

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1426
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Responsible Officer:	Adam Susko
Land to be developed (Address):	Lot 2 DP 528120, 51 Kalang Road ELANORA HEIGHTS NSW 2101
Proposed Development:	Demolition works and construction of a shop top housing development
Zoning:	B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Lightning Property Developments Pty Ltd
Applicant:	Lightning Property Developments Pty Ltd

Application Lodged:	02/09/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	14/02/2022 to 28/02/2022
Advertised:	14/02/2022
Submissions Received:	12
Clause 4.6 Variation:	4.3 Height of buildings: 35.2%
Recommendation:	Deferred Commencement Approval

Estimated Cost of Works:	\$ 2,650,000.00
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EXECUTIVE SUMMARY

Development Consent is sought under this application for demolition works and the construction of a three-storey shop top housing development over one level of partial-basement parking.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) for determination as the building is up to four-storeys and is subject to the provisions of SEPP 65 and the Apartment Design Guide, and because the exhibition of the application has attracted more than ten submissions. The proposal is also referred to the NBLPP as the proposal breaches the building height development standard by more than 10%.

The development of the site provides a transition between the established Elanora Village Town Centre

to the north and the R2 Low Density Residential zone to the south. Buffering the site and the R2 zone is a Council car park and community centre which is used as a childcare centre.

The majority of submissions received are from or on behalf of the childcare centre, and raise concerns that the development of the site, in any capacity, will harm the operation of the centre and could give rise to adverse safety risks both during construction and operation. Concerns from other neighbours pertain to a loss of visual privacy and a loss of trees.

Council's Design and Sustainability Advisory Panel (DSAP) reviewed the proposal and advised that the unusually shaped site was unduly constrained by the DCP controls which in turn resulted in an undesirable built form. The DSAP recommended the proposal be redesigned with flexibility being applied to the DCP controls.

In response to these factors, the Applicant redesigned the proposal to have a better street presence and internal layout to improve constructability and sustainability. An improved landscaped outcome was achieved through removing a secondary vehicular access point into the site.

The site is subject to two separate height controls pursuant to Clause 4.3 of the Pittwater Local Environmental Plan 2014 and it breaches those requirements. However, the breaches are not found to be significant, nor detrimental to the amenity of neighbours. The assessment revealed that there are sufficient environmental planning grounds to warrant the variation requested.

Stormwater drainage from the development site must be via an inter-allotment drainage easement through the adjoining Council owned land, used as a car park. At this time, no approach to acquire the right to an easement has been made by the Applicant/Owner, therefore such a request must be made and approved by Council prior to the activation of this consent.

On the balance of all factors, this report finds that the proposal is appropriate for the site and concludes with a recommendation that the NBLPP, as the consent authority, grants **DEFERRED COMMENCEMENT APPROVAL** to the development application.

PROPOSED DEVELOPMENT IN DETAIL

Development Consent is sought for demolition works, excavation and construction of a shop top housing development.

Specifically, the proposal involves the following:

- Excavation of a basement to provide parking for 13 spaces.
- Construction of a three-storey building atop of the basement, comprising of two retail tenancies at ground level totalling 154.3m² and five residential units above, comprising two x one bedroom, two x two-bedroom, and one x three bedroom apartment.
- Associated finishing and landscape works.

AMENDED PLANS

During the course of the assessment of the application, several sets of revised plans were received. The most notable changes were recommended by Council's Design and Sustainability Advisory Panel, which resulted in a redesign of the building facade and a simplification of the internal layout. These plans were re-notified to neighbouring properties.

Several rounds of additional information and plans for access and waste management were received, which did not necessitate the renotification of the development application.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

- Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
- Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
- Pittwater 21 Development Control Plan - A4.5 Elanora Heights Locality
- Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
- Pittwater 21 Development Control Plan - C2.21 Food Premises Design Standards
- Pittwater 21 Development Control Plan - D5.15 Amalgamation - Elanora Heights Village Centre
- Pittwater 21 Development Control Plan - D5.17 Front Building Line - Elanora Heights Village Centre
- Pittwater 21 Development Control Plan - D5.19 Setbacks to Upper Levels - Elanora Heights Village Centre
- Pittwater 21 Development Control Plan - D5.23 Design Excellence - Elanora Heights Village Centre
- Pittwater 21 Development Control Plan - D5.30 Signage - Elanora Heights Village Centre
- Pittwater 21 Development Control Plan - D5.31 Awnings and Colonnades - Elanora Heights Village Centre
- Pittwater 21 Development Control Plan - D5.38 View Sharing - Elanora Heights Village Centre

SITE DESCRIPTION

Property Description:	Lot 2 DP 528120 , 51 Kalang Road ELANORA HEIGHTS NSW 2101
Detailed Site Description:	<p>The subject site is legally identified as Lot 2 in Deposited Plan 528120 and is known as 51 Kalang Avenue, Elanora Heights.</p> <p>The site falls within the B2 Local Centre zone pursuant to the Pittwater Local Environmental Plan 2014 and is identified as the being the southernmost site of the Elanora Heights Village Centre.</p>

The site is triangular in shape with a splayed front boundary to Kalang Road of 32.52m and depths of 45.72m to the north and 38.5m to the southeast. Overall the site has a surveyed area of 661.7m².

Presently the site accommodates a two storey building in a landscaped setting with six large (>10m tall) trees in the front garden. A sewer line runs through the property.

Topographically the site falls from north to south by 2m and west to east by 3m.

Surrounding Development

Northwards of the site is a three storey brick development accommodating six business premises. The building is built hard up to the southern boundary adjoining the site and has at-grade car parking to the rear (east). Further northwards is the remainder of the village centre.

Directly south of the site is a Council car park, bound by a community centre and public reserve to the east. This land is zoned for SP2 Infrastructure. The community centre is predominantly occupied as a childcare centre. Beyond this and to the west is land zoned for dwelling houses.

Map:



SITE HISTORY

Prior to the submission of the development application, the applicant elected to attend a prelodgement meeting with Council to discuss the proposal.

PLM2020/0124 (25 June 2020)

The PLM scheme was not dissimilar to that originally submitted as a part of the development application. That PLM did not have the benefit of Councils newly formed Design and Sustainability Advisory Panel.

The minutes of the meeting raised four primary concerns being the building height, front setback, carparking and impacts on vegetation.

These items have been assessed as an element of this development application and, subject to the revised plans received, are satisfactorily addressed.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&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><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to DSAP and referral comments.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the</p>

Section 4.15 Matters for Consideration	Comments
	<p>consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may be addressed via a condition of consent.</p>
<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>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report, and within the Referral Response table.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. The proposal will contribute to the vitality of the Elanora Heights Village Centre and will provide new opportunities for housing, business and leisure within the precinct, as envisaged by the planning controls.</p> <p>It is acknowledged that concern has been raised by community members with regards to the development of the site, however the impacts associated with the development both during construction and in longevity are considered to be acceptable, and consistent with what could reasonably be expected to be from developing the land.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public</p>	<p>No matters have arisen in this assessment that would justify the</p>

Section 4.15 Matters for Consideration	Comments
interest	refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 14/02/2022 to 28/02/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 12 submission/s from:

Name:	Address:
Mr John Perrott	49 Kalang Road ELANORA HEIGHTS NSW 2101
Heidi Patrick	Address Unknown
Elisabeth Flett	26 Bolwarra Road NORTH NARRABEEN NSW 2101
Ms Joanne Therese Adams	29 Maralinga Avenue ELANORA HEIGHTS NSW 2101
Mr Glen Michael Connell	42 Kalang Road ELANORA HEIGHTS NSW 2101
Mrs Margaret Anne O'Shea	58 Koorangi Avenue ELANORA HEIGHTS NSW 2101
Dick Clarke	Address Unknown
Mrs Alison Joy Catt	4 Wesley Street ELANORA HEIGHTS NSW 2101
Elanora Heights Residents Association	19 Foxall Street ELANORA HEIGHTS NSW 2101
Ms Carolyn Maree Scott	44 A Kalang Road ELANORA HEIGHTS NSW 2101
Martin Milroy	69 Elanora Road ELANORA HEIGHTS NSW 2101
Elanora Heights Community Preschool	49 A Kalang Road ELANORA HEIGHTS NSW 2101

During the course of assessment, the development application was notified twice, once from 8 September to 27 September 2021, and the second time from 9 February to 28 February 2022. The first exhibition attracted eleven (11) submissions in objection to the DA. Of those, six (6) were from neighbours (one (1) being anonymous and another being a duplicate), one (1) from the operators of the adjoining childcare centre, and four (4) from parents of the childcare centre.

The second exhibition attracted two (2) submissions from previous objectors.

The following issues were raised in the submissions:

- Traffic and access safety implications
- Impacts on childcare centre
- Built form compliance
- Amenity impacts - noise, privacy, overshadowing, view loss
- Construction impacts
- Prospective future land uses

The above issues are addressed as follows:

- **Traffic and access safety implications**

The submissions raised concerns that the development is situated on a blind corner and, in conjunction with the stated 40+ cars that use the adjoining Council car park during pick-up and drop-off times for the childcare centre, would result in an increased risk to pedestrians in the immediate area, particularly young children from the childcare centre.

Comment:

It is acknowledged that the site is situated on a reasonably blind corner. This matter is not relevant to the application, as it cannot be altered by the applicant. The building has been set back from the street edge to maintain a wide field of vision for users of the driveway and motorists in general on Kalang Road.

The proposal is not anticipated to generate a significant volume of traffic, particularly when compared to the stated volume of cars that use the adjoining Council car park when accessing the childcare centre. It would be prejudicial to burden the development potential of the subject site because of the high-volume usage of an adjoining property.

The proposal is accompanied by a traffic and parking report that addresses these matters and is deemed acceptable, subject to conditions, by Council's Traffic Engineers.

The concerns raised by users of the childcare centre are duly noted (including the unsafe corner and speeding drivers), however this development application is not the correct avenue to address those concerns. It is recommended that concerned residents contact the Northern Beaches Council Local Traffic Committee to discuss opportunities to install traffic management measures along this section of Kalang Road to address their concerns.

- **Impacts on childcare centre**

The submissions raised concerns that the proposed development could impact on the on-going success of the existing childcare centre both through using the adjoining car park and an increased opportunity for noise complaints.

Comment:

The car park adjoining the subject site is a public car park, and a sign is displayed stating that it is for use by users of the community centre and public reserve. The car park is not a private facility only for use by the childcare centre. Notwithstanding that, the site has a compliant provision of carparking to adequately serve the development as detailed elsewhere in this report.

A concern is also raised that future occupants of the development may complain to Council about noise generated from the childcare centre. There is no factual basis to this concern and it does not warrant the refusal of the application, however it is noted that potential purchasers of any unit in the development should (reasonably) be aware that the development adjoins a childcare centre.

- **Built form compliance**

The submissions raised concerns that the building breaches several built form controls, and also notes that the controls are very prescriptive and restrictive given the shape of the site.

Comment:

Council's DSAP concurs with the observations in the submission, to the extent that the controls lead to an undesirable built form and that some flexibility in the application of the controls is needed facilitate a good development of the site. Where a built form non-compliance arises, it has been assessed in this report.

Notwithstanding the numerical compliance of the building, it is found that the density and overall proportion of the building is acceptable for the location.

- **Amenity impacts - noise, privacy, overshadowing, view loss**

Submissions from neighbouring properties raised concern that the proposal may impact on their amenity by way of increase noise and overshadowing and a loss of views and visual privacy.

Comment:

The assessment of the proposal has found that the scheme is not likely to cause any unreasonable view loss from neighbouring properties or the public domain, and that the extent of overshadowing caused by the building is compliant and satisfactory.

On-going noise from the commercial component of the development will be subject of assessment and applicable conditions to protect amenity as part of future applications, and this matter is secured by way of condition.

Concerns have been raised from the house at No. 49 Kalang Road that the top floor balcony may impede on the degree of privacy they have in their rear garden. Whilst it is noted that this privacy is somewhat compromised by the surrounding car park, the presence of an apartment building next door (albeit some 23m away) could give rise to an adverse impact.

