

# STATEMENT OF ENVIRONMENTAL EFFECTS

Proposed Shop Top  
Housing Development

3 Gondola Road,  
North Narrabeen

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# Statement of Environmental Effects

## Proposed Shop Top Housing Development



## 3 Gondola Road, North Narrabeen

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## 1.0 Introduction

This document has been prepared to accompany the lodgement of a development application proposing the construction of a shop top housing development comprising 8 residential apartments and a ground floor retail (commercial) tenancy over 2 levels of car parking for 22 vehicles. The application also proposes roof top communal open space and the implementation of an enhanced site landscape regime.

The proposed development has been developed in consideration of detailed site, contextual, and urban design analysis. Furthermore, the proposal has been designed with regard to the flood hazard that affects the site, and with specific regard to recent approvals issued on adjoining sites. The final design, the subject of this application, represents a highly considered and resolved response to the constraints and opportunities identified, with the proposed development exhibiting good design not only in its architectural form, function and amenity but importantly, its success in responding to the significant constraint associated with the flood affectation and the current and desired future character of the area.

In addition to this SEE, the application is also accompanied by the following:

- Architectural Plans
- Survey
- Flood Risk Assessment and Flood Emergency Response Plan
- Landscape Plans
- Traffic and Parking Assessment Report
- Accessibility Report
- BCA Compliance Report
- Stormwater Management Plans
- Preliminary Site Investigation
- Geotechnical Report
- Arborist Report
- Acoustic Report
- Waste Management Plan
- QS Report
- SEPP 65 Design Verification Statement
- ADG Compliance Table
- BASIX Certificate

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

- Environmental Planning and Assessment Act 1979, as amended (**EP&A Act**)
- Water Management Act 2000
- Pittwater Local Environmental Plan 2014 (**PLEP 2014**)
- Pittwater 21 Development Control Plan 2014 (**P21 DCP**)
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

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

- The accompanying plans depict a high quality and contextually appropriate built form outcome that responds to adjacent and nearby development and the surrounding environment.
- The 3 storey apparent height and bulk of the proposed development is compatible with that of surrounding development.
- Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191, I have formed the considered opinion that most observers would not find the height or bulk of the proposed development offensive, jarring or unsympathetic in the streetscape context.
- Whilst the proposal requires the consent authority to give favourable consideration to a variation to the building height development standard, strict compliance has been found to be unreasonable and unnecessary in this instance as the development is otherwise consistent with the objectives of the development standards and sufficient environmental planning grounds exist to support the variation (as outlined in the attached Clause 4.6 Variation Request).

- The areas of non-compliance with regard to the percentage of retail floor space and the undergrounding of overhead wires have been acknowledged and appropriately justified having regard to the associated objectives. Such variations succeed pursuant to section 4.15(3A)(b) of the EP&A Act which requires Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the objects of the DCP standards for dealing with that aspect of the development.
- The site is assessed as suitable for the proposal having regard to the relevant considerations pursuant to the SEPP 65 - Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guide (ADG).

## 2.0 Site description and Locality

### 2.1 The Site

The subject property is legally described as Lot 188, DP16719, No. 3 Gondola Road, North Narrabeen. The property is irregular in shape, tapering in width towards its southern rear boundary, with a 18.29m wide frontage to Gondola Road, a maximum depth of 38.59m and an area of 638.7m<sup>2</sup>. The site is generally flat and contains an existing one and two storey building that covers the majority of the site. Gondola Road is a two lane local road with on-street parallel parking on both sides of the street. The frontage contains kerb, guttering and a public footpath. A site survey extract is at Figure 1 below with an aerial context/ location and site photographs at Figures 2 and 3 over page.

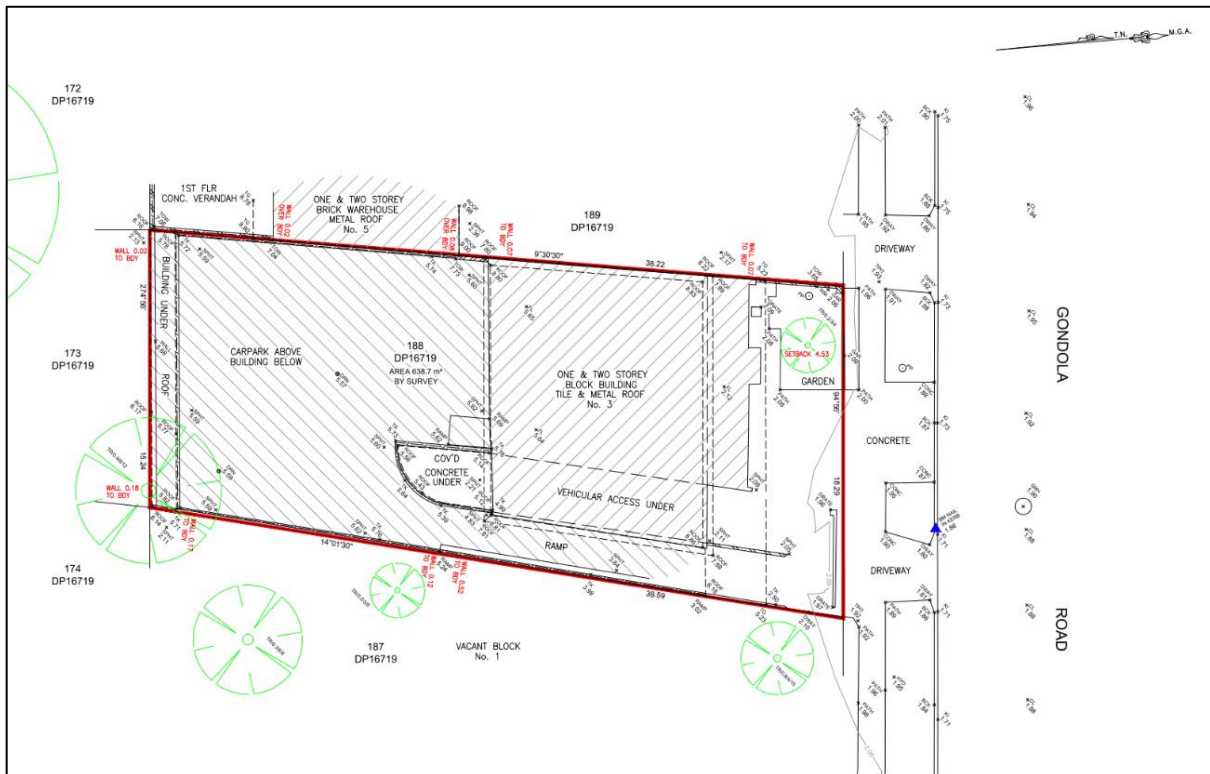


Figure 1 – Extract of site survey





Figure 2 – Aerial photograph



Figure 3 – Subject site as viewed from Gondola Road



## 2.2 The Locality

The extension of the tram to Narrabeen in 1913 established the North Narrabeen Locality as a popular area for holidays and camping. Until this time, the locality remained relatively undeveloped, used mainly as a through-route to Mona Vale and land further north. A bridge constructed across Narrabeen Lagoon in 1880, and the opening of the Wakehurst Parkway in 1946, connected the locality and rest of Pittwater with land to the south. From the 1950s, residential development intensified in the locality.

