited loading bay)</li> </ul> <p><u>Traffic Generation:</u> The subject development is projected to generate 25 peak hour vehicle trips to and from the site. This is considered to be a decline in comparison with existing traffic generation calculated in accordance with the RMS guide, therefore is supported.</p> <p><u>Parking provision:</u> The parking requirements for the proposed shop top housing in accordance with Pittwater DCP is 34 parking spaces including 16 residential spaces, 3 visitor spaces and 15 retail spaces. There are the total of 30 parking spaces including 2 disabled parking spaces has been proposed. The parking offset against the availability of 90 degree parking spaces along the site frontage is considered acceptable.</p> <p><u>Vehicular Access:</u> Vehicular access between the development site and Bilambee Lane is proposed to be provided via a single 6.5m combined ingress / egress driveway situated adjacent to the northern corner of the site. The pedestrian triangle measuring 2.0m x 2.5m clear of obstructions to visibility in accordance with aAS2890.1:2004 has been addressed by provision of delineated triangle on western side of the driveway, The clear Tran angle is to be confined via construction of kerb.</p> <p><u>Bicycle parking:</u> The provision of 12 bicycle parking spaces within the site satisfies the parking requirements of 7 in accordance with Pittwater DCP. The proposal includes the provision of 4 on-street bicycle racks which is supported.</p> <p><u>Motorcycle parking:</u> The proposed motorcycle parking provision of 4 spaces satisfies the Pittwater DCP requirements of 1 motorcycle space for the proposed use.</p> <p><u>Waste Collection / Loading Zone:</u> The application includes the servicing activities to be accommodated within the time limited indented at-grade loading bay proposed to be provided as part of the application within Bilkurra Avenue. It is also proposed that the refuse collection activities associated with the development are to be undertaken via this bay whereby waste bins are to be wheeled to the road frontage for collection. The proposed bay is to be modified to accommodate the waste management trucks which are 10.8m long trucks and the swept path analysis is to be provided. The signposted time limit will be subject to Local Traffic Committee approval. This can be conditioned</p> <p><u>Traffic Signal</u> The specific details of the internal traffic signal system are typically specified by traffic signal contractors at construction certificate stage, the requirement for which could reasonably be imposed by Council as a condition of development consent. Incorporating such an internal traffic signal system, the proposed single lane ramp connecting</p>

Internal Referral Body	Comments
	<p>Basement Levels 1 and 2 are envisaged to be satisfactory <b>no</b> parking on both sides of the laneway Mailbox to be relocated in consultation with Australia Post together with a mail zone parking restriction Mail zone to be provided Loading Zone to be provided within the site for small trucks within the site.</p> <p>Not more than one small bay to be allocated to visitor spaces. Public domain public design approval is subject to detail design to be submitted to Council for review and approval The width of proposed driveway has narrowed down to 4.5m does not comply. No Parking on both sides of the laneway.</p>
Waste Officer	<p><b>Refusal</b></p> <p>Council does not require a bulky goods store room for developments with less than 10 dwellings, however if a bulky goods storage room is provided, it must have its own entrance, separate from the communal bin store room.</p> <p>The residential communal bin store room is of adequate size, however the statement in the waste management plan that the bins will be moved to the footpath one day before collection day is not acceptable. Council staff will retrieve bins from the bin storage area on arrival and immediately replace them in the bin storage room once emptied to avoid bins being left on the footpath and impacting the local amenity and environment. The door to the bin room must be unlocked on bin collection day, accessible and able to be latched in the open position by waste collection staff.</p> <p>Although unclear, it appears that collection is intended from a roller door at the rear of the bin room, off Bilambee Lane and the main driveway into the building. If so there needs to be an indication that this is a pedestrian area (also for exit from the fire escape) from the fire exit door to the kerb, and no parking in this area.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra)	<p><b>Supported (subject to conditions)</b></p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent in the event of an approval.</p>

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for a service station and a vehicle repair station for an extended period of time. The Preliminary Site Investigation concludes