This report therefore discusses and includes a condition requiring the balustrading of the top floor balcony facing the site to be raised to a height of 1.5m above finished floor level, and to be finished in opaque glazing. Whilst this height would not stop direct views from someone on the very edge of the balcony, it would restrict downwards views from inside the apartment. This condition is considered to appropriately address the concern.

- **Construction impacts**

The submissions raised concerns that demolition and construction of the building would generate unacceptable impacts on neighbours by way of traffic, noise, dust, vibration etc.

Comment:

It is not possible to entirely avoid any inconvenience or short-term impacts during the excavation and construction phase of the development. Neighbours must reasonably expect that there will be a greater level of noise and other impacts compared to the existing situation. This report includes conditions requiring a Demolition Traffic Management Plan and Construction Traffic Management Plan to be approved prior to the commencement of works on site. Further, the conditions require compliance with all relevant Australian Standards which go towards dust and vibration management and mitigation.

These concerns are appropriately addressed by way of condition.

- **Prospective future land-uses**

The submissions raised concerns that the commercial premises in the development may be incompatible with surrounding uses and suggests that the two commercial units may be used as "tattoo parlours, mortuary, backpackers or highrise units".

Comment:

No approval is implied or granted under this report (if approved) for the land-use of the two ground floor retail premises. The plans indicate that the front unit will be a food and drink premises, and the rear will be an office and these uses would be the subject of a future development application, which will assess suitability and impacts of any first use. The Pittwater Local Environmental Plan 2014 details what land uses are permitted on the site, and Council raises no in-principle objection to the establishment of a food and drink or office premises, consistent with the rest of the village centre location.

REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	<p>The proposal was submitted to Council's Design and Sustainability Advisory Panel (DSAP) on 28 October 2021 who concluded (summary):</p> <p style="text-align: center;"><i>The Panel does not support the proposal in its current form.</i></p> <p style="text-align: center;"><i>The Panel strongly recommends that the design be revised to improve internal amenity, room sizes, efficiency of layout and to ensure the retention of one or more trees.</i></p> <p style="text-align: center;"><i>To facilitate this, some breaches of the precise setback controls and car parking to be accommodated on site may be considered.</i></p> <p>Following that meeting the applicant redesigned the facade of the building to introduce a large curved element rather than progressive stepping, along with internal changes to units and a revision of the site's landscaping. Council is satisfied that the revised scheme satisfactorily addresses the requirements of the DSAP.</p> <p>A detailed response to the matters raised by DSAP can be found elsewhere in this report.</p>
Building Assessment - Fire and Disability upgrades	<p>Supported, with conditions</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</p>

Internal Referral Body	Comments
	<p>the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Industrial)	<p>Supported, with conditions</p> <p>Details on the exact location and type of mechanical plant to be provided to this development limits the assessment of noise in relation to mechanical equipment. Therefore a condition prior to construction certificate should be considered so a more thorough assessment can be undertaken.</p>
Environmental Health (Food Premises, Skin Pen.)	<p>Supported, without conditions</p> <p>Environmental Health has reviewed relevant documents submitted as part of this proposed development which details the intent to have commercial units below residential units. There has been no proposal provided on the occupancy of the commercial units for food and/or skin pen operations therefore no food/skin pen conditions required at this time. A separate consent is required if the commercial units are to be occupied for food preparation or skin penetration activities. We have no objections to the proposal in its current format.</p>
Landscape Officer	<p>Supported, with conditions</p> <p>The development application is for demolition of the existing dwelling and the construction of a shop top housing development with basement, associated works and landscape works.</p> <p>Council's Landscape Referral section have assessed the application against the following relevant controls and policies:</p> <ul style="list-style-type: none"> • State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP65) under clause 28(2)(b) against the design quality principles within schedule 1 • The Apartment Design Guide under SEPP 65 clause 28(2)(c) • Pittwater 21 Development Control Plan including B4.22 Preservation of Trees and Bushland Vegetation, C1.1 Landscaping, and D5 Elanora Heights Locality including D5.28 Active Frontages - Elanora Heights Village Centre, and D5.34 Public Domain - Elanora Heights Village Centre. <p>Landscape Plans in accordance with Council's DA Lodgement requirements and a Arboricultural Impact Assessment are provided with the development application.</p> <p>The landscape proposal generally provides adequate landscape treatment to satisfy Schedule 1 Design quality principles of SEPP65, including: Principle 5: Landscape - positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood; and optimises useability, privacy and opportunities for social interaction, equitable access.</p> <p>Additionally, the objectives of the Apartment Design Guide are able to</p>

Internal Referral Body	Comments
	<p>be satisfied, including: 3E Deep Soil Zone, 4O Landscape Design, and 4P Planting on Structures. Pittwater 21 DCP control C1.1 Landscaping as applied to shop top housing is able to be satisfied with a minimum landscaped area of 20% provided at the front and rear of the development into natural ground.</p> <p>To be acceptable to Landscape Referral the development and associated Landscape Plan shall be the subject of imposed conditions for amended landscape plans to ensure adequate landscape outcomes are achieved including: removal of the carspace part within Council's road verge; existing footpaths fronting the site to be widened to 1500mm and paved as granite surface to match Kalang Rd B2 Local Centre existing pavements; and additional street tree planting within the road verge.</p> <p>The Arboricultural Impact Assessment provides recommendations for tree protection measures for the existing Angophora street tree and conditions shall be imposed, including the preparation of a tree protection plan to identify the locations of fencing and ground protection (and other measures) to ensure the impacts to the tree are minimised. It is noted that the site contains 3 existing Gums and 1 existing Deciduous tree within the frontage and 1 existing Gum at the rear corner of the property that are not referenced in the Arboricultural Impact Assessment as required by Council's DA Lodgement requirements. The four trees within the existing front setback are unable to be retained as they are impacted by the proposed development without a design alternative for retention, being located wholly within the development footprint. The existing Gum at the rear corner is not impacted by the proposed development and shall be retained and protected.</p> <p>Landscape Referral are able to support the application subject to amended landscape plans and provision of a tree protection plan and tree protection measures.</p>
NECC (Development Engineering)	<p>Supported, with conditions <i>Current comments 16/05/22</i> No objections to the proposed apartment building with basement carparking subject to development engineering conditions.</p> <p>The proposal also requires the provision of an interallotment drainage easement through the adjoining public reserve, this process requires an application to councils property section .</p> <p><u>Planner Comment:</u> The applicant is required to acquire the rights to an interallotment drainage easement through Council's adjoining car park / public reserve. Such an action cannot be granted under development consent. The applicant has not yet acquired an easement and this is done via a separate approval mechanism.</p> <p>The recommendations of this report therefore require that this</p>

Internal Referral Body	Comments
	<p>easement be created to the satisfaction of Council prior to the activated of the development consent.</p> <p><i>Superseded comments on amended plans 22/2/22</i> The previous comments still apply however additionally the applicant is to provide a driveway long section that demonstrates compliance with Councils standard vehicle crossing Normal Low and the maximum allowable grades specified in the Australian standard AS2890 -Off street Carparking .</p> <p><i>Original superseded comments</i> The on site stormwater detention(OSD)/site drainage has been reviewed and whilst the OSD design is satisfactory , the application cannot be supported for the following reasons:</p> <p>1) An inter allotment drainage easement will be required within the adjoining council reserve/carpark for the outlet pipe connection to Councils existing 750mm RCP line.</p> <p>2) The drainage engineer is also to provide a drainage long section through the carpark/reserve detailing the HGL and also clearances to any utility services. Cover is to be detailed appropriate for the above vehicle loadings.</p>
NECC (Water Management)	<p>Supported, with conditions The proposal is for a shop-top housing development with basement carpark. Subject to conditions, the development is compliant with Council's water management controls.</p>
Road Reserve	<p>Supported, with conditions</p> <p>Removal of parking space on road reserve is noted, although still shown on landscape plans.</p> <p>Landscape plans and photomontage suggest filling of road reserve to level with kerb potentially representing 1-1.5m of fill. Engineering details to be summited as part of a Road Act application for civil works (to be conditioned by Development Engineering) including adjustment of any utilities. Filling over underground power cables require consent from the energy authority.</p> <p>Given the intensification of the site use and extension of the current retail streetscape reconstruction and widening of the existing footpath to 1.5m minimum or as determined by Council's Public Space Design Guidelines. Details to be included the Road Act Application for Civil Works.</p>
Traffic Engineer	<p>Supported, with conditions <i>Amended comments - 09 March 2022</i></p> <p><u>Parking</u></p> <p>The amended plans and supplementary traffic report have been</p>

Internal Referral Body	Comments
	<p>reviewed. It is noted that the 14th parking space accessed via second point of vehicle access and on a bend has been removed from the plans as requested.</p> <p>With regard to the information in the supplementary traffic report it is accepted that a pit style car stacker which allows for each car to be accessed independently is not as restrictive in terms of access to vehicles as a stacked parking arrangement. The use of three car stacker pairs each operating in a pit style arrangement is therefore not opposed. It is also noted that each stacker pair has been allocated to the same unit which will assist the users of those spaces who will use them regularly, to become familiar with their use and operation.</p> <p><u>Loading</u></p> <p>It is also accepted that there will not be a high number of deliveries to the site and that these could be completed to a large extent by small vans which could be accommodated in the visitor parking space or on-street parking. The requirement for a Loading Bay is no longer pressed.</p> <p>Given the above the parking and loading arrangements are considered acceptable.</p> <p><u>Property Access</u></p> <p>The access ramp into the basement carpark is compliant with Australian Standard grade requirements. There is a section at 5% for the 6m into the carpark which is consistent with the requirements of AS2890.1 clause 3.3(a) the ramp then steepens to a maximum of 1 in 4.3 (23.3%) which does not exceed the 25% maximum specified in AS2890.1 clause 2.5.3 (b)(ii) and the sage grade at the bottom of the ramp is at 15% compliant with Clause 2.5.3 (d) (ii). There are no objections to the internal carpark ramp profile</p> <p>Given the above there are no traffic engineering objections to approval subject to conditions</p> <p><i>Original comments - 24 November 2021</i></p> <p>The development application is for demolition of the existing residence and construction of a mixed use development on the site comprised of 5 residential units, 80 sqm of café and 58sqm of commercial space. 13 off-street carparking spaces are proposed within a basement carpark with one car space also proposed off a separate driveway along the sites northern boundary.</p> <p><u>Traffic Generation</u></p> <p>The Traffic & Parking Impact Assessment report provided with the application estimates the traffic generation from rates in the RMS</p>

Internal Referral Body	Comments
	<p>Guide to Traffic Generating Developments. The developed site has been estimated to generate 3 vehicle trips per hour in the am peak and 7 vehicle trips per hour in the pm peak. When traffic generated from the existing site is subtracted this reduces the nett traffic generation from the proposed development to 2.2 trips in the am peak and 6 trips in the pm peak.</p> <p>These volumes of traffic will not have an appreciable impact upon traffic conditions in the surrounding road network.</p> <p><u>Parking</u></p> <p>The DCP parking requirements applicable to this development are:</p> <p>1 space per dwelling for 1 bedroom units,</p> <p>2 spaces per dwelling for 2 or more bedroom dwellings</p> <p>plus 1 visitor space for each 3 dwellings (rounded up)</p> <p>2.5 spaces for each 100sqm of GLA for business/office</p> <p>1 space for each 30sqm of GLA for cafes/restaurants</p> <p>Using these rates there is a parking requirement of 13.2 spaces, including 7residential spaces, 2 residential visitor spaces and 4.2 spaces for café and commercial uses (4 spaces). 2 of the parking spaces are for disabled use.</p> <p>The developer proposes to provide 14 car parking spaces. It is noted that the parking space accessed off a separate driveway along the northern boundary of the site is sited largely on the nature strip area. This is not permissible. The provision of a second point of vehicle access to the site is also not supported and particularly not at this location on a bend with limited sightlines. This parking space and the associated vehicle crossing shall be deleted from the plans.</p> <p>It is also noted that 6 of the parking spaces are proposed to be located in car stacker units. The Pittwater DCP states that the proportion of tandem parking spaces (which would, by function, also include vehicles in car stacker units) does not exceed 10% of the total residential parking for two (2) or more bedroom units. The number of spaces in car stackers is considered excessive and vehicles in each car stacker pair would need to be allocated to the same unit. The use of car stackers to meet parking requirements for single bed units, visitor spaces or for office and retail uses is not permissible under the DCP. While 2 car stacker units would be accepted to cater for the parking requirements of the 3 bed and 2 bed apartments, a third stacker unit is not supported. The parking requirements for other uses must be provided within individual spaces. Although the quantum of parking is acceptable the parking arrangements as proposed have an</p>