Since this time, the locality has developed into a predominantly low-density residential area, with dwellings built along the valley floor, slopes, and adjacent to Narrabeen Lagoon. The locality is characterised by one and two-storey dwelling houses on 450-650 square metre allotments (some smaller allotments may exist). The residential areas are of a diverse style and architecture, a common thread being the landscaped, treed frontages and subdued external finishes.

The locality is serviced by a neighbourhood retail centre at Pittwater Road, which also serves as a retail centre for passing motorists, and nearby residents descending from Elanora Heights. A smaller neighbourhood centre is located at the corner of Powderworks Road and Garden Street. This services the local industrial area that is dominated by car uses including servicing, repair and sales, that is located between Garden and Warraba Road. The locality also contains Narrabeen RSL club, a community centre and recreational facilities including tennis courts, several reserves and Narrabeen Lake.

The locality is characterised by a valley and steeper slopes to the north, south, and west, and lowlands extending to Narrabeen Lake to the east and Mullet Creek. Due to the topography, some significant views can be obtained to the east and south. Conversely, the slopes and ridge tops of the locality are visually prominent. Much of the natural vegetation has been removed and replaced with non-indigenous species. Much of the tree canopy around the escarpment has been retained. The natural features of the locality result in a high risk of bushfire, landslide and flood.

The major roads within the locality are Pittwater Road, Rickard Road, and the Wakehurst Parkway. Powderworks Road is a common through-route from the beaches to land further north/west, and similarly, the Wakehurst Parkway is a major link with land further west and south. Several pedestrian links and pathways exist within the locality, including a popular pedestrian/cycleway adjacent to Narrabeen Lake.

The property is located within the North Narrabeen Local Centre which is characterised predominantly by 1 and 2 storey commercial development fronting Pittwater Road and more contemporary 3 storey shop top housing development. The development of this Local Centre has been slowed by virtue of the high hazard flooding affectation and the fragmented nature of ownership, particularly in relation to the Pittwater Road fronting properties.

The property to the immediate east (1 Gondola Road) is currently vacant, but benefits from development consent for the construction of a shop top housing development. The property to the immediate west (5 Gondola Road) contains a two storey building that is currently unoccupied, but previously contained a scrap metal collection point. The properties to the

south currently contain single storey dwelling houses, but benefit from development consent for the construction of a shop top housing development.

The properties further to the east along Pittwater Road are occupied by older 1 and 2 storey commercial development with frontages to Pittwater Road and/or Gondola/Rickard Roads with servicing generally occurring from Minarto Lane. Development to the north includes single storey commercial premises, including a drive-through Liquorland and a 7-11 service station, with the balance of properties located on the northern side of Gondola Road occupied by 1 and 2 storey detached dwelling houses.

The property is within walking distance of regularly serviced bus stops, including the B-Line bus service at Narrabeen Town Centre. The site is in close proximity to Narrabeen Lake and a plethora of open space recreational areas. Such characteristics makes the site ideally suited for medium density housing.

### 3.0 Proposed Development

The application seeks consent for the construction of a shop top housing development comprising 8 residential apartments and a ground floor retail (commercial) tenancy over 2 levels of car parking for 22 vehicles. The detail of the application is depicted on Architectural Plans prepared by Mackenzie Architects International.

Specifically, the proposed development incorporates the following:

- Demolition of the existing site structures,
- Tree removal,
- Construction of a multi-storey storey shop top housing development, comprising:
  - 8 x 2 bedroom apartments (including 2 (25%) adaptable units),
  - 1 x retail tenancy with total GFA of 119.98m<sup>2</sup>,
  - Basement carparking for 22 vehicles comprising 16 residential spaces, 3 residential visitor spaces and 3 retail spaces accessed via a ramp to Gondola Road,
  - Separated residential and commercial bin storage,
  - Roof top communal open space,
- Landscaping, including at-grade and upper-level planters, and
- Stormwater infrastructure.

The development is a considered design solution for the site, that appropriately responds to the evolving context of the North Narrabeen locality and the flood affectation of the land.

The modulated façade treatments and varied design elements provide a contemporary building with a high degree of visual interest whilst the proposed landscape treatments to the front of building will soften the building form in a streetscape context.

All stormwater will be gravity drained to Gondola Road with the elevated nature of the ground floor area of the development determined by the required flood planning levels and flood storage requirements as detailed in the accompanying Flood Risk Management Report. The application is accompanied by a detailed Finishes Schedule demonstrating a suitable palette for the streetscape context and the locality.

The acceptability of the access, car parking and servicing arrangements are detailed within the accompanying Traffic and Parking Assessment Report. The proposal readiness to comply with the relevant provisions of the BCA is detailed in the BCA Compliance Report, with the proposal's acceptability in relation to accessibility addressed in the accompanying Access Assessment.

Finally, the application is supported by a Construction, Demolition and On-Going Waste Management Plans detailing how demolition and construction waste is to be managed during the construction phase and how general waste is to be managed throughout the life of the development.

## 4.0 Statutory Planning Framework

### 4.1 Pittwater Local Environmental Plan 2014

#### 4.1.1 Zoning

The subject property is zoned B2 Local Centre pursuant to the provisions of PLEP 2014 and shop top housing is permissible in the zone. The proposal is consistent with the stated zone objectives, as follows:

- *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 proposed development provides 134.07m<sup>2</sup> of commercial floor space, contributing to the existing range of retail, business and community uses within the North Narrabeen Locality.

- *To encourage employment opportunities in accessible locations*

Comment: The proposed development will provide short-term employment opportunities during construction, and on-going employment opportunities associated with the commercial floor space and the management and maintenance of the building.

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

Comment: The subject site is located in an accessible location that is serviced by both Sydney Buses and Forest Coach Lines bus routes. The proximity of the site to public transport, in addition to local shops and restaurants in both the North Narrabeen and Narrabeen local centres, and nearby public reserves will actively encourage the use of public transport and walking/cycling in the locality.

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

Comment: The proposed development will contribute to the revitalisation of the North Narrabeen locality, which has been somewhat stagnant as a result of the flood hazard that affects the site. The proposal will positively contribute to the streetscape and enhance both the daytime and night-time economy of the small local centre.

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

Comment: The proposed development contributes to employment generation in the North Narrabeen Locality, both in the short and long term.



- *To provide an active day and evening economy*

Comment: Future occupants moving to and from the site will enliven the streetscape, and increase demand for local shops and services, both during the daytime and into the evening. The ground floor retail tenancy will also contribute to the activation of the local centre, serving as a continuation of the ground floor retail strip that is approved on the adjoining site to the east and that exists on the sites further to the west.