Section 4.15 'Matters for Consideration'	Comments
	that the site to be suitable for the proposed land use without further environmental assessment.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	Not applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<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 can be addressed via a condition of consent, in the event of an approval.</p> <p>Clause 50(1A) 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 documentation has been submitted.</p> <p>Clauses 54 and 109 of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in this case, however, it has not been supplied by the applicant.</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 may be addressed via a condition of consent, in the event of an approval.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter may be addressed via a condition of consent, in the event of an approval.</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 may be addressed via a condition of consent, in the event of an approval.</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, in the event of an approval.</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 proposed development is capable of being constructed so as to not result in any adverse environmental impacts on the natural environment. However, the proposed development in its current form will have an adverse impact on the visual and scenic quality of the site and locality and the streetscape by virtue of its excessive height, bulk and scale. Therefore, the impacts of the proposal are unsatisfactory in its current form.</p> <p><b>(ii) Social Impact</b> The proposed development will not have a detrimental social impact on the broader locality considering the mixed use 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 suitable for a mixed use development as the site is zoned for that purpose and the development will replace the existing development which is a prohibited use and does not provide a positive contribution to the character of the locality.

Section 4.15 'Matters for Consideration'	Comments
	However, a satisfactory interface with adjoining residential properties has not been achieved. Subject to the resolution of these challenges, the site is considered to be suitable for a proposed mixed use development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	<p>The Desired Character statement for the Bilgola Plateau Locality as contained within Pittwater 21 DCP provides the community with a level of certainty as to the scale and intensity of future development and the form and character of development that is in keeping with the zoning of the site.</p> <p>While the redevelopment of the site could revitalise the centre, the proposal, in its current form, represents a scale of development that is excessive for the site and locality.</p> <p>This assessment has found the development to be inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site and should be reduced to better reflect a sympathetic and sensitive scale of development in what is a low-density area.</p> <p>On balance, this assessment finds that the public benefits do not outweigh the need for the proposal to appropriately respond to the planning controls and the context and character of the locality.</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. The Preliminary Site Investigation (PSI), prepared by Canvas, submitted with the application notes that the site operated as a service station until 1994 and since then as a car mechanic's workshop. The report concludes that subject to the recommendations being satisfactorily implemented, the site is suitable for the proposed land use without further environmental assessment. It is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for mixed use development land use.



## **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 shop top housing development plus basement car parking for the provisions of eight (8) self-contained dwellings and retail premises.

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**

On 17 December 2020, the Northern Beaches Council Design and Sustainability Advisory Panel (DSAP), considered the application at their meeting and concluded that:

*The Panel does not support the proposal in its current form.*

*The Panel does not support the 3rd storey and notes that the additional floor space has a series of 'flow-on' effects for car parking, substation, excavation, embodied energy and carbon. A redesign and investigation of alternative options that consider all of the recommendations set out above is required.*

## 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 subject site is in the B1 Neighbourhood Centre zone and surrounded by low density residential development in the form of detached dwellings in landscaped settings. The specific controls (particularly the Desired Character statement) for the Bilgola Locality clearly indicate that development within the subject site should be similar in scale and appearance to that envisaged in the Locality, which is largely detached dwellings in landscaped settings. In this context, the proposed development (as lodged) is not consistent with the locality in that the scale and density of the development does not sufficiently integrate with the surrounding development.

The proposed variation of 32% (+2.7m) to the height of buildings development standard under PLEP 2014, has been found to be excessive in its own right and will result in adverse impacts on adjoining developments. Overall, there are insufficient environmental planning grounds provided by the applicant to justify contravening the development standard to such an extent.

Therefore, the non-compliance with the height of buildings development standard, which ultimately determines the contextual fit of the development with the surrounding locality, cannot be supported.

Accordingly, the proposed development is found to inconsistent with 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 site has three street frontages and shares a common boundary with a two storey mixed used development on its western boundary. Development surrounding the centre comprises of low density residential development on all sides.

This site is suitable for redevelopment with strong definition to the public roads and a built form that emphasizes its 'island' location, but this should be carried out in a manner which is sympathetic and sensitive to the low density environs.