Internal Referral Body	Comments
	<p>over reliance on the use of car stackers and are unacceptable. An amended car parking layout is required which notes on the plans which spaces will be allocated to which use. The shared space between the two disabled spaces must also be shown hatched and incorporate a bollard to prevent it being used as a parking space. Visitor parking spaces and those allocated for cafe use must be publicly accessible at all times (i.e not located behind a secure roller shutter).</p> <p><u>Vehicular Access</u></p> <p>As outlined above, the 2nd vehicle crossing at the northern boundary of the site is not supported and should be deleted from the plans</p> <p><u>Loading/ deliveries</u></p> <p>No loading or delivery space has been provided. The Pittwater DCP only requires the provision of a designated space for deliveries or couriers where the business or office use exceeds 400 sqm. For cafe use “adequate” space for delivery vehicles is required. The traffic and parking report only states that deliveries for the commercial and café uses are expected to be undertaken by B99 light commercial vehicles. While it is accepted that most deliveries are likely to be undertaken by such vehicles, no discussion of where delivery vehicles will park has been provided. It is noted that parking on the street frontage of the site is not permitted. An additional space to cater for deliveries is considered necessary.</p> <p><u>Summary</u></p> <p>Given the concerns outlined above additional information and amendment to the plans are required prior to further consideration of this development</p>
Waste Officer	<p><i>Supported, with conditions (Amended plans dated 13 May 2022)</i></p> <p>No objection to the revised plans, subject to conditions as recommended.</p> <p><i>(Superseded plans dated 21 April 2022)</i></p> <p>This proposal does not comply with Northern Beaches Council’s Waste Management Design Guidelines.</p>

Internal Referral Body	Comments
	<p>Specifically:</p> <p>An external permanent residential Waste Storage Area must:</p> <ul style="list-style-type: none"> a) Be roofed with a minimum ceiling height of 2100mm throughout and clear of any obstructions with walls from floor to ceiling to screen the bins from view from the street. b) Be a secure room that residents can access with a code, card or key. c) Any doors fitted on the waste storage area must be unobstructed by any locks and security devices on the nominated collection day - and be able to be latched in the open position. We request a timer lock to be fitted to the residential waste room door providing access to the street to be open from 6am-6pm on collection day. <p><i>(Superseded original plans)</i></p> <p>This proposal does not comply with Northern Beaches Council's Waste Management Design Guidelines.</p> <p>Specifically:</p> <p><u>Transfer of Waste Bins between the Basement Bin room and the Holding Bay</u></p> <p>Transferring the bins between the basement binroom and the holding bay requires the use of the vehicular driveway - unacceptable.</p> <p>Access to the basement has a gradient of 1 in 4.3 - Maximum gradient for wheeling bins is 1 in 8, or else this will require the use of a bin tug to negotiate when take full bins up to the holding bay.</p> <p>If there are no persons onsite prepared to transfer the bins, this arrangement will create an ongoing financial burden for the owners.</p> <p>A pathway for wheeling bins that is separate from the driveway is required.</p> <p>Alternatively transferring the bins between the basement binroom and the holding bay using the lift then requires occupants to leave the property and walk along the footpath to reach the bin holding bay -</p>

Internal Referral Body	Comments
	<p>unacceptable.</p> <p>The transfer of bins must take place entirely within the property.</p> <p>To improve access and safety, the applicant may choose to use the holding bay as a permanent bin storage area removing the need for a residential bin room in the basement.</p> <p>An external permanent Waste Storage Area must:</p> <p>a) Have a minimum wall height of 1600mm</p> <p>b) Be roofed with a minimum ceiling height of 2100mm throughout and clear of any obstructions.</p> <p>c) Have a path for the residents to use that is within the property.</p> <p>The proposal does not meet Councils requirements. Specifically:</p> <ul style="list-style-type: none"> • The waste bin storage area is too far from the property boundary with the street. • The bin room in the basement is only accessible via the lift or the driveway and appears to have secure access. • A Residential Waste Room separate to the Commercial Waste Room must be provided. <p>As this is a multiple occupancy proposal, Council will be providing a “wheel out / wheel in” service from Kalang Road for the residential bins. The owners corporation / building occupants are not to place the bins at the kerbside for collection.</p> <p>Council will be providing 6 x 240 litre residential bins: 2 x garbage, 2 x paper recycling, 1 container recycling bins, 1 x vegetation bin. The dimensions for each bin are: · Depth: 750mm · Width: 600mm · Height: 1080mm</p> <p>A suitably located bin storage room will need to be provided that complies with Council’s requirements.</p> <p>- Within 12 metres of the property boundary with the</p>

Internal Referral Body	Comments
	<p>street. (Please note: the distance is normally 6.5 metres. Due to site constraints Waste Services will allow up to 12 metres).</p> <ul style="list-style-type: none"> - Service access for Council waste collection staff must be via a pathway that is separate to the vehicular driveway. - Service access pathway to have a flat, smooth non-slip surface with no steps or ramps with a gradient steeper than 1 in 8 and 1.2m wide. - Access to the bin storage area must not be obstructed by locked doors. - Doors must be able to be latched in an open position, openable in an outward direction and be a minimum 1.2 metres wide. <p>Please be advised that if there is a holding bay at street level that meets Council's location and access requirements, it is possible for the bins to be stored in a basement bin room. It would be the responsibility of the owners corporation to transfer the bins between the basement bin room and the holding bay. Please note that the vehicular driveway must not be used to transfer the bins between the basement binroom and the holding bay. A viable alternative must be provided that meets WHS requirements e.g. no stairs and no ramps steeper than 1 in 8.</p> <p>Commercial waste storage room</p> <p>A commercial waste storage room has not been provided. The residential bin room is required to be separate from the commercial bin room. Please show as separate rooms on the proposed plan.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who raised no objections to the development.

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 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 part-three / part-four storey shop top housing development plus basement car parking for the provisions of five (5) self-contained dwellings.

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

As previously outlined within this report Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

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

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

DESIGN REVIEW PANEL

Northern Beaches Council's Design and Sustainability Advisory Panel reviewed the application and their comments can be found later in this report.

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 transitional nature of the site from local centre to residential inherently means that achieving a form appropriate to both contexts is challenging by virtue of built form and land uses.

The proposed land use of one retail, one office and five apartments is considered to be an appropriate mix for the Elanora Village locale and will contribute to the neighbourhood.

The architecture of the proposal is considered to be both interesting and non-offensive to neighbours, as would be required in a transitional site. The site is a challenging shape and is prejudiced by unusual built form controls under the planning instruments.

In summary of the above and as detailed in the preceding eight principles, the development is considered to appropriately respond to context and neighbourhood character.

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

Notwithstanding the fact that the development does breach the building height control and several DCP controls, the overall built form, scale and proportion of the building are considered to be acceptable with regards to surrounding properties and the wider Elanora Village locale.

The development generally aligns with the pattern of mixed-use buildings along Kalang Road and will, over time, be screened by landscaping.

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 proposal achieves satisfactory internal and external amenity for future residents in accordance with the relevant ADG principles as assessed below. The density of the development (five apartments) is not considered excessive and will contribute to providing housing diversity in a locale that is predominantly detached single dwelling houses.

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 proposal includes an acceptable degree of sustainability credentials including passive shading and cross ventilation, and mechanical systems such as photovoltaic cells and water capture.

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

It is noted that the existing site does have some desirable mature trees, however the location of those trees and their root zones severely prejudice the ability for the site to be developed in any reasonable capacity (commensurate to the land use and planning controls). The application is accompanied by a landscape plan, and that plan is enhanced further by conditions from Council's Landscape Officers. Subject to that plans and conditions the proposal will provide for an acceptable landscape both immediately, but more so into longevity as the plantings mature.

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 proposal provides a satisfactory provision of amenity in accordance with the ADG principles as described below, noting that solar amenity is severely prejudiced by existing neighbouring buildings. The proposal has appropriate ease of access for all age groups and degrees of mobility.

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 proposal is considered to provide a safe environment for occupants, pedestrians and surrounding land users.

Principle 8: Housing Diversity and Social Interaction

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

Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment

The Elanora Heights locale is generally dominated by detached single family dwelling houses, with some alternative land uses interspersed throughout. The outlier to this statement is the Elanora Village centre that generally comprises of commercial and retail offerings that are either older single storey buildings or newer shop top housing developments. Such is the premise of this development application.

The site has been envisaged for an extended period of time (by virtue of the planning controls) to accommodate a mixed-use development. The offering of five residential units of one, two or three bedrooms provide an appropriate housing diversity and alternate offering to prospective buyers commensurate to the prevailing housing typology in the suburb.

Principle 9: Aesthetics

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

The visual appearance of well designed apartment development responds to the existing or future local

context, particularly desirable elements and repetitions of the streetscape.

Comment

The proposed development is considered to be appropriately designed with regards to its visual presentation to the streetscape and neighbouring properties. The design is somewhat unique along the Kalang Road streetscape, however that is deemed appropriate given that the site is the last block of the village centre before transitioning to low density residential buildings.

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
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Consistent The development is considered to be appropriately sited given the existing flank wall to the north and the reasonably open curtilage presented to the southeast.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Consistent The site's ability to achieve a high level of solar access within is significantly prejudiced by its location southwards of a large building built to the boundary which removes any opportunity for northern sunlight. The building is appropriately orientated to Kalang Road and to neighbouring properties to provide the best level of amenity possible to both future occupants, and neighbours.
Public Domain Interface	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?	Consistent The proposal entails the establishment of new retail units at ground floor facing the street and flowing on to (what is assumed to be) outdoor dining areas. The design of the building

		<p>appropriately transitions between private and public domain without compromising safety and security.</p> <p>The public domain is enhanced by way of an improved landscaped outcome, albeit the large angophora trees are being removed, and through the addition of new retail and office offerings.</p>
<p>Communal and Public Open Space</p>	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> 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) 	<p>Inconsistent (satisfactory on merit)</p> <p>The site does not have any dedicated communal open space for residents, although it is noted that there is a small courtyard area to the eastern edge of the site accessible from the basement.</p> <p>Each of the five apartments has surplus internal and external areas which mitigate any loss of amenity caused by a shortfall in communal open space.</p> <p>It is further noted that the entire frontage of the site, at ground level, is somewhat dedicated as public open space, being a cafe with terraces and a landscaped area. Occupants of the development would be able to use this space (as customers, and if a future application does indeed secure this space as a cafe / food and drink offering).</p> <p>The site also looks over and is immediately adjacent to the Allington Reserve park.</p>