- *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 proposed shop top housing development and the incorporation of residential development on the site is compatible with existing and approved development surrounding the site.

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

#### 4.1.2 Height of Buildings

Pursuant to clause 4.3(2) of PLEP 2014 development the land must not exceed a height of 8.5 metres. Clause 4.3(2A) states that despite subclause (2), development on land:

- at or below the flood planning level or identified as “Coastal Erosion/Wave Inundation” on the Coastal Risk Planning Map, and*
- that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map, may exceed a height of 8.5 metres, but not be more than 8.0 metres above the flood planning level.*

The site is identified as being affected by High Hazard flooding on Council’s Flood Risk Precinct Maps. The Comprehensive Flood Information Report issued by Northern Beaches Council identifies a Flood Planning Level (FPL) of 4.4m AHD. Having regard to clause 4.3(2A) provisions, development on the land must not exceed a height of 8.0m above the FPL, being 12.4m AHD.

The stated objectives of this standard are as follows:

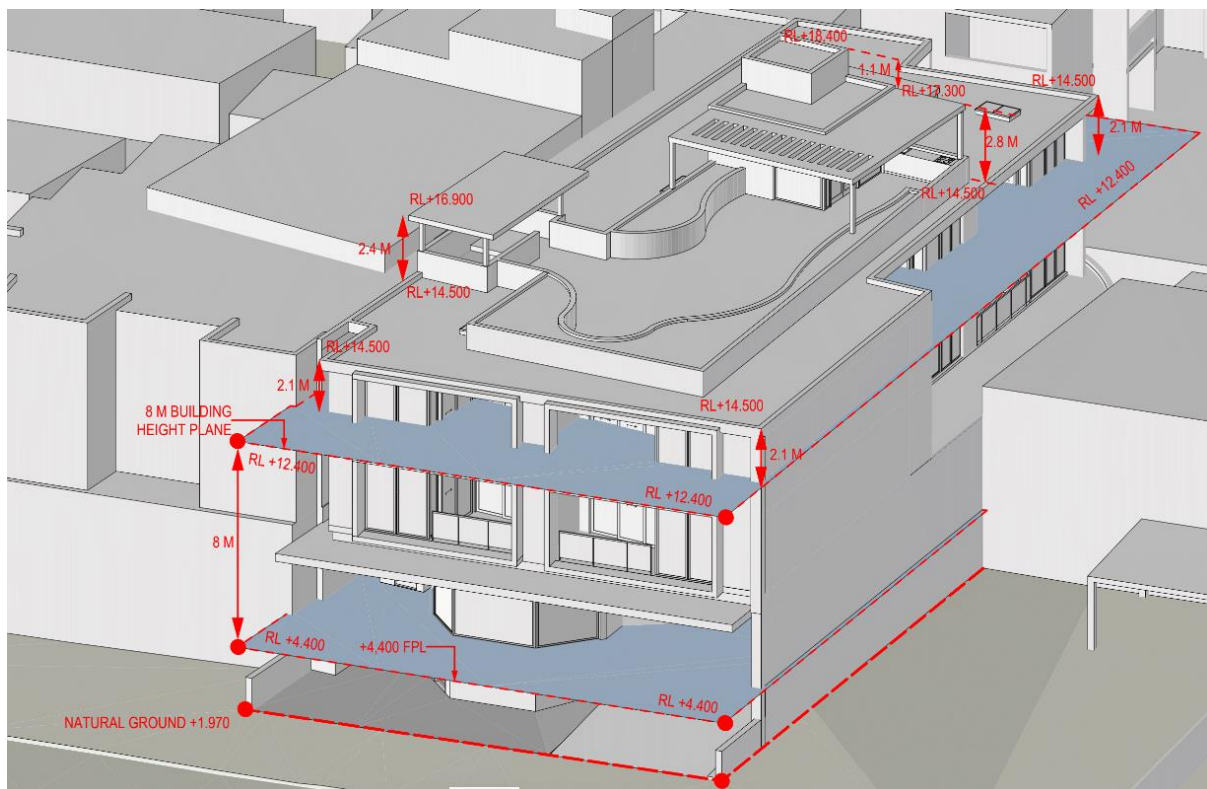
- to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- to minimise any overshadowing of neighbouring properties,*
- to allow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

The proposed lift overrun reaches a maximum RL of 18.4m AHD, representative of a 6m (75%) variation of the building height development standard with the roof terrace balustrade having a maximum height of RL 15.3m AHD, representative of a 2.9m (36.25%) variation of the building height standard. The upper level roof parapet exceeds the building height standard by 2.1m or 26.25%. The extent of the non-conforming elements is depicted in the Height Plane Diagram in Figure 4 on the following page.

Clause 4.6 of PLEP 2014 provides a mechanism by which a development standard can be varied. The objectives of this clause are:

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

Having regard to these provisions, strict compliance has been found to be unreasonable and unnecessary having regard to the particular circumstances of the case including the ability to satisfy the objectives of the zone and the objectives of the development standard. Sufficient environmental planning grounds exist to support the variation proposed, as outlined in the accompanying clause 4.6 variation request at **ANNEXURE 1**.



**Figure 4 – Height Plane Blanket**

#### 4.1.3 Flood Planning

The site is identified as being affected by High Hazard flooding on Council’s Flood Risk Precinct Maps and the provisions of clause 5.21 of PLEP 2014 are applicable in relation to the site and the proposed development.

Pursuant to clause 5.21(2) of PLEP 2014, development consent must not be granted unless the consent authority is satisfied that the development:

- (a) *is compatible with the flood function and behaviour on the land, and*
- (b) *will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) *will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) *incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) *will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

The application is supported by a Flood Risk Management Report that addresses these points of consideration and concludes:

*A review of relevant flood information indicates that the site is impacted by short duration local catchment flooding and longer duration lagoon flooding. Flood levels rise rapidly at the site for the 1% AEP and PMF events, giving little warning time, and inundating the site for extended periods of time. The site is located outside of the floodway for all flood events and is classified as a flood storage hydraulic category. Hazards during flood events are high, with the site being classified as a high-risk flood precinct for both the 1% AEP and PMF events. The site is affected by a flood life hazard category of H3 for the 1% AEP event and H5 for the PMF event. A FERP has been prepared to ensure that the site can operate safely in the floodplain environment. The proposed development incorporates several flood mitigation measures which allow for shelter-in-place to be used as an appropriate emergency response. With the implementation of the FERP procedures the risk to life is reduced to acceptable levels.*

*A Flood Risk Assessment, Flood Storage Assessment and a compliance assessment have been provided and demonstrate that the proposed development is compatible with the existing floodplain environment and achieves Council's flood planning requirements. We note that: 1. The proposed development would have acceptable offsite flood impacts. 2. Compliance with Council flood planning level requirements for building and car park levels are achieved. 3. The proposed development satisfies flood hazard and flood storage controls set out in Council's DCP. Proposed flood characteristics will be largely consistent with existing conditions, and differences due to the proposed development are negligible*

#### **4.1.4 Acid Sulfate Soils**

The site is identified as being within Area 3 on the Acid Sulfate Soils Map of PLEP 2014, and the provisions of clause 7.1 of PLEP 2014 are relevant to the proposal. This application is accompanied by a Preliminary Acid Sulfate Soils Assessment that confirms:

*On the basis of the ASS action criteria presented in Section 5.4.2, we conclude tested soil samples below 1.2 mbgl exceed the action criteria either for the acid trail and /or sulfur trail and therefore to be PASS. In accordance with ASSMAC (1998), an ASSMP will be required if PASS soils are to be disturbed during construction works. 1 of the 5 samples requires a liming rate of 40kg CaCO<sub>3</sub>/t.*

*Should materials be identified during construction works which do not resemble materials identified in this report, Martens and Associates should be contacted to inspect the material and assess the need for further testing / advice.*

#### **4.1.5 Earthworks**

The consent authority can be satisfied that the excavation proposed to accommodate the basement will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, consistent with the provisions of clause 7.2 of PLEP 2014.