The height of the proposed development is 11.2m which is inconsistent with the height of surrounding development and non-compliant with the required maximum building height. The height and bulk of the structure does not comply with the numerous controls applicable to the site, resulting in a built form and scale that does not achieve the required outcomes for the site.

As a result of its excessive bulk and scale, the development has not had sufficient regard to its nearest residential neighbours particularly those of the adjoining mixed use development to the west (1 Bilambee Avenue).

For these reasons, the proposed development is found to inconsistent with 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 housing density for the site is stipulated within Clause 4.5A of Pittwater LEP 2014 as a maximum of 1 dwelling per 150m<sup>2</sup> of the site area, equating to a maximum of six (6) apartments for the subject site. The proposed development has eight (8) apartments equating to a density of 1 dwelling per 116.25m<sup>2</sup> of site area. The proposed density is inappropriate for the site and its context.

The proposed development is found to inconsistent with 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:

The proposed works include demolition and excavation works to accommodate the new development.

A BASIX certificate for development has been submitted with the application. The certificate confirms that the development is capable of achieving the water and energy targets and has obtained a pass for thermal comfort.

The Construction Management Plan (CMP) submitted with the development application details the disposal and recycling of demolition and excavation materials.

Accordingly, it is considered that the proposal satisfies 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 landscape plans submitted with the application provide details of the proposed landscaping for the site, which has been reviewed by Council's Landscape Officer, who concludes, that while no deep soil zones are provided, the proposal satisfies for the objectives for landscape.

Accordingly, it is considered that the proposal satisfies 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 development has been assessed against the various amenity requirements of the Apartment Design Guideline (ADG), where it has been found that the development does not comply with some of the requirements.

The assessment has found that the proposed development does not provide adequate building separation to the adjoining properties to the west and north and, as a result, the residential amenity of these dwellings will be compromised.

For this reason, the development does not meet the objectives of Design Quality Principle 2. This issue has been included as a reason for refusal.

**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 provides secure access, which is separated from all vehicular access points. All apartments provide balconies and windows which allow passive surveillance over the adjoining public domain.

Accordingly, it is considered that the proposal satisfies 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:

This principle essentially requires design to respond to the social context and needs of the local community in terms of lifestyles, affordability and access to social facilities and optimising the provision of housing to suit the social mix and provide for the desired future community.



The development provides a reasonable mix of apartments and includes active street front uses on the ground floor which will contribute to the social context by encouraging and providing for social interaction and engagement.

Accordingly, it is considered that the proposal satisfies 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 a well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.*

#### Comment:

The proposed development is appropriate in terms of the composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the resultant building. Despite the concerns in relation to height, mass, bulk and scale, the development responds aesthetically to the environment and context, contributing in an appropriate manner to the character of the area.

Accordingly, it is considered that the proposal satisfies this principle.

## APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
<b>Part 3 Siting of the Development</b>		
<b>Site Analysis</b>	Does the development relate well to its context and is it sited appropriately?	<b>Not Consistent</b>  A context plan is provided to accompany the application. The building form does not reflect the current character as anticipated by the PLEP 2014 and P21 DCP for the site. The siting of the upper two levels as it relates to the adjoining dwellings to the west and north is not appropriate.
<b>Orientation</b>	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	<b>Not Consistent</b>  Whilst the development responds to the streetscape, the design of the development does not optimise solar access to some of the apartment within the development and results in overshadowing to neighbouring courtyards at unit 3 and 4, 1 Bilambee Ave.
<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?	<b>Consistent</b>  The development has been found to be consistent with requirement of this Clause in that it provides an appropriate public domain interface.
<b>Communal and Public Open Space</b>	Appropriate communal open space is to be provided as follows:  1. Communal open space has a minimum area equal to 25% of the site 2. 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)	<b>Not Consistent (acceptable on merit)</b>  The proposed development does not provide any communal open space for the residents of the development.  However, given the site is located in close proximity to public open space and that the development provides larger balconies for each unit, the requirement of communal space is not considered critical.