<p>Deep Soil Zones</p>	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1" data-bbox="440 371 1058 913"> <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 650m²</td> <td>-</td> <td rowspan="4">7%</td> </tr> <tr> <td>650m² – 1,500m²</td> <td>3m</td> </tr> <tr> <td>Greater than 1,500m²</td> <td>6m</td> </tr> <tr> <td>Greater than 1,500m² 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 ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	<p>Consistent</p> <p>The site has a surveyed area of 661.7m². The frontage of the site has a deep soil zone of 94m² or 14.2% of the total site area. The site has two additional smaller areas of deep soil landscaping which increase the overall quantum of deep soil landscaping to ~ 20%.</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
<p>Visual Privacy</p>	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1" data-bbox="440 1099 1058 1458"> <thead> <tr> <th>Building height</th> <th>Habitable rooms and balconies</th> <th>Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>Up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> <tr> <td>Over 25m (9+ storeys)</td> <td>12m</td> <td>6m</td> </tr> </tbody> </table> <p><i>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</i></p> <p><i>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</i></p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>Consistent</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
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Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												
<p>Pedestrian Access and entries</p>	<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>Consistent</p>												
<p>Vehicle Access</p>	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high</p>	<p>Consistent</p>												

	quality streetscapes?	
Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p>Inconsistent (satisfactory on merit)</p> <p>The development is required to provide 14 car parking spaces (7 residential, 2 visitor and 4.2 commercial) but only provides 13.</p> <p>Given the village centre location of the site it is not considered that a shortfall of one space will compromise the availability of street parking. It is further considered to be seldom occurrence that both visitor spaces and all five commercial spaces would be at capacity at any one time.</p> <p>Council's Traffic Engineer supports the shortfall in car parking and therefore the variation is supported on planning grounds.</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"> 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. 	<p>Consistent</p> <p>The ability to provide solar access within the site is prejudiced by the orientation of the site southward of large building.</p> <p>Unit 1.3 receives one hour of direct sunlight to its primary balcony and living room between 9am and 3pm on its winter solstice. The other four units in the development exceed the requirements.</p> <p>Therefore, 80% of apartments in the development receive the minimum solar access, and thus the development is</p>
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		compliant.												
	<ul style="list-style-type: none"> A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter. 	Consistent												
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"> 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. 	Consistent												
	<ul style="list-style-type: none"> Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line. 	Consistent												
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table border="1"> <thead> <tr> <th colspan="2">Minimum ceiling height</th> </tr> </thead> <tbody> <tr> <td>Habitable rooms</td> <td>2.7m</td> </tr> <tr> <td>Non-habitable</td> <td>2.4m</td> </tr> <tr> <td>For 2 storey apartments</td> <td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td> </tr> <tr> <td>Attic spaces</td> <td>1.8m at edge of room with a 30 degree minimum ceiling slope</td> </tr> <tr> <td>If located in mixed used areas</td> <td>3.3m for ground and first floor to promote future flexibility of use</td> </tr> </tbody> </table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	Consistent
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Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p> <table border="1"> <thead> <tr> <th>Apartment type</th> <th>Minimum internal area</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>35m²</td> </tr> <tr> <td>1 bedroom</td> <td>50m²</td> </tr> <tr> <td>2 bedroom</td> <td>70m²</td> </tr> <tr> <td>3 bedroom</td> <td>90m²</td> </tr> </tbody> </table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	Consistent		
	Apartment type	Minimum internal area												
	Studio	35m ²												
	1 bedroom	50m ²												
	2 bedroom	70m ²												
	3 bedroom	90m ²												

	A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m ² each.																
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	Consistent															
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Consistent															
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Consistent															
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	Consistent															
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	Consistent															
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments 	Consistent															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Consistent															
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <table border="1" data-bbox="438 1433 1061 1697"> <thead> <tr> <th>Dwelling Type</th> <th>Minimum Area</th> <th>Minimum Depth</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m²</td> <td>-</td> </tr> <tr> <td>1 bedroom apartments</td> <td>8m²</td> <td>2m</td> </tr> <tr> <td>2 bedroom apartments</td> <td>10m²</td> <td>2m</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>12m²</td> <td>2.4m</td> </tr> </tbody> </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 ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	Consistent
Dwelling Type	Minimum Area	Minimum Depth															
Studio apartments	4m ²	-															
1 bedroom apartments	8m ²	2m															
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	N/A															
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Consistent															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single	N/A															

	lift is 40.											
Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table border="1"> <thead> <tr> <th>Dwelling Type</th> <th>Storage size volume</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m²</td> </tr> <tr> <td>1 bedroom apartments</td> <td>6m²</td> </tr> <tr> <td>2 bedroom apartments</td> <td>8m²</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>10m²</td> </tr> </tbody> </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 ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²	Consistent
Dwelling Type	Storage size volume											
Studio apartments	4m ²											
1 bedroom apartments	6m ²											
2 bedroom apartments	8m ²											
3+ bedroom apartments	10m ²											
Acoustic Privacy	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.	Consistent										
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Consistent										
Configuration												
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Consistent The development comprises a mix of one, two and three bedroom apartments.										
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	N/A										
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Consistent										
Roof Design	<p>Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features.</p> <p>Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.</p>	Consistent In this location it is not deemed appropriate to permit a roof area to be used as trafficable space. The roof area is used as an architectural feature addressing the street, and then a functional area for photovoltaic panels for the remainder.										
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Consistent The landscape plan submitted responds										

appropriately to the site conditions and context. It is considered that further amendments to the landscape plan incorporating public domain treatments will result in an even better outcome, and therefore Council's Landscape Officer has required that the plans be further detailed prior to the issuance of a Construction Certificate.

Planting on Structures

When planting on structures the following are recommended as minimum standards for a range of plant sizes:

Plant type	Definition	Soil Volume	Soil Depth	Soil Area
Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent
Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent
Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent
Shrubs			500-600mm	
Ground Cover			300-450mm	
Turf			200mm	

N/A

Universal Design

Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features

Consistent

Adaptable Reuse

New additions to existing buildings are contemporary and complementary and enhance

N/A
The development does not

	an area's identity and sense of place.	comprise of adaptive reuse, and the existing structure on site is not appropriate for such.
Mixed Use	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.	Consistent The site is within the village centre and is accessible via public transport. It is considered the density and mix of the building is appropriate for its location and positively contributes to the wider public domain.
Awnings and Signage	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.	Consistent Appropriate awnings are provided at ground level to complement to architecture of the building and to improve amenity for users of the ground floor retail space. No signage is proposed or approved under this consent.
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Consistent
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Consistent
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	Consistent
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Consistent

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

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

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

- (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
- (b) if the internal area for each apartment will be equal to, or greater than, the recommended

minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,

(c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

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

Comment

The development is not being refused on any of these grounds.

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

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

(3) To remove doubt:

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

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

Comment

This assessment has given regards to the design quality principles and the objectives of the ADG and on balance, the amended plans for the development application are acceptable.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment

The proposal was referred to Ausgrid who raised no objections.

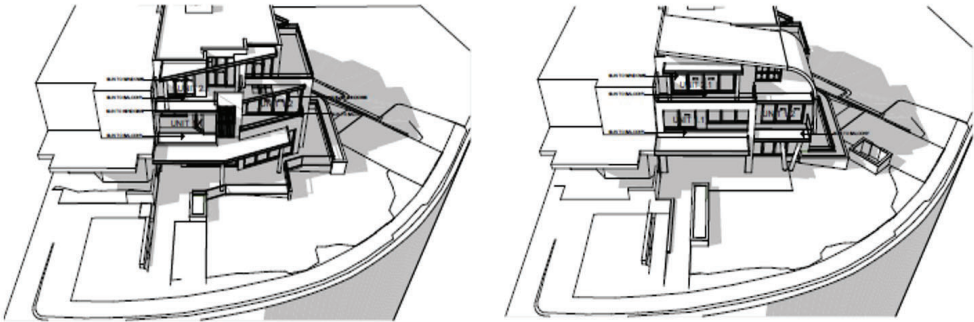
SEPP (Resilience and Hazards) 2021

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

DESIGN AND SUSTAINABILITY ADVISORY PANEL

The DA was reviewed by Council's DSAP on 28 October 2021. The Panel acknowledged the significant constraints of the site caused by the DCP control and noted that the design, as proposed, was overly complex because of the DCP controls. The Panel recommended that Council apply a degree of flexibility in these controls given the poor outcome that the result in. The below table details the DSAP recommendations and the applicant's responses.

DSAP RECOMMENDATIONS	APPLICANT RESPONSE TO RECOMMENDATIONS
Revise the design to simplify interior layouts, minimise the amount of balconies over habitable spaces and simplify the overall building form.	The applicant amended their development to modify the internal layout of the building to improve amenity, circulation and to rationalise service functions. The balconies and building form were amended to reduce the extent to which they overlapped with levels below and to create an increased depth to the building facade.
Investigate how the design and overall layout and arrangement of rooms could be improved if the building extended to C-1 on the ground and first floors and the set back from C to B was reduced to 1.5m. on the second floor	The DSAP saw that the prescriptive built form controls were creating a difficult design environment for the project architect. The applicant elected to maintain a similar building footprint / setbacks to what was originally proposed as they did not want to exacerbate existing levels of non-compliance.
Notwithstanding 1 and 2, the areas of excavation should be reduced by eliminating the inefficient garbage store	The residential garbage room was deleted from the basement carpark and relocated to ground level. The commercial garbage rooms remain in the basement. Overall the extent of excavation was reduced to a small degree consequent of the revised plans.
A very high priority should be given to the protection and retention of the mature angophora T01	Tree T01 is now being retained under the re revised plans.
Building form should be	The applicant sought to simply the overall building form in response to the

DSAP RECOMMENDATIONS	APPLICANT RESPONSE TO RECOMMENDATIONS
<p>simplified and made more coherent.</p>	<p>DSAP advice.</p> <p>The left image is the front axonometric drawing as submitted, and the right is the proposal as amended (the plans of which are the subject of this Assessment Report).</p> 
<p>Given two large Angophora will be removed from site we would encourage the planting of one semi mature Angophora in the location of the driveway entry in deep soil (replaces Tree 42) to offset this loss.</p>	<p>The application is accompanied by a landscape plan which has been deemed to be acceptable by Council's Landscape Officer, subject to conditions as recommended.</p>
<p>Internal layouts need to be simplified so both ground floor tenancies have a streetscape presence, and the residential entry is clearly defined.</p>	<p>The permitted width of the building does not easily lend itself to provide a frontage to both ground floor tenancies and the residential lobby. In this instance it is considered appropriate to dedicate the majority of the frontage to the future food and drink premises and its outdoor seating areas.</p>
<p>Investigate whether the north western most tree 'T02' (there are 3 T02a) could be retained if the basement were replanned.</p>	<p>The basement design is considered to be acceptable and does not require a redesign. Council's Traffic Engineer and Landscape Officer raise no objections to the development.</p>
<p>Reconsider mix of units</p>	<p>The mix of units proposed in the development is acceptable for the location and does not require revision.</p>
<p>Replan internal layout in response comments on DSAP Report Page 3.</p>	<p>Internal layout revised to rationalise service cores, reduce amount of circulation space, provide more windows and natural ventilations to unit, and to provide better living spaces for future occupants.</p>
<p>Check egress arrangements for required stairs</p>	<p>The stairs proposed appear to be acceptable, and will be subject to future design detail under the CC in accordance with the relevant Australian Standards.</p>
<p>The at-grade car space should be removed</p>	<p>Removed.</p>

DSAP RECOMMENDATIONS	APPLICANT RESPONSE TO RECOMMENDATIONS
Simplify the car parking layout	Council' Traffic Engineer supports the car parking layout and therefore no changes are required.
Consider not requiring parking for patrons on site to reduce the amount of excavation required	Council's Traffic Engineer supports the amount of car parking proposed and finds that the number should not be further reduced.
Remove the glazed balustrades at ground level	Removed.
Reconsider the use of glazed balustrades in this part of the centre that is more residential and vegetated in character	Some balustrades amended to include partial solid/partial glazed construction. This concern is not pertinent to the DA planning assessment.
100% EV charging	Some EV charging ports added to basement car park.
Improve shading to windows	The revised front building facade (as seen in the above axonometrics) results in an improved level of shading to windows which still retaining a compliant degree of solar access.
Switch from gas to electric for hot water and stoves	This is a design detail to be addressed at CC stage.
Include PV on the roof	The application is amended to include PV on the roof.
Include a skylight over lobby	The application is amended to include a skylight over the main lobby.
Include rainwater recycling	This is a design detail to be addressed at CC stage.

Concluding comments:

The applicant has responded to the recommendations made by the DSAP by submitted revised plans which include a multitude of changes. Whilst the two schemes may appear similar at a cursory and plan-view review, there are a number of small and positive changes that are tantamount to a significantly improved design. Most notable is the overall change to the front facade of the building and the changes to its massing created by the addition of a sweeping curved roof. The plans result in an improved internal layout with reduced circulation, better amenity and a simplification of services thereby leading to an easier construction process.