#### **4.1.6 Essential Services**

Pursuant to clause 6.12 of PLEP 2014, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) *the supply of water,*
- (b) *the supply of electricity,*
- (c) *the disposal and management of sewage,*
- (d) *stormwater drainage or on-site conservation,*
- (e) *suitable vehicular access.*

The consent authority can be satisfied that these services will be available prior to occupation, and conditions of consent can be imposed in this regard.

## **4.2 Pittwater 21 Development Control Plan**

This policy document came into effect on 1 February 2004. P21 DCP contains development controls for the design and construction of buildings and the development of land in Pittwater. The proposed development has been assessed against the relevant provisions of P21 DCP as outlined in the following sections of this report.

### **4.2.1 North Narrabeen Locality**

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

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

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

*Future development will maintain a building height limit below the tree canopy and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.*

*The design, scale and treatment of future development within the North Narrabeen commercial centre on Pittwater Road will reflect the status of the centre as the 'gateway' to Pittwater through building design, signage and landscaping, and will reflect principles of good urban design.*

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

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

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

The proposed design appropriately responds to the flood affectation of the site, whilst providing a development of good design quality that will positively contribute to the Gondola Road streetscape and the wider locality. The site is conveniently located in close proximity to commercial centres, public transport and community facilities, and is supported by adequate infrastructure.

The design, scale and treatment of the proposed development is compatible with that anticipated in this precinct as reflected by recent approvals for 3 storey shop top housing at 2 – 8 Rickard Road (N0267/16), 1473 Pittwater Road (N0033/15) and 1 Gondola Road (DA2018/1210). External materials and finishes will be consistent with the colours and materials anticipated in the locality. In this regard, the development is consistent with the desired future character of the North Narrabeen locality.



#### 4.2.2 P21 DCP Compliance Table

Control	Requirement	Proposed	Compliance
<b>Part B General Controls</b>			
<b>B1.3 Heritage Conservation - General</b>	If a property, the subject of a development application, is identified as possibly meeting any of the criteria for heritage listing (encompassing the four values of the Burra Charter, being historical, aesthetic, scientific and social significance) then additional independent information on the potential heritage significance may be requested. If the property meets the criteria for heritage listing then development control B1.1 of this DCP will apply.	The subject site is not considered to meet any of the criteria for heritage listing.	Yes
<b>B1.4 Aboriginal Heritage Significance</b>	If a property, the subject of a development application is identified as possibly meeting any of the criteria for being a potential Aboriginal place or containing an Aboriginal object then additional independent information on the potential heritage significance may be requested.	The site is heavily disturbed and is unlikely to contain any items of Aboriginal Heritage Significance.	Yes
<b>B2.6 Dwelling Density and Subdivision – Shop Top Housing</b>	The commercial/retail component of the development must be a minimum of 25% of the	Retail component: 12.9%  The size/area of the ground floor retail space is compromised by the flood	<b>No</b> Acceptable on merit

Control	Requirement	Proposed	Compliance
	<p>gross floor area of the building.</p>	<p>affectation, which necessitates the driveway to rise above the flood planning level before continuing down to the basement.</p> <p>Despite non-compliance, both the floor space and the presentation of the retail premises to the street has been maximised to a degree that is commensurate with surrounding and nearby mixed use developments.</p>	
<p><b>B3.6 Contaminated Land and Potentially Contaminated Land</b></p>	<p>Council shall consider:</p> <ul style="list-style-type: none"> <li>• whether the land is contaminated; and</li> <li>• if the land is contaminated, whether the land is suitable in its contaminated state (or will be suitable after remediation) for the purpose for which the development is proposed to be carried out; and</li> <li>• if the land requires remediation, whether the land will be remediated before the land is used for that purpose.</li> </ul>	<p>The application is supported by a Preliminary Site Investigation with no objection to the conclusions contained within this document forming appropriately worded conditions of development consent.</p>	<p>Yes</p>
<p><b>B3.11 Floor Prone Land</b></p>	<p>Development must comply with the prescriptive controls.</p> <p>Development on flood prone land requires the preparation of a Flood Management Report by a</p>	<p>The application is supported by a Flood Risk Management Report.</p>	<p>Yes</p>

Control	Requirement	Proposed	Compliance
	suitably qualified professional.		
<b>B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)</b>	The Flood Risk Management Report is to include consideration of climate change, specifically the impacts of sea level rise and the impacts of sea level rise combined with increased rainfall volume.	The application is supported by a Flood Risk Management Report that addresses climate change.	Yes
<b>B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land</b>	<p>Development shall retain and enhance habitat for threatened species, endangered populations, endangered ecological communities and locally native species.</p> <p>Development shall provide flora and fauna habitat by active restoration, regeneration, and / or creation.</p> <p>Development shall result in no significant onsite loss of canopy cover or a net loss in native canopy trees.</p> <p>Landscaping is not to include environmental weeds.</p>	The application will result in the enhancement of landscaping on the site, as demonstrated in the Landscape Plans prepared to accompany this application.	Yes
<b>B5.15 Stormwater</b>	Stormwater runoff must not cause downstream flooding and must have minimal environmental impact on any receiving stormwater infrastructure,	The application is supported by Stormwater Management Plans that demonstrate consistency with Council's Water Management for Development Policy.	Yes

Control	Requirement	Proposed	Compliance
	<p>watercourse, stream, lagoon, lake and waterway or the like. The stormwater drainage systems for all developments are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.</p>		
<p><b>B6.1 Access Driveways and Works on the Public Road Reserve</b></p>	<p>The design of all Access Driveways shall be in accordance with the current edition of Australian Standard <i>AS/NZS 2890.1-2004: Parking Facilities - Part 1: Off-Street Car Parking</i>.</p>	<p>The suitability of the proposed driveway crossing is confirmed in the Traffic and Parking Assessment Report prepared to accompany this application.</p>	<p>Yes</p>
<p><b>B6.2 Internal Driveways</b></p>	<p>Internal Driveways are to be designed and constructed to provide safe access and shall have a maximum gradient of 1:5 (V:H). Recommended maximum gradient of an Internal Driveway for a distance of 2m on the approach to a garage, parking area or carport is 1:20 (V:H). There must be a minimum 2 metre long transition between the driveway and the garage/parking area/carport in accordance with the standards.</p>	<p>The suitability of the proposed driveway is confirmed in the Traffic and Parking Assessment Report prepared to accompany this application.</p>	<p>Yes</p>