<b>Deep soil Zones</b>	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <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><b>Not consistent (acceptable on merit)</b></p> <p>No deep soil provided.</p> <p>As the site is located within a Neighbourhood Centre the provision of deep soil planting is not a strict requirement.</p> <p>The proposal incorporates planting within planter boxes in balconies and courtyards.</p> <p>Additional plantings are proposed within the adjoining public domain.</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													
Greater than 1,500m <sup>2</sup>	6m													
Greater than 1,500m <sup>2</sup> with Significant existing tree cover	6m													
<b>Visual Privacy</b>	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <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>4.5 m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5 m	Over 25m (9+ storeys)	12m	6m	<p><b>Not consistent</b></p> <p>The control requires a 6m setback for habitable rooms and a 3m setback for non-habitable rooms up to four storeys.</p> <p>The proposed development provides a nil setback to the adjoining dwellings at units 3 &amp; 4, 1 Bilambree Avenue. This is unacceptable.</p> <p>The issue of non-compliance with the building separation requirements in relation to the western boundary has been included as a reason for refusal.</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5 m												
Over 25m (9+ storeys)	12m	6m												
<b>Pedestrian Access and entries</b>	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p><b>Consistent</b></p> <p>The development provides level pedestrian access to all floor levels from the basement car parking area.</p>												
<b>Vehicle Access</b>	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p><b>Consistent</b></p> <p>The proposed vehicular access has been assessed as satisfactory by Council's Traffic Engineer.</p>												
<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</p>	<p><b>Consistent</b></p> <p>An assessment of car parking provision, having regard to P21DCP and location of the site, has been undertaken.</p> <p>In summary, the amount of car parking is sufficient for the development, as addressed elsewhere in this report.</p>												

	<p>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>															
Part 4 Designing the Building																
Amenity																
Solar and daylight Access	<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><b>Not consistent</b></p> <p>Units 102, 103, 104 do not receive 2 hours of sunlight to living areas.</p> <p>There is no natural light to the lift lobby on level 2 or 3.</p>														
Natural ventilation	<p>The number of apartments with natural cross ventilation is maximise to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"><li>At least 60% of apartments are naturally 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.</li></ul> <p>Overall depth of a cross-over or cross through apartment must not exceed 18m, measured glass line to glass line.</p>	<p><b>Consistent</b></p> <p>Cross ventilation requirements are satisfied.</p>														
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><td colspan="2">Minimum ceiling height</td></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable rooms</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor</td></tr><tr><td></td><td>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 use areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable rooms	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 use areas	3.3m for ground and first floor to promote future flexibility of use	<p><b>Consistent</b></p> <p>The floor to ceiling heights of the apartments within the development meet the minimum 2.7m as required by the ADG.</p>
Minimum ceiling height																
Habitable rooms	2.7m															
Non-habitable rooms	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 use areas	3.3m for ground and first floor to promote future flexibility of use															
Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p>	<p><b>Consistent</b></p>														