Council is satisfied that the applicant has responded appropriately to the DSAP.


Pittwater Local Environmental Plan 2014

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

zone objectives of the LEP?	Yes
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Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	Green - 8.5m Yellow - 11.0m	11.5m 12.33m	35.2% (3m) 12.9% (1.33m)	No No



Compliance Assessment


Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance:

Development standard:	Height of Buildings
Requirement:	Green: 8.5m Yellow: 11.0m
Proposed:	(in 8.5m area): 11.5m (in 11m area): 12.33m



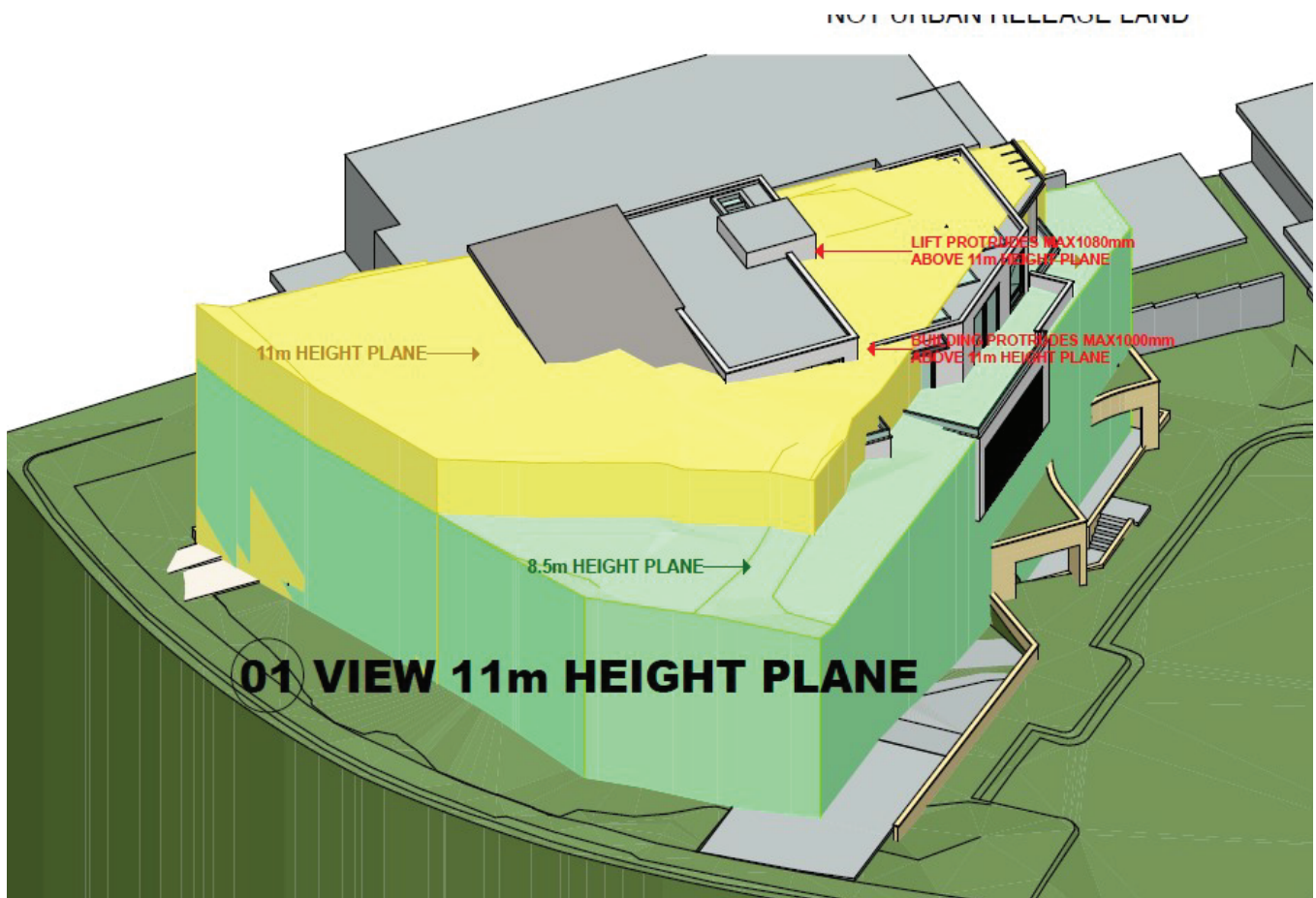
Percentage variation to requirement:

(in 8.5m area): 35.2%
(in 11m area): 12.9%

The subject site is located on the periphery of the B2 Local Centre zone and the R2 Low Density Residential zone and as such, a control exists to split the height of the development, understood to be in place to allow for a transition in scale between commercial and residential development.

The height of buildings maps can be found above, where the yellow area represents an 11m height limit, and the green area represents an 8.5m height limit.

The project architect has extrapolated these requirements in the same colour on a digital model of the development to show the extents of non-compliance proposed as below:



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*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to Development Standards

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

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular*

circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

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

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

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

(a) the consent authority is satisfied that:

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

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

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

Clause 4.6 (4)(a)(i) (Justification) Assessment:

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

Applicants Written Request

The applicants written request argues, in part:

- *that the extent of non-compliance is largely resultant of the sites topography;*
- *that the extent of non-compliance is largely non-discernible from the public domain or neighbouring properties, and does not result in any significant impacts on adjoining land;*
- *that the height of the development is generally consistent with the rest of the mixed-use developments along Kalang Road and is not inconsistent with what could reasonably be expected to be built on the site.*

It is agreed that the development of the site is largely constrained by the shape of the lot, a split height control and unusual setback controls. It is concurred that the extent of building encroaching beyond the height plane (as illustrated on the above diagram) is unlikely to cause any detrimental impacts to the amenity of adjoining land. The land use, proportions and general architecture of the building is considered to be congruous with the streetscape and consistent with what could reasonably be expected to be built on the site.

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

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

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

Clause 4.6 (4)(a)(ii) (Public Interest) Assessment:

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the B2 Local Centre zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the PLEP 2014 are:

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

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

Comment:

Consistency with the desired future character of the locality is discussed later in this report but in summary, the height and scale of the building is considered acceptable and consistent with the intent of the planning controls and the desired character of the locality.

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

Comment:

Whilst the proposed building will be of a height slightly greater than other commercial sites on the street block (that is sites north of the subject site, east of Kalang Road and south of St Andrews Gate) it does not appear visually incongruous with the existing proportions and is generally consistent with the height of newer development throughout the town centre. The proposal does attain a height greater than what is permitted on the properties to the south and east, however

that increased height is mitigated by the openness of the adjoining site (49A Kalang Road) which is considered likely to remain in the future, even if that site were to be redeveloped.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposal is not assessed as causing any unreasonable overshadowing of neighbouring properties.

d) to allow for the reasonable sharing of views,

Comment:

The proposal is not assessed as causing any unreasonable extent of view loss from neighbouring properties.

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

Comment:

Topographically the land slopes away from the street (west to east) and as such, the building steps down that slope by way of changing floor levels internally, and pulling back the eastern edges of the building progressively.

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

Comment:

The development is not anticipated to have an adverse visual impact on the natural environment, heritage conservation areas or heritage items.

Zone Objectives

The underlying objectives of the B2 Local Centre zone are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

Comment:

The development provides one retail offering with outdoor dining facing Kalang Road, and one small office unit to the rear of the building. This range of retail and business floorspace is considered beneficial to the local community.

- *To encourage employment opportunities in accessible locations.*

Comment:

As described above, depending on the tenants of the two commercial premises the development will provide employment opportunities.

- *To maximise public transport patronage and encourage walking and cycling.*

Comment:

The site is located in proximity to public transport and is within the village centre whereby it is anticipated that the predominant patronage would be locals who could walk to the site, or utilise existing on-street car parking.

- *To provide healthy, attractive, vibrant and safe local centres.*

Comment:

The proposed development is considered to provide an appropriate development for the village centre which contributes to the overall healthy, attractive, vibrant and safe nature of the locale.

- *To strengthen the role of centres as places of employment.*

Comment:

Commensurate to the total floor area of the development, the proposal is considered to provide an appropriate degree of employment floor space.

- *To provide an active day and evening economy.*

Comment:

The retail spaces have the potential to contribute to the day and evening economy, however that will be the subject of future DAs for the uses of those spaces.

- *To provide for residential uses above street level where they are compatible with the characteristics and uses of the site and its surroundings.*

Comment:

The proposal is for shop top housing and thus the residential units are located on levels above commercial spaces.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B2 Local Centre zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment:

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for

the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

7.2 Earthworks

The objective of Clause 6.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

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

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

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

(b) the effect of the proposed development on the likely future use or redevelopment of the land

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

(c) the quality of the fill or the soil to be excavated, or both

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

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

(e) the source of any fill material and the destination of any excavated material

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

(f) the likelihood of disturbing relics

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

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

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

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

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

of the development.

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

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

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

Pittwater 21 Development Control Plan

Built Form Controls

The site is subject to built form controls pursuant to clauses D5 Elanora Heights Locality of the P 21 DCP which generally differ from regular built form controls in that they are reliant on diagrams contained within the various clauses to outline what the appropriate setbacks are.

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	Varies. approx. 7.0m to the west, 12.0m to the south	Building: Complies Terrace: Encroachment	- -	Yes No
Rear building line	8.0m from eastern corner	Terrace: 8.0m Building: 11.6m	- -	Yes Yes
Side building line	north - nil (to adjoin neighbouring building)	Nil	-	Yes
	Southeast - 3.0m to ground and first floor	Building: 3.0m	-	Yes
	Southeast - 6.0m to second floor	Building: 5.0m+ Balcony: 3.0m	17% 50%	No No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.5 Elanora Heights Locality	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
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C2.6 Adaptable Housing and Accessibility	Yes	Yes
C2.16 Undergrounding of Utility Services	Yes	Yes
C2.21 Food Premises Design Standards	N/A	N/A
C2.22 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C5.17 Pollution control	Yes	Yes
C5.21 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D5.2 Scenic protection - General	Yes	Yes
D5.15 Amalgamation - Elanora Heights Village Centre	No	Yes
D5.17 Front Building Line - Elanora Heights Village Centre	No	Yes
D5.18 Side and Rear Setbacks - Elanora Heights Village Centre	Yes	Yes
D5.19 Setbacks to Upper Levels - Elanora Heights Village Centre	No	Yes
D5.20 Separation - Elanora Heights Village Centre	Yes	Yes
D5.21 Building Depth - Elanora Heights Village Centre	Yes	Yes
D5.22 Ceiling Height - Elanora Heights Village Centre	Yes	Yes
D5.23 Design Excellence - Elanora Heights Village Centre	Yes	Yes
D5.24 Facade Articulation - Elanora Heights Village Centre	Yes	Yes
D5.25 Roof Forms - Elanora Heights Village Centre	Yes	Yes
D5.26 Materials - Elanora Heights Village Centre	Yes	Yes
D5.27 Colours - Elanora Heights Village Centre	Yes	Yes
D5.28 Active Frontages - Elanora Heights Village Centre	Yes	Yes
D5.29 Entries - Elanora Heights Village Centre	Yes	Yes
D5.30 Signage - Elanora Heights Village Centre	N/A	N/A
D5.31 Awnings and Colonnades - Elanora Heights Village Centre	No	Yes
D5.32 Fences - Elanora Heights Village Centre	Yes	Yes
D5.33 Ecologically Sustainable Development Responsive Design - Elanora Heights Village Centre	Yes	Yes
D5.34 Public Domain - Elanora Heights Village Centre	Yes	Yes
D5.35 Landscaping - Elanora Heights Village Centre	Yes	Yes
D5.36 Solar Access - Elanora Heights Village Centre	Yes	Yes
D5.37 Visual Privacy - Elanora Heights Village Centre	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D5.38 View Sharing - Elanora Heights Village Centre	Yes	Yes
D5.39 Acoustic Privacy - Elanora Heights Village Centre	Yes	Yes
D5.40 Private Open Space - Elanora Heights Village Centre	Yes	Yes
D5.41 Natural Ventilation - Elanora Heights Village Centre	Yes	Yes
D5.42 Storage - Elanora Heights Village Centre	Yes	Yes
D5.43 Vehicular Access - Elanora Heights Village Centre	Yes	Yes
D5.45 Off-Street Vehicle Parking Requirements - Elanora Heights Village Centre	Yes	Yes

Detailed Assessment

A4.5 Elanora Heights Locality

The desired character of the Elanora Heights Village centre is as follows:

Elanora Heights is a small village centre with great sense of community, making it one of the great places to live in the northern beaches.