Control	Requirement	Proposed	Compliance
<b>B6.3 Off-Street Vehicle and Parking Requirements</b>	2 space per dwelling, 1 space per 3 dwellings for visitors, and 1 space per 30m <sup>2</sup> GLA.	The suitability of the proposed parking arrangements is confirmed in the Traffic and Parking Assessment Report prepared to accompany this application.	Yes
<b>B8.1 Construction and Demolition – Excavation</b>	Excavation greater than 1 metre deep, the edge of which is closer to a site boundary or structure to be retained on the site, than the overall depth of the excavation and any excavation greater than 1.5 metres deep below the existing surface must comply with the requirements of the <i>Geotechnical Risk Management Policy for Pittwater</i> .	The application is supported by a Geotechnical Risk Management Report, consistent with the requirements of the <i>Geotechnical Risk Management Policy for Pittwater</i> .	Yes
<b>B8.3 Construction and Demolition – Waste Minimisation</b>	Waste materials generated through demolition, excavation and construction works is to be minimised by reuse on-site, recycling, or disposal at an appropriate waste facility.	The application is supported by Waste Management Plan.	Yes
<b>Part C Development Type Controls</b>			
<b>C1.1 and C2.1 Landscaping</b>	A built form softened and complemented by landscaping.  For shop top housing, a minimum landscaped area of 20% of the site	Landscaping works are proposed at the front and rear of the site, and at upper levels of the development, as detailed on the Landscape Plans provided	Yes



Control	Requirement	Proposed	Compliance
	<p>area, or 35m<sup>2</sup> per dwelling, whichever is the greater, shall be provided.</p> <p>The following soil depths are required in order to be counted as landscaping:</p> <ul style="list-style-type: none"> <li>• 300mm for lawn</li> <li>• 600mm for shrubs</li> <li>• 1metre for trees</li> </ul>	<p>to accompany the application.</p> <p>The landscaping will appropriately soften the proposed development and the existing commercial building.</p>	
<p><b>C1.2 and C2.2 Safety and Security</b></p>	<p>The development is to be designed in accordance with the four CPTED principles.</p>	<p>The proposed development has been specifically designed to minimise the opportunity for crime by adopting appropriate measures with respect to surveillance, access control, territorial reinforcement and space management.</p>	<p>Yes</p>
<p><b>C1.3 and C2.5 View Sharing</b></p>	<p>All new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties.</p>	<p>Upon review of the context of the site, it is unlikely that the proposed development will result in any adverse or unreasonable impacts upon existing view corridors.</p>	<p>Yes</p>
<p><b>C1.4 Solar Access</b></p>	<p>The main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.</p> <p>Windows to the principal living area of the proposal, and windows to</p>	<p>The solar access requirements of P21 DCP are inconsistent with those of the ADG. In accordance with the provisions of clause 6A of SEPP 65, provisions of a DCP relating to solar access that are inconsistent with those prescribed by the ADG are of no effect.</p>	<p>N/A</p>

Control	Requirement	Proposed	Compliance
	<p>the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).</p>		
<p><b>C1.5 Visual Privacy</b></p>	<p>Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).</p>	<p>The proposed development does not result in any unreasonable overlooking of adjoining properties, particularly noting the absence of areas of private open space or windows associated with living rooms within 9m from the western elevation of the proposed development.</p>	<p>Yes</p>
<p><b>C1.6 Acoustic Privacy</b></p>	<p>Noise-sensitive rooms, such as bedrooms, should be located away from noise sources, including main roads, parking areas, living areas and communal and private open space areas and the like.</p> <p>Walls and/or ceilings of dwellings that are attached to another dwelling/s shall have a noise transmission rating in accordance with Part F(5) of the <i>Building Code of Australia</i>. (Walls and</p>	<p>The application is supported by an Acoustic Report confirming that the proposed development has been designed to maximise internal amenity with regard to noise levels.</p>	<p>Yes</p>

Control	Requirement	Proposed	Compliance
	<p>ceilings of attached dwellings must also comply with the fire rating provisions of the <i>Building Code of Australia</i>).</p>		
<p><b>C1.7 Private Open Space</b></p>	<p>For Shop Top Housing, residential flat buildings and multi dwelling housing, private open space at upper levels in the form of front/rear or internal courtyard balconies and terraces are required. The dimension of the balcony should be sufficient so that the area can be usable for recreational purposes (ie a minimum area of 10m<sup>2</sup> and a minimum width of 2.4 metres). First floor balconies along the side boundary must be designed to limit overlooking and maintain privacy of adjoining residences.</p>	<p>Each of the proposed terraces exceed 10m<sup>2</sup>.</p> <p>The proposed development is primarily oriented to the north and west, away from adjacent dwellings.</p>	<p>Yes</p>
<p><b>C1.9 and C2.6 Adaptable Housing and Accessibility</b></p>	<p>20% of units (rounded up) are to be adaptable units, designed to meet the silver level of the Liveable Housing Guideline.</p> <p>Development shall include the design and construction of works in the public domain to ensure accessibility for the full frontage of the site to any public road</p>	<p>25% of the proposed apartments are adaptable units.</p> <p>The suitability of the proposal with regard to adaptability and accessibility is addressed in the Access Report that accompanies this application.</p>	<p>Yes</p>

Control	Requirement	Proposed	Compliance
	<p>and to ensure access to the site from the public domain.</p>		
<p><b>C1.10 and C2.7 Building Facades</b></p>	<p>Building facades to any public place including balconies and carpark entry points must not contain any stormwater, sewer, gas, electrical or communication service pipe or conduit that is visible from the public place.</p> <p>For multi dwelling housing, residential flat buildings or seniors housing and similar development that includes multiple dwellings with multiple letterboxes, where possible mailboxes should be orientated obliquely to the street to reduce visual clutter and the perception of multiple dwellings.</p>	<p>Pipes and conduits will be integrated into the development to minimise visual clutter.</p> <p>The proposed mailboxes are located perpendicular to the front boundary.</p>	<p>Yes</p>
<p><b>C1.12 and C2.9 Waste and Recycling Facilities</b></p>	<p>All development that is, or includes, demolition and/or construction, must comply with the appropriate sections of the Waste Management Guidelines and all relevant Development Applications must be accompanied by a Waste Management Plan.</p>	<p>The application is supported by a Waste Management Plan.</p>	<p>Yes</p>