	<table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><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></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>	All apartments within the development comply with the minimum area.					
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>																
<b>Private open space and balconies</b>	<p>All apartments are required to have primary balconies as follows:</p> <table><tr><th>Dwelling type</th><th>Minimum Area</th><th>Minimum depth</th></tr><tr><td>Studio apartments</td><td>4m<sup>2</sup></td><td>-</td></tr><tr><td>1 bedroom apartment</td><td>8m<sup>2</sup></td><td>2m</td></tr><tr><td>2 bedroom apartment</td><td>10m<sup>2</sup></td><td>2m</td></tr><tr><td>3+ bedroom apartment</td><td>12m<sup>2</sup></td><td>2.4m</td></tr></table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>	Dwelling type	Minimum Area	Minimum depth	Studio apartments	4m <sup>2</sup>	-	1 bedroom apartment	8m <sup>2</sup>	2m	2 bedroom apartment	10m <sup>2</sup>	2m	3+ bedroom apartment	12m <sup>2</sup>	2.4m	<p><b>Consistent</b></p> <p>All apartments within the development comply with the minimum balcony area and depth.</p>
Dwelling type	Minimum Area	Minimum depth															
Studio apartments	4m <sup>2</sup>	-															
1 bedroom apartment	8m <sup>2</sup>	2m															
2 bedroom apartment	10m <sup>2</sup>	2m															
3+ bedroom apartment	12m <sup>2</sup>	2.4m															
<b>Common Circulation and Spaces</b>	<p>The maximum number of apartments off a circulation core on a single level is eight.</p>	<p><b>Consistent</b></p> <p>The maximum number of apartments off a circulation core on a single level is 5.</p> <p>The proposed development includes access to all floors via a lift.</p>															
<b>Storage</b>	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table><tr><th>Dwelling type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m<sup>3</sup></td></tr><tr><td>1 bedroom apartment</td><td>6m<sup>3</sup></td></tr><tr><td>2 bedroom apartment</td><td>8m<sup>3</sup></td></tr><tr><td>3+ bedroom apartment</td><td>10m<sup>3</sup></td></tr></table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling type	Storage size volume	Studio apartments	4m <sup>3</sup>	1 bedroom apartment	6m <sup>3</sup>	2 bedroom apartment	8m <sup>3</sup>	3+ bedroom apartment	10m <sup>3</sup>	<p><b>Consistent</b></p> <p>All apartments comply with total storage volumes and internal storage requirements.</p>					
Dwelling type	Storage size volume																
Studio apartments	4m <sup>3</sup>																
1 bedroom apartment	6m <sup>3</sup>																
2 bedroom apartment	8m <sup>3</sup>																
3+ bedroom apartment	10m <sup>3</sup>																
<b>Acoustic Privacy</b>	<p>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.</p>	<p><b>Consistent</b></p> <p>All garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, private open spaces and circulation areas are located more than 3m away from bedrooms.</p>															
<b>Noise and Pollution</b>	<p>Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.</p>	<p><b>Consistent</b></p>															

		The Acoustic report submitted with the development application provides "noise goals" and recommendations and Council's Environmental Health Officer recommended approval. However, impacts on the residential units 3 & 4, 1 Bilambee Avenue have not been assessed.
<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 location within the building.	<b>Consistent</b> The development proposes a mix of one and two bedroom apartments.
<b>Ground Floor Apartments</b>	Do the ground floor apartments deliver amenity and safety for their residents?	<b>Not Applicable</b> The development does not have ground floor apartments.
<b>Facades</b>	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	<b>Consistent</b> The facade treatment is appropriate to enhance the streetscape and character of the area
<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?	<b>Not consistent</b> There is no communal open space incorporated into the roof design.  As discussed throughout this report, the roof top plant is not supported as it results in excessive building height.
<b>Landscape Design</b>	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	<b>Consistent</b> As previously discussed within this report, the proposed landscape design is generally acceptable.
<b>Planting on Structures</b>	When planting on structures minimum soil volumes and depths are recommended for a range of plant sizes.	<b>Consistent</b> Sufficient soil depths are provided.
<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.	<b>Consistent</b> The apartment mix is satisfactory.
<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.	<b>Consistent</b> Proposed awnings to shops are satisfactory.  There is no signage proposed with this application.
<b>Performance</b>		
<b>Energy Efficiency</b>	Have the requirements in the BASIX certificate been shown in the submitted plans?	<b>Consistent</b>

		A BASIX certificate report has been prepared for the development. The BASIX certificate confirms that required targets for water, thermal comfort and energy efficiency will be met.
<b>Water Management and Conservation</b>	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	<b>Consistent</b> Water management and conservation through the means of retention of stormwater for reuse has been assessed as compliant and further, compliance with the supplied BASIX Certificate can be conditioned, if the application is approved.
<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?	<b>Consistent</b> A Waste Management Plan has been provided with the development application.
<b>Building Maintenance</b>	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	<b>Consistent</b> The application includes a Schedule of Materials and Finishes which ensures the longevity and sustainability of the building.

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

The application has been accompanied by a BASIX certificate that lists commitments by the applicant as to the manner in which the development will be carried out. The requirements outlined in the BASIX certificate have been satisfied in the design of the proposed development. Nonetheless, a condition could be imposed, in the event of approval to ensure such commitments are fulfilled during the construction of the development.

#### 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 provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent in the event of an approval.

## PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with: aims of the LEP?	No
zone objectives of the LEP?	Yes

### Principal Development Standards

Clause	Requirement	Proposed	% Variation	Complies
4.3 Height of buildings	8.5m	9.85m (3 <sup>rd</sup> storey) 11.2m (rooftop plant)	16% 32%	No
4.5A Density controls for certain residential accommodation	1 dwelling per 150m <sup>2</sup>	1 dwelling per 116.25m <sup>2</sup>	22.5%	No

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Part 2 Permitted or prohibited development	Yes
2.7 Demolition requires development consent	Yes
<b>Part 4 Principal development standards</b>	
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.5A Density controls for certain residential accommodation	No
4.6 Exceptions to development standards	No
Part 5 Miscellaneous provisions	Yes
Part 7 Additional local provisions	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

### Detailed Assessment

#### Clause 4.6 – Exceptions to development standards

##### Description of non-compliance

Development standard	Height of buildings
Required	8.5m
Proposed	9.85m (3 <sup>rd</sup> storey) 11.2m (rooftop plant)
Percentage of variation	16% (building) 32% (rooftop plant)

##### 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 recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*.

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 Planning 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 not demonstrated that the objectives of the development standard are achieved.

In this regard, the Applicant's written request has not 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 applicants written request argues, in part:

*The roof top plant structure is located centrally within the building envelope – not readily discernible from ground level around the outside of the building or from the adjoining road reserves (as shown in the perspective drawings). The upper roof level of the building is set well back from each building alignment below making the upper level and variation not readily apparent or offensive on the streetscape when viewed from surrounding road network or public places or surrounding residential properties.*

*The consequence of strict compliance in the circumstances would necessitate the loss of an entire residential floor which would make the development economically unviable and be contrary to the Object of the Act at s1.3 which seeks to promote the orderly and economic development of the land. The success of the development is wholly dependent on the additional level (i.e the variation). See attached feasibility prepared by Dreambuild Pty Ltd. This is important in terms of the positive social and economic impacts that the overall development will have on the viability and sustainability of the neighbourhood centre, providing necessary active retail uses and additional residential population in the form of various housing mix contributing to the amenity and vitality of the area atmosphere and also providing additional security and surveillance.*

*The viability is the catalyst for the redevelopment of the site, allowing for the removal of the existing service centre which is an outdated eyesore with negative visual impacts on the amenity of the area. Further it will allow for the removal of a non-conforming use with*

*existing use rights and the conversion to a permissible land use consistent with the objectives of the zone and Council's strategic planning aims for the locality.*

*If the development is not viable, those community benefits will not be forthcoming.*

*The proposal is setback from the boundaries to create a generous wide verge and improved public domain and hence whilst there is an argument that some additional floorspace could be accommodated at ground floor level, it would be strictly limited to retail or business premises which would generate additional traffic impacts and parking demands and additional exaction for carparking. Further the first floor could have been cantilevered to extend to the boundaries. In lieu the building is setback so as to provide greater separation and buffer to surrounding residential properties. It also allows for outdoor dining opportunities, improved connectivity of the footpath and generous landscaped areas and additional on street parking.*

The applicant's report relies on financial feasibility as a basis for exceeding building height. However, financial feasibility is not a valid justification under Clause 4.6. In any case, the underlying land value should reflect the development potential for the site achievable under the relevant planning controls.

In addition, the applicant's report states that that compliance is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. However, the applicant's clause 4.6 request fails to demonstrate:

- How the three-storey proposal is consistent with the desired character statement for the Bilgola Locality (Pittwater 21 DCP) which states:
  - *The Bilgola locality will remain primarily a low-density residential area with dwelling houses a maximum of **two storeys** in any one place in a landscaped setting, integrated with the landform and landscape.*
- How the building is compatible with the height and scale of surrounding development when the impacts on the adjoining residential apartments to the west will be severe.
- How the proposal minimises overshadowing of neighbouring properties when no regard has been given to the balconies of units 3 and 4, No 1 Bilambee Avenue.
- How the proposal allows for reasonable sharing of views when the views available from units 3 and 4, 1 Bilambee Avenue have not been recognised or addressed by the proposal.