Local residents enjoy an easy-going lifestyle while shopping, dining and socializing in the lively village centre shops and cafes open onto the footpaths. The new town square on the western verge, south of St Andrews Gate, offers great choices for "breaky" or a good cup of coffee on the weekends. It offers public art and informal play opportunities for kids, and the favourite sunny spot of both young and senior residents.

Elanora Heights is a relaxed, easy-going place that has adapted gracefully over time with its improved public domain, tree-lined main street and characteristic, low scale, 3-storey built form with colourful facades and high quality architecture.

The architecture reflects the village atmosphere and coastal location. Buildings abut each other along both sides of Kalang Road. Driveways do not interrupt the pedestrian verges. The deep balconies to the upper levels create a play of light and shade on the facades. The use of natural materials enhances the facades and streetscape. The lower scale edges of the buildings to the rear of the properties and St Andrews Gate create a gentle transition to the lower scale houses.

The community centre, its adjacent open space with tall trees, shade canopies and playground space are ideal for the locals to meet and attend community events.

Lush planting and shading devices along generous footpaths give plenty of shade to pedestrians. The landscaped verges have regular seating areas that do not interrupt the flow of pedestrians past the shop fronts.

The extensive street trees give Kalang Road a dappled, leafy character emphasised by the tree planted central median.

The street frontages of the new buildings are active with well designed, fine grain shop fronts and high quality signage under the colonnade on the western verge along Kalang Road or under the awnings along the eastern verge. Together with the landscape master plan and the built form they create a holistic vision and character for the village centre.

The design principles underpinning the desired character for Elanora Heights Village Centre are:

- *To enhance and activate the existing character of Kalang Road;*
- *To create a high quality public domain environment;*
- *To encourage upgrades to existing properties and shops;*
- *To ensure development achieves design excellence;*
- *To create a strong sense of place as a small scale coastal village centre;*
- *To extend the village centre uses and activity to the southern block on Kalang Road;*
- *To ensure the whole length of the village centre is active and vibrant with increased visitation to the southern block;*
- *To ensure the village retains a low scale fine grain character;*
- *To maximize opportunities for cafes and restaurants;*
- *To announce arrival at the village centre through architectural and landscape markers;*
- *To improve visibility of the existing Community Centre and children's playground to Kalang Road and the rest of the village centre; and*
- *To encourage greater knowledge of Kywong Reserve.*

Comment:

For the reasons explained throughout this report, the proposal is deemed to achieve and contribute to the desired character of the village centre.

The proposal maintains a predominantly three storey appearance and provides the maximum available retail frontage to Kalang Road, buffered by an area of landscaping. For a transitional site between the village centre and a residential area, the balance of land uses and building proportions is considered appropriate to minimise impacts on neighbouring houses whilst still contributing to the vibrancy of the town centre.

B6.3 Off-Street Vehicle Parking Requirements

Council's Traffic Engineer has determined that the proposed 13 car parking spaces is short by one (1) space, when measured against the control requirements. Notwithstanding this, the engineer has advised that the shortfall is unlikely to create any detrimental impacts on the provision of publicly available car parking on the street or the surrounding road network.

Given the location of the site, people are generally more inclined to utilise existing on-street car parking when visiting the village centre and are considered less likely to find the commercial spaces within a development itself. Additionally, this type of centre is generally one where customers carry out multi-purpose visits rather than a single destination shop.

C2.21 Food Premises Design Standards

The use of the two commercial spaces shall be subject to future development applications at which time the requirements of this clause will become applicable. For the purpose of this current development application, the clause is not applicable.

D5.15 Amalgamation - Elanora Heights Village Centre

Clause D5.15 indicates that the development site should be amalgamated with Nos. 53 and 55 Kalang

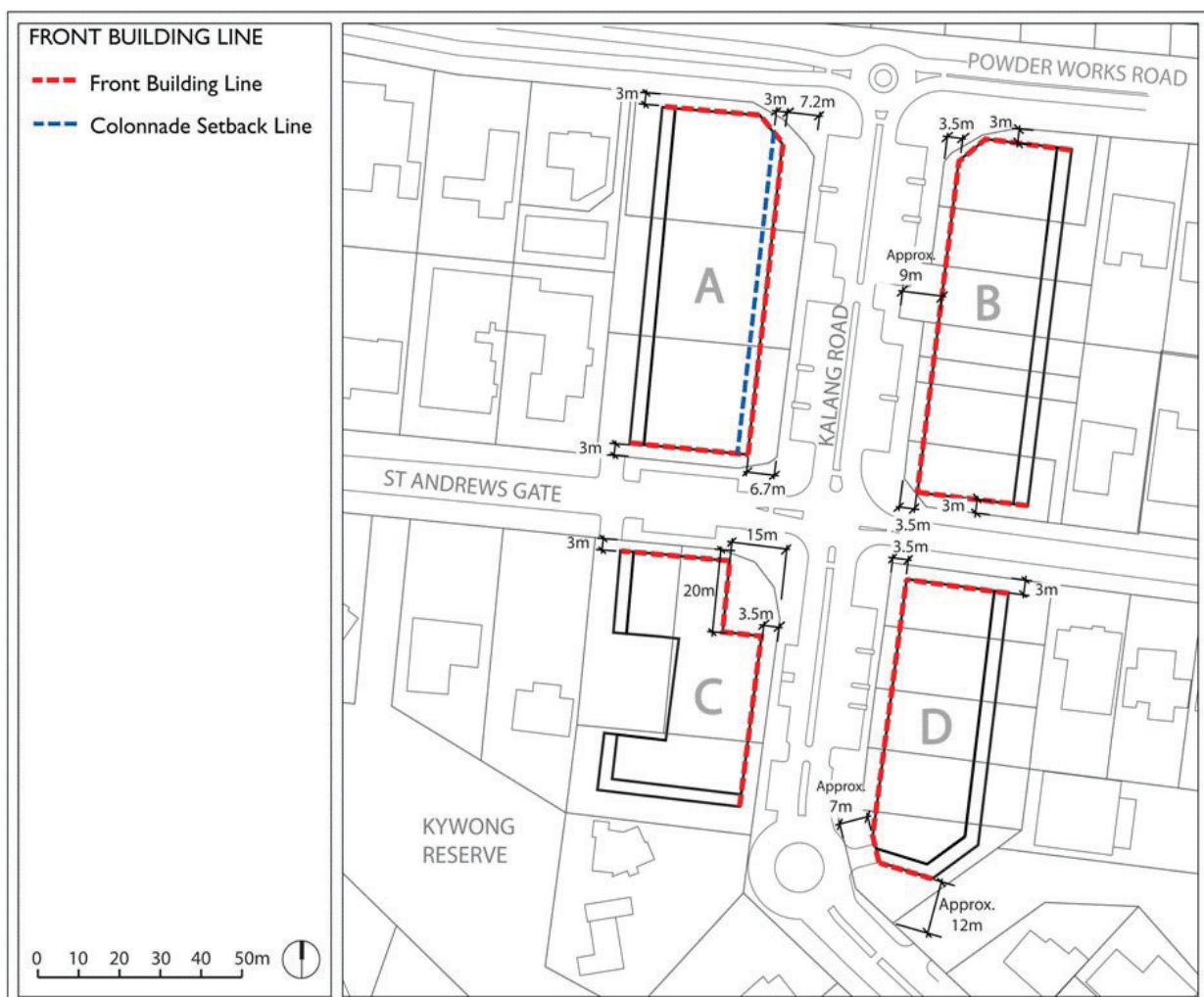
Avenue to the north, to permit a larger site area with greater development potential.

These two northwards buildings are dated, but appear to be structurally sound and are occupied with numerous owners. Whilst it would represent a greater opportunity and potentially a better outcome to have the whole street-block developed holistically, that is not a realistic outcome given the present situation with a multitude of owners. Furthermore, the combination of these three sites being development as one development could present issues such as village scale and compatible character which is in scale for the low-rise village centre and be contrary to the intent of the locale.

On that basis, it is considered that the subject site is capable of being independently developed, and that that development does not prejudice the ability of adjoining sites to be developed to a similar capacity.

D5.17 Front Building Line - Elanora Heights Village Centre

The site is subject to a front building line provision which indicates that the setback of building to the front boundary should be vary from approximately 7.0m to 12.0m, as shown in the figure below.



The majority of the building complies with the requirements, however the outdoor terrace for the ground floor commercial tenancy encroaches within the prescribed setback area. The variation is therefore assessed against the underlying outcomes of the control as follows:

- *To achieve a consistent street alignment.*

Comment:

The site has an unusual alignment commensurate to the rest of the village centre whereby the front boundary line projects closer to the street than its neighbours. The other developments within the centre are generally built hard up to the front boundary line.

The setbacks proposed in the control, and as displayed in the development are appropriate to allow for a transitional development between the centre and the low density residential neighbourhood.

The setback of the building is consistent with the controls and achieves an appropriate alignment. The building is setback further into the site than the requirement for dwelling houses in the adjoining residential zone.

The encroachment of the terrace encroachment facilitates outdoor dining and does not have any roof structure above, thereby not impeding any prevailing pattern of building alignment.

- *To ensure retail uses activate the public domain.*

Comment:

The entire frontage of the building is a retail use with outdoor dining opportunities which provide sufficient opportunity to activate the public domain. The future use of that space will be subject to a separate development application.

- *To achieve a strong edge and sense of enclosure to Kalang Road.*

Comment:

The shape of the lot and presence of a large and valuable angophora tree does not lend the site to have a strong edge to the road. Rather it is considered in this instance to be more appropriate to have a landscaped frontage similar to the existing building on site, and as proposed in this development.

- *To provide adequate exposure to shop fronts and avoid opportunities for concealment at ground level.*

Comment:

The retail unit G.1 addressing the street has the maximum possible exposure to the public domain and does not provide any opportunities for concealment.

- *To improve pedestrian amenity and avoid interruptions in pedestrian flow.*

Comment:

The building does not impede on existing pedestrian amenity or avoid interruptions in pedestrian flow. Comments from Council's Road Assets Officer requiring the footpath to be widened to a minimum of 1.5m will improve amenity.

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

Comment:

The site is subject to an unusual context to respond to, given its awkward shape and transitional nature between two zones. Notwithstanding that it is considered that the landscaped front setback of the development provides an appropriate transition into and out-of the village centre (depending which way one is travelling) and responds to the spatial characteristics of the existing urban environment.

On balance of all factors it is considered that the variation to D5.17 Front Building Line - Elanora Heights Village Centre is supported.

D5.19 Setbacks to Upper Levels - Elanora Heights Village Centre

The P21DCP prescribes two different sets of side setback requirements. The first (D5.18) is a 3.0m setback requirement which applies to all levels of the building up until the third level (second floor). The second control (D5.19) requires that the third level of a building be set back a further 3.0m (6.0m in total) from a side boundary but permits eaves and shading structures to encroach within the setback.

Generally, the proposal is designed to comply with the setback requirements and no encroachments are proposed at ground or first floor level. The second floor of the building breaches the 6m setback control to the south-eastern edge of the building, presenting a balcony with a 3.0m setback, and the building with a 5.0m setback, thus encroaching the required setback zone. The extent of encroachment can be observed in the earlier 3D massing diagram under section 4.6 of this report.

The variations sought are assessed against the underlying outcomes of the control:

- *The bulk and scale of the built form adjacent to adjoining low scale residential properties and to courtyard spaces is minimised.*

Comment:

The offending balcony is not considered to create any bulk or scale when viewed from neighbouring properties, as an alternate compliant scheme would have a roof form in this location that would be of a greater proportion than a balcony railing.