Control	Requirement	Proposed	Compliance
<b>C1.15 Storage Facilities</b>	A lockable storage area of minimum 8 cubic metres per dwelling shall be provided.	A storage area is provided for each of the proposed units within the basement, which is in addition to storage provided within each unit.	Yes
<b>C1.20 and C2.16 Undergrounding of Utility Services</b>	<p>All existing and proposed utility services within the site are to be placed underground or encapsulated within the building.</p> <p>All existing and proposed utility services to the site, or adjacent to the site within a public road reserve, are to be placed underground for the total frontage of the site to any public road.</p>	<p>All services connecting to the site will be located underground.</p> <p>Existing overhead wires are proposed to be retained along the road reserve. The subject site relates to only a portion of an existing span, and it would be an unreasonable burden on the subject development to require the undergrounding of the entire span, particularly when it was not required in relation to the adjoining development.</p>	<p>Yes</p> <p><b>No</b> Acceptable on Merit</p>
<b>C1.25 and C2.22 Plant, Equipment Boxes and Lift Over Run</b>	Where provided, plant and equipment boxes, air conditioning units and lift over-runs are to be integrated internally into the design fabric of the built form of the building.	The lift overrun has been integrated into the design of the roof top terrace.	Yes
<b>Part D11 North Narrabeen Locality</b>			
<b>D11.1 Character as viewed from a public place</b>	The facades of buildings presenting to any public place must address these public places, provide visual interest,	The proposed development is well articulated, with both the ground floor retail space and upper level residences	Yes



Control	Requirement	Proposed	Compliance
	<p>have a street presence and incorporate design elements that are compatible with any design themes existing in the immediate vicinity. Blank facades that front public places are not supported.</p> <p>Clear visual connection must be achieved between the public place and the front setback/front façade of the building.</p> <p>The bulk and scale of buildings must be minimised.</p> <p>Conceal services.</p>	<p>presenting to Gondola Road.</p> <p>The bulk and scale of the development is commensurate with that of surrounding development (existing and approved), with landscaping along the front setback that will soften the visual impact as seen from the street.</p> <p>The roof terrace has been setback from all building edges with the lift overrun/ stair core and adjacent WC and shade elements not discernible elements in the streetscape.</p>	
<b>D11.3 Building Colours and Materials</b>	<p>Dark and earthy tones.</p>	<p>The application is accompanied by a schedule of finishes. The development incorporates external colours, materials and finishes which are consistent with the predominant colours of development in the North Narrabeen locality.</p>	<p>Yes</p>
<b>D11.6 Front Building Line</b>	<p>3.5m to Gondola Road</p>	<p>3.5m to Gondola Road</p>	<p>Yes</p>
<b>D11.7 Side and Rear Building Line</b>	<p>Nil</p>	<p>East: Nil – 3m West: Nil South: Nil – 2m</p>	<p>Yes</p>

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

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

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

### 4.4 State Environmental Planning Policy (Resilience and Hazards) 2021

#### 4.4.1 Coastal Hazard

Chapter 2 of SEPP (Resilience and Hazards) aims to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner that is consistent with the objects of the *Coastal Management Act 2016*.

The site is identified as “coastal environmental area” of the Coastal Environment Area Map, and the provisions of Chapter 2 of this policy are applicable.

Clause 2.10(2) of SEPP (Resilience and Hazards) prescribes that development consent must not be granted unless the consent authority is satisfied that the proposed development is designed, sited and will be managed to avoid an adverse impact on the matters referred to in clause 2.10(1) of this policy. The relevant matters are addressed as follows:

- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*

Comment: The application is supported by a Geotechnical Report and Stormwater Management Plans that confirm that the development can be constructed with minimal environmental impact.

- (b) *coastal environmental values and natural coastal processes,*

Comment: The proposed works will not result in any adverse impacts upon coastal environmental values and natural coastal processes.

- (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*

Comment: The proposed development is not located in the vicinity of a marine estate.

- (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*

Comment: The proposed development does not result in any unreasonable impacts upon native vegetation and fauna and their habitats.

- (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*

Comment: The proposed works are located within private property and not within a foreshore area.

- (f) *Aboriginal cultural heritage, practices and places,*

Comment: The proposed works do not impact upon any known/nominated sites of Aboriginal cultural significance.

- (g) *the use of the surf zone.*

Comment: The proposed works are not located within the surf zone.

The consent authority can be satisfied with regard to clause 2.10 of SEPP (Resilience and Hazards).

Clause 2.12 of SEPP (Resilience and Hazards) prescribes that development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. The proposed development is not likely to cause increased risk at the site or for adjoining land, and the consent authority can be satisfied in this regard.

#### **4.4.2 Remediation of Land**

Chapter 4 of SEPP (Resilience and Hazards) applies to all land and aims to provide for a state-wide planning approach to the remediation of contaminated land.

Clause 4.6(1)(a) of this policy requires the consent authority to consider whether land is contaminated.

The application is supported by a Preliminary Site Investigation with no objection to the conclusions contained within this document forming appropriately worded conditions of development consent.

#### **4.5 State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development**

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

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

SEPP 65 applies to new shop top housing developments that are at least 3 or more storeys in height and that contain at least 4 dwellings.

As the proposed development is for the erection of a 3 storey shop top housing development containing 8 dwellings, the provisions of SEPP 65 are applicable to the proposed development.

Clause 28(2)(b) SEPP 65 requires the proposal to be assessed against the 9 design quality principles contained in Schedule 1. The proposal's compliance with the design quality principles is detailed in the SEPP 65 Report prepared by Mackenzie Architects provided to support this application.

Clause 28(2)(c) of SEPP 65 requires the consent authority to take into consideration the Apartment Design Guide. In this regard, an Apartment Design Guide compliance table prepared by Mackenzie Architects accompanies this application.

#### **4.6 Water Management Act 2000**

The Geotechnical Report identifies that ground water will be encountered during excavation for the proposed basement, which will require water to be pumped from the site during construction. The proposed basement will then be tanked, to prevent water ingress occurring in the future.

The development constitutes integrated development and requires aquifer interference approval under the provisions of section 91 of the Water Management Act 2000.

## 5.0 Matters for Consideration Pursuant to Section 4.15(1) of the EP&A Act

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15(1) of the EP&A Act:

### **The provision of any planning instrument, draft environmental planning instrument, development control plan or regulations.**

The proposal is permissible under the provisions of PLEP 2014 and is generally in conformity with the General, Development Type and Locality Specific Controls contained within P21 DCP. Whilst the application requires the consent authority to give favourable consideration to a variation of the height of buildings development standard contained at clause 4.3 of PLEP 2014, this report demonstrates that strict compliance is both unreasonable and unnecessary given the significant floor level constraint imposed by flooding and the desirability of roof top communal open space in a mixed-use development effected by flooding where occupants will need to “shelter in place” during a flooding event.