Furthermore, the variation to the building height development standard is a result of the third floor and rooftop plant which causes substantial amenity impacts to the adjoining residential apartments at 1 Bilambee Ave (shadowing, privacy and view impacts). Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3) and the application should be refused on these grounds.

#### Clause 4.5A Density controls for certain residential accommodation

Clause 4.5A (4) provides a maximum density of 1 dwelling / 150m<sup>2</sup> of site area. This equates to a maximum density for the site of 6 dwellings. The proposal provides a density of 1 dwelling / 116.25m<sup>2</sup> (8 dwellings) and therefore does not comply with the density development standard.

As Council has not received a written request from the applicant that seeks to justify the contravention of the density development standard, Council does not have the authority to grant development consent for development.

## PITTWATER DEVELOPMENT CONTROL PLAN

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.3 Bilgola Locality	No	No
<b>Section B General Controls</b>		
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B2.6 Dwelling Density and Subdivision - Shop Top Housing	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B5.1 Water Management Plan	Yes	Yes
B5.3 Greywater Reuse	Yes	Yes
B5.4 Stormwater Harvesting	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.9 Stormwater Management - Water Quality - Other than Low	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B5.12 Stormwater Drainage Systems and Natural Watercourses	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.14 Stormwater Drainage Easements (Public Stormwater Drainage System)	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
<b>C1 Design Criteria for Residential Development</b>		
C1.1 Landscaping	No	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	No	No
C1.4 Solar Access	No	No
C1.5 Visual Privacy	No	No
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.14 Separately Accessible Structures	Yes	Yes
C1.15 Storage Facilities	Yes	Yes
C1.18 Car/Vehicle/Boat Wash Bays	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
<b>C2 Design Criteria for Business Development</b>		
C2.1 Landscaping	Yes	Yes
C2.2 Safety and Security	Yes	Yes
C2.3 Awnings	Yes	Yes
C2.5 View Sharing	Yes	Yes
C2.6 Adaptable Housing and Accessibility	Yes	Yes
C2.10 Pollution Control	Yes	Yes
C2.11 Signage	Yes	Yes
C2.12 Protection of Residential Amenity	Yes	Yes
C2.16 Undergrounding of Utility Services	Yes	Yes
C2.20 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C2.22 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
<b>D3 Bilgola Locality</b>		
D3.1 Character as viewed from a public place	Yes	Yes
D3.2 Scenic protection - General	Yes	Yes
D3.3 Building colours and materials	Yes	Yes
D3.6 Front building line	No	No
D3.7 Side and rear building line	Yes	Yes
D3.9 Building envelope	No	No
D3.10 Landscaped Area – General	Yes	Yes
D3.12 Fences - General	Yes	Yes

## Detailed Assessment

### **A4.3 Bilgola Locality**

The desired character of the Bilgola locality is prescribed, as follows:

#### Desired Future Character

*The Bilgola locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary Dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.*

*The three distinct areas within the Bilgola locality (as identified in Bilgola Locality Map 2) will, by their unique differences, require differing and distinct degrees of control to ensure the individual characteristics and essence of each area are maintained and enhanced:*

#### The Plateau Area:

*Will provide for some dual occupancies, on land that does not have tree canopy coverage, species and habitat diversity, or other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, community and recreational facilities will serve the community.*

Comment:

The proposal development is found to be inconsistent with the requirements of the desired character statement for the following reasons:

- The proposed density is inconsistent with a low-density residential area
- The proposal exceeds the two storey requirements with the proposal presenting as a 3 storey building when viewed from different vantage points.

C1.13 View Sharing

All new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties.

Units 3 & 4, 1 Bilambee Ave currently enjoy district views and distant water views over the site. These will be lost as a direct result of the non-complying building height.

The proposed development does not achieve a reasonable sharing of views.

C1.4 Solar Access

The proposed development will result in the loss of sunlight to the east facing windows and private open space of units 3 & 4, 1 Bilambee Ave resulting in non-compliance with clause C1.4 which requires that private open space and living room windows receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.