The offending building edge is setback 5.0m from the boundary. The site is separated from the neighbouring dwelling at 49 Kalang Road by a Council car park which measures some 18.0m in width. The offending building element is therefore some 23.0m from the boundary of 49 Kalang Road, and it is not considered that a 1m increase to the setback would present a discernible visual benefit of reducing bulk and scale. Further to that is the fact that the majority of the second floor has a significantly greater than required setback.

The proposal is considered to meet this objective.

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

Comment:

The variation sought to the upper level setback control is not considered to cause any unreasonable overshadowing of the neighbouring properties (noting that compliant solar access

is achieved).

Whilst there is a significant degree of spatial separation between the building and the neighbour, the degree of privacy could be improved by simply raising the glazed portion of balcony balustrade to be a height of 1.5m above finished floor level and be of an opaque finish. This would not prevent overlooking when standing at the edge of the balcony, however it would prevent downwards sightlines into the garden of 49 Kalang Road from inside the apartment.

On that basis a condition to that effect is imposed.

- *To ensure the built form of new development transitions are in scale to existing development surrounding the village centre.*

Comment:

The proposal is generally consistent with the proportions of other built form within the village centre, and is of a height and scale that could reasonably be anticipated to be developed on the site.

D5.23 Design Excellence - Elanora Heights Village Centre

The primary objectives of Clause D5.23 are:

- *To achieve high quality of architecture, landscape architecture and urban design for Elanora Heights Village Centre.*
- *Quality buildings that respond to their prominent visual setting.*
- *Contemporary village character.*

The proposal is considered to be of an acceptable design for the site and maintains a generous curtilage around its edges to provide a landscaped buffer and spatial separation.

The more contemporary in its architecture than its neighbours which is considered to be a good thing. The building is not unduly prominent and provides an appropriate transition between zones.

On balance, the design is considered to be of an acceptable quality within a pleasant landscaped setting that should contribute to the continued urban design success of the Elanora Heights Village Centre.

D5.30 Signage - Elanora Heights Village Centre

No signage is proposed or approved under this development consent.

D5.31 Awnings and Colonnades - Elanora Heights Village Centre

The shape of the site in having a front boundary projecting further westwards than its neighbours, and the change in topography between the site and its northern neighbour do not lend the site appropriate as having an awning the same as the other buildings within the village centre.

It is not considered warranted to require a continuous awning in this location as such would result in an awkward building alignment and awning design. The setback requirements do not allow buildings to be

constructed immediately adjacent to the footpath which negates the benefit of having a continuous awning along the road.

D5.38 View Sharing - Elanora Heights Village Centre

The proposal is not anticipated to cause any view loss from any neighbouring properties, nor from the public domain.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of \$26,500 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,650,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and

b) There are sufficient environmental planning grounds to justify the contravention.

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

This report demonstrates that the proposed development has been appropriately designed for the transitional context of the site forming the interface between the village centre and the low density residential areas in Kalang Road.

The development is not anticipated to generate any unreasonable amenity impacts on the village centre, the adjoining community centre or residential dwellings. Where an impact may occur, that impact has been assessed and can be appropriately managed or mitigated by way of condition.

Notwithstanding the variation sought to the height of building development standard, the overall proportions and architecture of the building result in an appropriately scaled and designed addition to the village centre. The variation to the development standard for building height is well founded under the Clause 4.6 Variation request and is without unreasonable impact.

The Applicant has responded to all the feedback from Council and the DSAP and has redesigned the proposal to address initial concerns which has resulted in a higher quality development.

On the balance of all factors, the proposal is deemed to be acceptable, and this report therefore concludes with the recommendation that the NBLPP grants **DEFERRED COMMENCEMENT APPROVAL** to the development application.

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

RECOMMENDATION

DEFERRED COMMENCEMENT APPROVAL

A. Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant a Deferred Commencement Development Consent being subject to a two (2) year time frame for Deferred Commencement Consents detailed within Section 95 of the EP&A Regulation 2000 to DA2021/1426 for Demolition works and construction of a shop top housing development on land at Lot 2 DP 528120,51 Kalang Road, ELANORA HEIGHTS, subject to the conditions printed below:

B. THAT once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within Part A of this recommendation.

DEFERRED COMMENCEMENT CONDITIONS

1. Stormwater Drainage Easement

As the natural fall of the land is towards the rear of the site the disposal of stormwater drainage is to be in accordance with the approved drainage plans. The easement is to be created under Sections 88B and/or 88K of the Conveyancing Act 1919. The applicant must provide Council with evidence of the created easement on title in order to activate the consent.

Stormwater drainage plans are to be submitted to Council for written approval detailing disposal of stormwater from the site in accordance with Council's Water Management Policy.

Reason: To ensure adequate provision is made for stormwater drainage from the site in a proper manner that protects adjoining properties.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

2. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA-01 Amendment C - Roof and Site Plan	21 April 2022	Fortey + Grant Architecture
DA-06 Amendment C - Basement Floor Plan	21 April 2022	Fortey + Grant Architecture
DA-07 Amendment C - Ground Floor Plan	21 April 2022	Fortey + Grant Architecture
DA-08 Amendment C - First Floor Plan	21 April 2022	Fortey + Grant Architecture
DA-09 Amendment C - Second Floor Plan	21 April 2022	Fortey + Grant Architecture
DA-10 Amendment C - North Elevation	21 April 2022	Fortey + Grant Architecture
DA-11 Amendment C - South Elevation	21 April 2022	Fortey + Grant Architecture
DA-12 Amendment C - East Elevation	21 April 2022	Fortey + Grant Architecture
DA-13 Amendment C - West Elevation	21 April 2022	Fortey + Grant Architecture
DA-14 Amendment C - Section	21 April 2022	Fortey + Grant Architecture
DA-15 Amendment C - Section	21 April 2022	Fortey + Grant Architecture
DA-17 Amendment C- Materials and Finishes Schedule	21 April 2022	Fortey + Grant Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Report	12 May 2021	Landscape Matrix Pty Ltd
BASIX Certificate No. 1132917M_03	09 February 2022	Lin & Associates Pty Ltd
Disability Access Report (ref: LP_20280)	05 May 2021	LPA Access
Environmental Noise Impact Assessment (ref: 7273-1.1R)	09 August 2021	Day Design Pty Ltd

Geotechnical Assessment (ref: 20210301-R1)	05 July 2021	Willows Engineering
Traffic and Parking Assessment Report (ref: 20461)	09 March 2021	Varga Traffic Planning Pty Ltd
Construction Traffic Management Plan (ref: 20461)	23 July 2021	Varga Traffic Planning Pty Ltd

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
20115DA1 Rev. A - Landscape Concept Plan	05 March 2021	Vision Dynamics Pty Ltd

Waste Management Plan		
Report Title	Dated	Prepared By
Waste Management Plan	05 May 2021	Steve Djogo

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

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

3. No Approval for Ground Floor Land Use

No approval is granted under this Development Consent for any land use of the two ground floor tenancies. A separate Development Application must be submitted to Council for approval prior to the use of the premises.

Reason: To ensure compliance with the relevant Local Environmental Plan.

4. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
 - (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
 - (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or

demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

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

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

Reason: Legislative requirement.

5. **General Requirements**

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$26,500.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$2,650,000.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount

unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

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

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

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

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

7. **Security Bond**

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

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

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

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

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

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

The applicant is to lodge a bond of \$35,000 as security against any damage or failure to complete the construction of the stormwater drainage works in the adjoining Council reserve as part of this consent.

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

Reason: Protection of Council's infrastructure.

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

The applicant is to lodge a Bond of \$30,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and

removal of any redundant driveways required as part of this consent.

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

Reason: Protection of Council's infrastructure.

10. **Construction, Excavation and Associated Works (Security Bond)**

A bond of \$25,000 as security against damage to Council's roads fronting the site caused by the transport and disposal of materials and equipment to and from the site.

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

Reason: Protection of Council's infrastructure.

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

11. **Amended Landscape Plans and Public Domain Plan**

An Amended Landscape Plan and Public Domain Plan is to be issued to the Certifying Authority documenting the following required changes:

- i) the indicated carspace located part within Council's road verge is to be removed and replaced with an extended garden area and lawn,
- ii) the existing footpath fronting the site to be widened to 1500mm and paved as Sesame Grey granite pavement to match the granite pavement treatment existing along the road reserve pavement to the northern part of Kalang Road,
- iii) the proposed footpath between kerb and building entry shall be a minimum 1500mm width and paved as Sesame Grey granite pavement,
- iv) one (1) *Lophostemon confertus* (Brushbox) is to be planted within the lawn area within the road verge, and shall be planted at a minimum pre-ordered 200 litre container size,
- v) all nominated trees within the plant schedule shall be planted at a minimum 75 litre container size,
- vi) the proposed *Pennisetum* species shall be substituted for a non self-seeding / invasive species of similar form and size.

The Certifying Authority shall document acceptance of the Amended Landscape Plan and Public Domain Plan satisfying the above conditions i), ii), iii), iv), v), and vi).

Reason: To ensure that the landscape treatments are installed to provide landscape and public domain amenity, and soften the built form.

12. **Tree Protection Plan**

a) A Tree Protection Plan shall be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate, demonstrating tree protection measures to protect the following trees:

- i) *Angophora* street tree within the road verge,
- ii) existing *Angophora* or other Gum at the rear of the property.

b) The Tree Protection Plan shall be prepared by an Arborist with minimum AQF Level 5 in arboriculture, incorporating the following:

- i) location of tree protection fencing / barriers,
- ii) root protection in the form of mulching or boards proposed within the tree protection zone,

- iii) trunk and branch protection within the tree protection zone,
- iv) location of stockpile areas and materials storage,
- v) inspection hold points,
- vi) other general tree protection measures.

c) Tree protection methods are to be in accordance with AS4970-2009 Protection of Trees on Development Sites.

Reason: Tree protection.

13. On Slab Landscape Works

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

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

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

- i) 600mm minimum for shrubs

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

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

14. Erosion and Sediment Control Plan

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

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: Protection of the receiving environment.

15. Detailed Design of Stormwater Treatment Measures - Major

A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the Stormwater Plans dated 6 October 2020 and Council's Water Management for Development Policy.

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

Reason: Protection of the receiving environment.

16. **Construction Traffic Management Plan**

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

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or

machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site

- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

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

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

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

17. Removal of Redundant Driveways

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

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

Reason: To remove vehicle crossings that are no longer needed in accordance with Council policy.

18. Pedestrian sight distance at property boundary

A pedestrian sight triangle of 2.0 metres by 2.5m metres, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property and where internal circulation roadways intersect with footpaths or other pedestrian access areas. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To maintain pedestrian safety.

19. Amendments to the approved plans

The following amendments are to be made to the approved plans:

- The glazed portion of balcony handrail for Unit 2.2 shall be increased in height to 1.5m above finished floor level and shall be finished in opaque glazing.

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

20. Geotechnical Report Recommendations have been Incorporated into Designs and

Structural Plans

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

21. **On-site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's WATER MANAGEMENT POLICY fore DEVELOPMENT, and generally in accordance with the concept drainage plans prepared by Civil and Stormwater Engineering, drawing number 200870 DRW 101C,102C,103B,105B,106B, dated 31/3/22. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. The 80mm rising main from the pump out pit is to be connected and discharge to the On site detention tank.
- ii The drainage plans are to incorporate a long section of the proposed 375mm RCP line to run through Councils adjoining reserve and include the levels of all relevant services within the reserve demonstrating adequate clearances to the stormwater line can be achieved.
- iii. Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

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

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

The application is to include four (4) copies of Civil Engineering plans for the design of kerb and gutter reinstatement, vehicle crossing, road reserve regrading/filling works and concrete footpath works which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

1)Filling of road reserve to level with the kerb may require adjustment of utilities services and filling over underground power cables which require consent from the energy authority

2)The fee associated with the assessment and approval of the application is to be in accordance

with Council's Fee and Charges.

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

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

23. **Utilities Services**

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

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

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

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

24. **Structural Adequacy and Excavation Work**

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

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

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

Reason: To provide public and private safety.