The development satisfies the Design Principles prescribed by State Environmental Planning Policy No. 65, the associated Clause 30 standards and the objectives specified in the Apartment Design Guide for the relevant design criteria. The height and density proposed is entirely appropriate given the paucity of adverse environmental consequences, the ability to provide appropriately for off-street car parking and the developments consistency with the Department of Planning’s Sydney’s Metropolitan Strategy ‘City of Cities’ and the Subregional Strategy as it relates to the appropriate concentration of residential density.

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15C of the Environmental Planning and Assessment Act, 1979. It is considered that the application, the subject of this document, is appropriate on merit and is worthy of the granting of development consent.

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

#### *Context and Setting*

- i) *What is the relationship to the region and local context on terms of:*
- *the scenic qualities and features of the landscape?*
  - *the character and amenity of the locality and streetscape?*
  - *the scale, bulk, height, mass, form, character, density and design of development in the locality?*
  - *the previous and existing land uses and activities in the locality?*

The proposed development has been developed through detailed site, contextual, flood planning and urban design analysis. The final design, the subject of this application, represents a considered and resolved response to the constraints and opportunities identified during the initial site analysis with the proposed development exhibiting good design not only in its architectural form, function and amenity but

importantly, its success in responding to the significant constraint imposed by flooding and the current and desired future character of the area.

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

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

The proposed development incorporates appropriate design elements to ameliorate potential amenity impacts to adjoining properties. These issues have been discussed in detail in the body of this report.

#### *Access, transport and traffic*

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

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

The proposed development provides appropriately for commercial, resident and visitor car parking and has good access to public transport.

#### *Public domain*

The landscape quality and accessibility within the public domain will be retained as a consequence of the works proposed. The proposed development will contribute positively to the public domain.

#### *Utilities*

Existing and upgraded utility services will adequately service the development.

#### *Flora and fauna*



The application is accompanied by Landscape Plan which detail the proposed landscape regime for the entire site.

#### *Waste*

Normal domestic and commercial waste collection applies to this development.

#### *Natural hazards*

The site is in a high risk flood area and a detailed Flood Risk Management Report accompanies this application.

#### *Economic impact in the locality*

The proposed development will provide temporary employment through the construction phases and employment opportunities in the future ground floor commercial space.

#### *Site design and internal design*

i) *Is the development design sensitive to environmental conditions and site attributes including:*

- *size, shape and design of allotments?*
- *the proportion of site covered by buildings?*
- *the position of buildings?*
- *the size (bulk, height, mass), form, appearance and design of buildings?*
- *the amount, location, design, use and management of private and communal open space?*
- *landscaping?*

The impact of the proposal with respect to design and site planning is positive. The scheme is in accordance with the thrust of the planning regime and will result in a shop top housing development of exceptional design quality.

ii) *How would the development affect the health and safety of the occupants in terms of:*

- *lighting, ventilation and insulation?*
- *building fire risk – prevention and suppression/*
- *building materials and finishes?*
- *a common wall structure and design?*
- *access and facilities for the disabled?*

- *likely compliance with the Building Code of Australia?*

The proposed development will comply with the provisions of the Building Code of Australia as detailed in the accompanying BCA report. There will be no detrimental effects on the occupants through the building design which will achieve the relevant standards pertaining to health and safety.

#### *Construction*

- i) *What would be the impacts of construction activities in terms of:*

- *the environmental planning issues listed above?*
- *site safety?*

The development will be carried out in accordance with the provisions of the Protection of the Environment Operations Act 1997. Normal site safety measures and procedures will ensure that no site safety or environmental impacts will arise during construction.

#### **The suitability of the site for the development.**

##### *Does the proposal fit in the locality?*

- *are the constraints posed by adjacent developments prohibitive?*
- *would development lead to unmanageable transport demands and are there adequate transport facilities in the area?*
- *are utilities and services available to the site adequate for the development?*

The adjacent development does not impose any insurmountable development constraints. The site is well located with regards to utility services and public transport. There will be no excessive levels of transport demand created.

##### *Are the site attributes conducive to development?*

The constraints associated with the natural hazards that affect the site do not inhibit development of the nature proposed.

#### **Any submissions received in accordance with this Act or the regulations.**

It is envisaged that any submissions made in relation to the proposed development will be appropriately assessed by Council.

#### **The public interest.**

The proposed development has been developed through detailed site, contextual, flood planning and urban design analysis and in response to the minutes arising from formal pre-DA discussions with Council. The final design, the subject of this application, represents a considered and resolved response to the constraints and opportunities identified during the initial site analysis with the proposed development exhibiting good design not only in its

architectural form, function and amenity but importantly, its success in responding to the significant constraint imposed by flooding and the current and desired future character of the area. The development will not only provide a quality built form outcome on the site and greater housing choice in this particular locality but also improve the commercial and retail viability of this commercial centre.

It is considered that the public interest is best served in providing certainty in the planning process through encouraging development of good design that satisfies the outcomes and controls contained within the adopted legislative framework. Accordingly, approval of the development would be in the public interest.

## 6.0 Conclusion

The proposal is permissible under the provisions of PLEP 2014 and generally in conformity with the General, Development Type and Locality Specific Controls contained within P21DCP. Whilst the application requires the consent authority to give favourable consideration to a variation of the height of buildings development standard contained at clause 4.3 of PLEP 2014, this report demonstrates that strict compliance is both unreasonable and unnecessary given the significant floor level constraint imposed by flooding and the desirability of roof top communal open space in a mixed-use development effected by flooding where occupants will need to “shelter in place” during a flooding event.

The development satisfies the Design Principles prescribed by State Environmental Planning Policy No. 65, the associated Clause 30 standards and the objectives specified in the Apartment Design Guide for the relevant design criteria. The height and density proposed is entirely appropriate given the paucity of adverse environmental consequences, the ability to provide appropriately for off-street car parking and the developments consistency with the Department of Planning’s Sydney’s Metropolitan Strategy ‘City of Cities’ and the Subregional Strategy as it relates to the appropriate concentration of residential density.

The proposed development has been developed in consideration of detailed site, contextual, and urban design analysis. Furthermore, the proposal has been designed with regard to the flood hazard that affects the site, and with specific regard to recent approvals issued on adjoining sites. The final design, the subject of this application, represents a highly considered and resolved response to the constraints and opportunities identified, with the proposed development exhibiting good design not only in its architectural form, function and amenity but importantly, its success in responding to the significant constraint associated with the flood affectation and the current and desired future character of the area.

- The accompanying plans depict a high quality and contextually appropriate built form outcome that responds to adjacent and nearby development and the surrounding environment.
- The 3 storey apparent height and bulk of the proposed development is compatible with that of surrounding development.
- Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191, I have formed the considered opinion that most observers would not find the height or bulk of the proposed development offensive, jarring or unsympathetic in the streetscape context.
- Whilst the proposal requires the consent authority to give favourable consideration to a variation to the building height development standard, strict compliance has been found to be unreasonable and unnecessary in this instance as the development is otherwise consistent with the objectives of the development standards and sufficient environmental planning grounds exist to support the variation (as outlined in the attached Clause 4.6 Variation Request).