The proposed development does not achieve the stated outcome of maintaining a reasonable level of solar access to existing residential properties.

C1.5 Visual Privacy

Clause C1.5 requires that the private open space areas and living rooms of any existing adjoining dwellings are to be protected from direct overlooking within 9 metres, by building layout, landscaping, screening devices or greater spatial separation.

In this regard, the dwelling house located at 1 Bilkurra Ave will be overlooked by the proposed north-facing balconies on level 1 and the expansive terrace on level 2, all of which are on a nil setback. The distance between the proposed development and the southern boundary of 1 Bilkurra Avenue is 6m. Notably, there is a window in the southern elevation of 1 Bilkurra Ave which is within 9m of the proposed development and therefore the requirements of clause C1.5 are not satisfied. In addition, the proposed development does not achieve the stated outcome of optimising visual privacy though good design.

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

As well as exceeding the building height, the proposed rooftop plant area has not been designed to integrate internally into the design fabric of the built form of the building.

D.3.6 Front building line

The minimum front building line for land zoned B1 Neighbourhood Centre is 3.5m.

The proposal has a nil setback to all three street frontages. While this is appropriate for the commercial component on the ground floor, it is not appropriate for the residential component of the building. Non-compliance with the front building line contributes to excessive building bulk and scale.



#### D.3.9 Building envelope

The proposed development breaches the building envelope which is determined by planes projected at 45 degrees from a height of 3.5 metres above ground level (existing) at the side boundaries to the maximum building height.

The breach of the building envelope contributes to excessive bulk and scale of the built form and unreasonable privacy, amenity and solar access impacts on the adjoining residential apartments at 1 Bilambee Ave.

#### D12.1 Character as view from a public place

The proposed development in terms of visual bulk and scale is not a considered response to the predominant scale of the existing development within the Palm Beach Locality. the proposed development is not consistent with the locality in that the scale of the development does not sufficiently reflect that envisaged for the area.

The scale of the development is uncharacteristic of the locality. The height, bulk, scale and density are not compatible with the character of the locality.

## **7.12 CONTRIBUTIONS**

### **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 \$68,104 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$6,810,408.

## **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

The proposed land uses are permissible with consent on the site pursuant to the provisions of PLEP 2014. As discussed throughout this report, there are no objections raised to the proposed land uses on the site and redevelopment of the site will be beneficial to the site as well as the locality as a whole.

However, the proposed development, in terms of its built form and density, is not sufficiently sympathetic to its low density location and has a poor interface with the adjoining residential properties surrounding the site.

## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2020/1351 for demolition works and construction of a mixed use development comprising of shop top housing and retail premises, with associated carparking and landscaping on land at Lot 5, DP 229309, 1 Bilambee Lane BILGOLA PLATEAU, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy 65 - Design Quality of Residential Flat Development (Principles 1, 2 and 6) and its associated Apartment Design Guide.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development does not satisfy the provisions of Clause 1.2 Aims of the Pittwater Local Environmental Plan 2014.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development does not satisfy the provisions of Clause 4.3 Height of Buildings of the Pittwater Local Environmental Plan 2014.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development does not satisfy the provisions of Clause 4.5A Density controls for certain residential accommodation of the Pittwater Local Environmental Plan 2014.
5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development does not satisfy the provisions of Clause 4.6 Exceptions to development standards of the Pittwater Local Environmental Plan 2014.
6. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the proposed development is not consistent with the Desired Future Character of the Bilgola Locality outlined in the Pittwater 21 Development Control Plan and is an over-development of the site.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 1.13 Views, Clause 1.4 Solar Access and Clause C1.5 Visual Privacy of the Pittwater 21 Development Control Plan, resulting in unacceptable amenity impacts on surrounding residential properties.
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D3.6 Front Building Line and Clause 3.9 Building Envelope of the Pittwater 21 Development Control Plan resulting in a building with excessive bulk and scale.
9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed rooftop plant is inconsistent with the provisions of Clause C1.25 Plant, Equipment Boxes and Lift Over Run of the Pittwater 21 Development Control Plan.