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

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

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

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

26. **Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

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

Reason: To facilitate suitable vehicular access to private property.

27. **Stormwater Drainage Application**

The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the 375mm RCP pipe running within Council adjoining public reserve and connection to Councils downstream drainage system. The engineering drainage works are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website at www.northernbeaches.nsw.gov.au > Council Forms > Stormwater Drainage Application Form.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

28. **Mechanical Plant Design and Location**

Prior to Construction Certification, a detailed plan identifying the location of all mechanical plant including exhaust outlets is to be provided to a suitably qualified acoustic consultant to review the design and equipment and provide a report on how the equipment complies with the below articles.

The plans are to include the location and specifications of all plant, air conditioning units, exhaust and fan outlets and any plant associated with the commercial units that may be applicable. The designs and locations of the plant must demonstrate compliance with AS1668, The use of mechanical ventilation, Building Code and recommendations in Section 6.2.1 to 6.2.4 within the acoustic report prepared by Day Design Pty Ltd dated 9 August 2021.

Reason: Protect amenity of the area

29. **Compliance with Standards**

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

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

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

30. **Sydney Water "Tap In"**

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

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

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

- Guidelines for Building Over/Adjacent to Sydney Water Assets.

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

31. Project Arborist

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, and ground protection.

The Project Arborist is to supervise all demolition, excavation and construction works near all trees to be retained, including construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works, unless approved by the Project Arborist.

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

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, including:

- i) Angophora street tree within the road verge, as listed in the Arboricultural Impact Assessment under section 2.1 Observations,
- ii) existing Angophora or other Gum at the rear of the property.

All tree protection measures specified must:

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

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

Note:

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

Reason: Tree protection.

32. No Access Through Adjoining Park/Reserves

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

Reason: To ensure protection of council parks/reserves.

33. Work Zones and Permits

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

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane

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

34. Demolition Traffic Management Plan

As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to commencing any demolition work.

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Include a Traffic Control Plan prepared by an RMS accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

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

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

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

35. **Pre-Construction Dilapidation Report**

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

Properties:

- 53 Kalang Avenue, Elanora Heights
- 49A Kalang Avenue, Elanora Heights (community centre)

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

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

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

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

37. **Protection of Existing Street Tree**

The existing Angophora street tree within the road verge frontage of the site shall be protected during all stages of construction. Construction temporary fencing consisting of 1.8m high x 2.4m wide in accordance with the Tree Protection Plan.

As a minimum, the tree protection fencing for street tree fronting the development site shall consist of standard 2.4m panel length to four sides unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture, in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, and with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

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

Reason: Street tree protection.

38. Tree and Vegetation Protection

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

- i) all trees and vegetation within the site not approved for removal (ie. Angophora street tree and Angophora or other Gum at rear of the site), excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

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

and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

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

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree (s) is prohibited.

Reason: Tree and vegetation protection.

39. **Road Reserve**

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

Reason: Public safety.

40. **Dewatering Management**

Tailwater (surface water and rainwater): Please contact catchment@northernbeaches.nsw.gov.au for advice on Council's water quality requirements for a single instance of dewatering tailwater that collects in an excavation during works. A dewatering permit application must be made for expected multiple instances or continuous dewatering of tailwater.

Groundwater: A permit from Council is required for any dewatering of groundwater. An application for interference with an aquifer is required to the Natural Resources Access Regulator. Contact catchment@northernbeaches.nsw.gov.au for more information about permits.

The groundwater/tailwater to be discharged must be compliant with the General Terms of Approval/Controlled Activity permit issued by WaterNSW (if applicable), Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) (Blue Book), Council's Compliance and Enforcement Policy and legislation including Protection of the Environment Operations Act 1997 and Contaminated Lands Act 1997.

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

Reason: Protection of the receiving environment and groundwater resources.

41. **Implementation of Demolition Traffic Management Plan**

All works and demolition activities are to be undertaken in accordance with the approved Demolition Traffic Management Plan (DTMP). All controls in the DTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for

approval. A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.

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

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

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

43. **Ongoing Management**

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

Reason: To ensure public safety.

44. **Demolition Works - Asbestos**

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

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

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

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

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

45. **Survey Certificate**

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

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels,

prior to concrete slab being poured/flooring being laid.

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

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

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

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

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

47. **Property Boundary Levels**

The Applicant is to regrade the property frontage from the kerb to the property boundary so fall to the street is achieved. Approval is required for any change to existing property alignment levels to accommodate the development.

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

Reason: To achieve a fall from the property boundary to the street for stormwater management,

48. **Progress Certification (Road & Subdivision)**

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

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

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

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

49. **Civil Works Supervision**

The Applicant shall ensure all civil works approved in the Section 138 approval and Section 68

approval are supervised by an appropriately qualified and practising Civil Engineer.

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

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

50. **Footpath Construction**

The applicant shall construct a 1.5m wide concrete footpath for the entire property frontage. The works shall be in accordance with the following:

- (a) All footpath works are to be constructed in accordance with Section 138 Road Act approval
- (b) Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Section 138 Road Act approval for footpath. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

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

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

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

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

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

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

52. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

53. **Vehicle Crossings**

The Applicant is to construct a vehicle crossing 6.2 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ Normal Low and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle

crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

54. **Site filling - Virgin Excavated Natural Material (VENM)**

Where site fill material is necessary, fill materials must:

1. Be Virgin Excavated Natural Material (VENM) only, as defined in: The Protection of the Environment Operations Act 1997
2. Be free of slag, hazardous, contaminated, putrescibles, toxic or radioactive excavated material and soil, rock or similar material. Putrescibles and non-putrescibles solid waste (including demolition material) is not permitted.
3. The Applicant shall provide certification by a N.A.T.A. approved laboratory to the Principal Certifying Authority for approval prior to importation of material.

Reason: To ensure protection of the natural environment.

55. **Waste Management During Development**

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

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

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

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

During demolition and/or construction the following materials are to be separated for recycling: timber, bricks, tiles, plasterboard, metal, concrete, and evidence of disposal for recycling is to be retained on site.

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

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

57. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Amended Landscape Plan and Public Domain Plan.

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

Reason: To ensure that the landscape treatments are installed to provide landscape amenity and soften the built form.

58. **Stormwater Disposal**

The site stormwater drainage works and 375mm RCP pipe connection within Councils reserve shall be certified as compliant with Councils Water management policy for development and the

approved Construction certificate drainage plans by the design engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

59. **Post-Construction Road Reserve Dilapidation Report (Major Development)**

The applicant must bear the cost of all restoration works to Council's road, footpath and drainage assets damaged during the course of this development.

A Post Construction Dilapidation Report after the completion of all building works is to demonstrate that there is no damage to Council infrastructure prior to the refund of any security deposits.

Reason: To ensure security against possible damage to Council property.

60. **Works as Executed Drawings - Stormwater Treatment Measures**

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

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

Reason: Protection of the receiving environment.

61. **Allocated Parking Spaces (retail/commercial)**

Parking allocated to this development must be clearly signposted and linemarked as being for the exclusive use of this development. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To ensure parking availability.

62. **Shared Zone Bollard**

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

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

Reason: To ensure compliance with Australian Standards.

63. **Footpath Construction**

The footpath, in accordance to Council's standard specifications, shall be reconstructed along the property frontage to Council's satisfaction. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To provide pedestrian access to and from the property.

64. **Convex Mirror at Ramps**

One (1) convex mirror is to be installed and maintained at the curved ramp leading from road to

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

Reason: To minimise vehicular conflicts at ramps.

65. **Mechanical Car Stackers Servicing**

The applicant is to include a Section 88E instrument on the title permitting Council to provide direction as to the repair/maintenance of any mechanical devices. In the instance where the building manager does not comply with the direction of Council, or fails to address repair/maintenance requirements in a timely manner, Council reserves the right to undertake the repairs and all fees associated will be borne by the building manager.

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

Reason: To ensure the mechanical services are maintained in a serviceable state at all times.

66. **Post-Construction Dilapidation Report**

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

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

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

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

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

68. **Waste Management Confirmation**

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

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

69. **Reinstatement of Kerb**

The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

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

70. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

71. **Mechanical Ventilation certification**

Prior to the issuing of any interim / final occupation certificate, certification is to be provided from the installer of the mechanical ventilation systems that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668 The use of mechanical ventilation.

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

Reason: To ensure that the mechanical ventilation system complies with the design requirements. (DACHPFPOC4)

72. **Garbage and Recycling Facilities**

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

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

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

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

73. **House / Building Number**

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

74. **Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)**
The units within the development are to be numbered in accordance with NSW Address Policy and User Manual.

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

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

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

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

Reason: To ensure consistent numbering for emergency services access.

75. **Undergrounding of Telecommunications Services**
Arrangements are to be made for the provision of underground telecommunications services to the building.

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

Reason: Provision of telecommunication facilities in a manner that facilitates the future underground provision of cable services.

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

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

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

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

77. **Removal of All Temporary Structures, Material and Construction Rubbish**
Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

78. **Car Stackers**
That the installation of the car stackers and their operation in accordance with the approved plans and specifications be certified by the manufacturer or their agent and such certification be provided to the certifying authority

Reason: to confirm correct installation of car stackers

79. **Waste and Recycling Facilities Certificate of Compliance**
The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

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

Reason: To ensure waste and recycling facilities are provided.

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

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

81. **Authorisation of Legal Documentation Required for Waste Services**
The original completed request form (NSW Land Registry Services form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

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

Reason: To create encumbrances on the land.

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

82. **Landscape Maintenance**
If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be

planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

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

For all new residential works with two or more dwellings and mixed use developments, a maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

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

Reason: To maintain local environmental amenity.

83. **Maintenance of Stormwater Treatment Measures - Minor**

Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

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

Reason: Protection of the receiving environment.

84. **Fencing Height / Vegetation**

All fencing and/or vegetation along the frontage road(s) shall not impede pedestrian or driver visibility. This requires that fencing and vegetation does not exceed one (1) metre in height with the 2.0 x 2.5m pedestrian sight line splay. Appropriate plants shall be selected within the 2.0 x 2.5m splay to ensure this condition is met.

Reason: To ensure maximum vehicular and pedestrian visibility.

85. **Parking Enclosure**

No parking spaces, or access thereto, shall be constrained or enclosed by any form of structure such as fencing, cages, walls, storage space, or the like, without prior consent from Council.

Reason: To ensure accessibility is maintained.

86. **Stacked Parking Spaces (Residential)**

Spaces within car stackers pairs shall be assigned to the same unit.

Reason: To minimize conflicts regarding parking areas and familiarity with access arrangements.

87. **Sight lines within carparks**

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

Reason: To maintain unobstructed sight distance for motorists.

88. **Geotechnical Recommendations**

Any ongoing recommendations of the risk assessment required to manage the hazards

identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

89. **Proposed Outdoor Dining Condition**

No outdoor dining is approved in this consent. Any proposed outdoor dining must be consistent with SEPP Exempt and Complying. Any outdoor dining that is consistent with SEPP Exempt and Complying shall be the subject of a separate Outdoor Dining Application to Council's Property team.

Reason: To ensure that outdoor dining is assessed and approved under the appropriate regulatory framework and legislation.

90. **Access to the Residential Bin Storage Room**

- The door to the residential bin room must be unobstructed by any locks and security devices on the nominated collection day - and be able to be latched in the open position. We request a timer lock to be fitted to the residential waste room door providing access to the street to be open from 6am-6pm on collection day.
- The residential bin room doors are to remain locked at all other times with only residents having key/card/code access. Commercial operators are not to have access to the residential bin storage area.

Reason: To ensure ongoing clear access to empty the residential bins.

91. **Commercial Waste and Recycling Storage**

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

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

92. **No Approval for Signage**

No approval is granted under this Development Consent for signs (as defined under Warringah Local Environment Plan 2011 and State Environmental Planning Policy No. 64). A separate Development Application for any signs (other than exempt and signs permitted under Complying Development) must be submitted for the approval prior to the erection or display of any such signs.

Reason: Control of signage.