- The areas of non-compliance with regard to the percentage of retail floor space and the undergrounding of overhead wires have been acknowledged and appropriately justified having regard to the associated objectives. Such variations succeed pursuant to section 4.15(3A)(b) of the EP&A Act which requires Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the objects of the DCP standards for dealing with that aspect of the development.
- The site is assessed as suitable for the proposal having regard to the relevant considerations pursuant to the SEPP 65 - Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guide (ADG).

Having given due consideration to the matters pursuant to Section 4.15(1) of the EP&A Act as amended, it is considered that there are no matters which would prevent Council from granting consent to this proposal in this instance.

### **BOSTON BLYTH FLEMING TOWN PLANNERS**



**Greg Boston**

**ANNEXURE 1**

**CLAUSE 4.6 VARIATION REQUEST – HEIGHT OF BUILDINGS**

## 1 Clause 4.6 variation request – Height of buildings

### 1.1 Introduction

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *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.

### 1.2 Pittwater Local Environmental Plan 2014 (PLEP 2014)

#### 1.2.1 Clause 4.3 - Height of buildings

Pursuant to clause 4.3(2) of PLEP 2014 development the land must not exceed a height of 8.5 metres. Clause 4.3(2A) states that despite subclause (2), development on land:

- (a) *at or below the flood planning level or identified as “Coastal Erosion/Wave Inundation” on the Coastal Risk Planning Map, and*
- (b) *that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map, may exceed a height of 8.5 metres, but not be more than 8.0 metres above the flood planning level.*

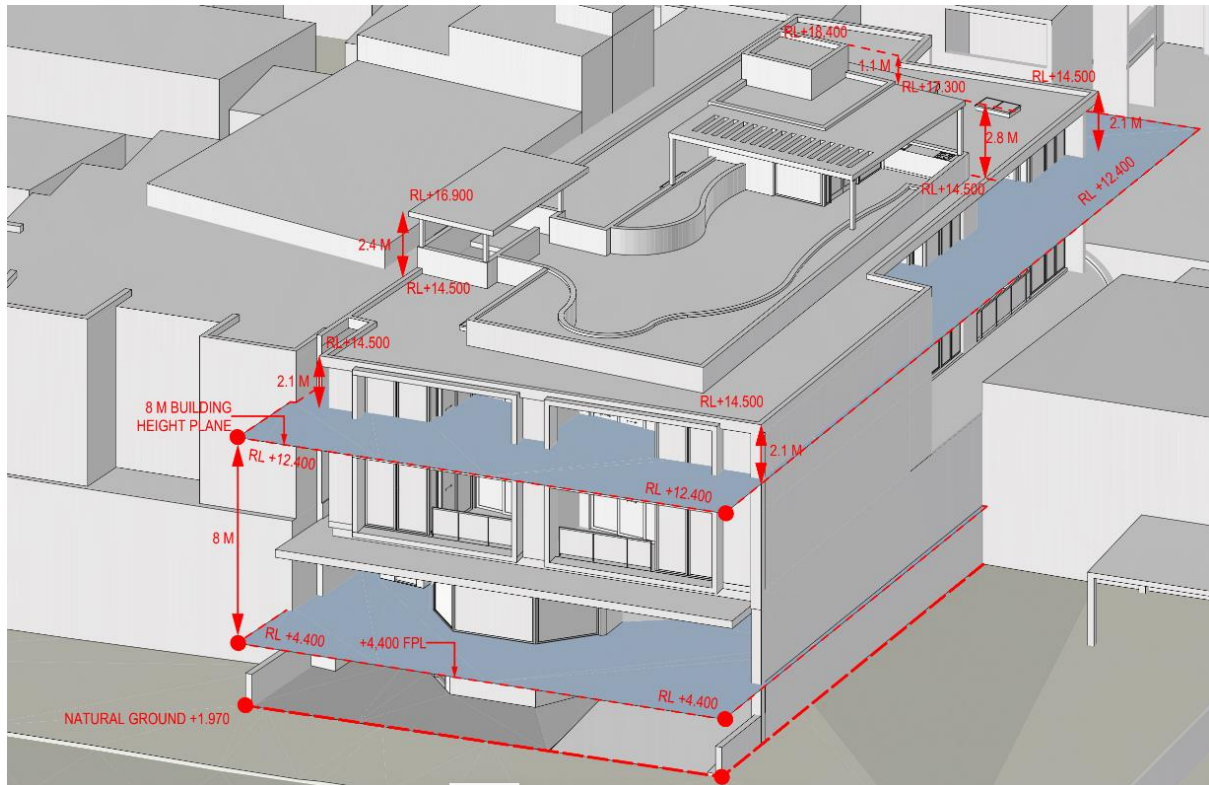
The site is identified as being affected by High Hazard flooding on Council’s Flood Risk Precinct Maps. The Comprehensive Flood Information Report issued by Northern Beaches Council identifies a Flood Planning Level (FPL) of 4.4m AHD. Having regard to clause 4.3(2A) provisions, development on the land must not exceed a height of 8.0m above the FPL, being 12.4m AHD.

The objectives of the height of buildings control 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,*
- (b) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) *to minimise any overshadowing of neighbouring properties,*
- (d) *to allow for the reasonable sharing of views,*
- (e) *to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) *to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*



The proposed lift overrun reaches a maximum RL of 18.4m AHD, representative of a 6m (75%) variation of the building height development standard with the roof terrace balustrade having a maximum height of RL 15.3m AHD, representative of a 2.9m (36.25%) variation of the building height standard. The upper level roof parapet exceeds the building height standard by 2.1m or 26.25%. The extent of the non-conforming elements is depicted in the Height Plane Diagram in Figure 4 on the following page. The extent of the non-conforming elements is depicted in the Height Plane Diagram in Figure1 below



**Figure 1: Height Plane Diagram**

### 1.2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of PLEP 2014 provides:

*The objectives of this clause are:*

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“*Initial Action*”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by clause 4.6(3).

*Initial Action* involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner. At [90] of *Initial Action* the Court held that:

*“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”*

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of PLEP 2014 provides:

*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.*

This clause applies to the Height of Buildings development standard in clause 4.3 of PLEP 2014.

Clause 4.6(3) of PLEP 2014 provides:

*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.*

The proposed development does not comply with the height of buildings development standard at clause 4.3 of PLEP 2014 which specifies a maximum building height of 8.0m above the flood planning level. However, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of PLEP 2014 provides:

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

- (a) *the consent authority is satisfied that:*
- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Planning Secretary has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority.

The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]).

The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

The Local Planning Panels Direction issued by the Minister for Planning and Public Spaces, dated 30 June 2020, provides that local planning panels have the delegation to approve development that contravenes a development standard imposed by an environmental instrument by more than 10% or non-numerical development standards.

Clause 4.6(5), which relates to matters that must be considered by the Director-General in deciding whether to grant concurrence is not relevant, as the Council has the authority to determine this matter. Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of PLEP 2014 from the operation of clause 4.6.

### 1.3 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular, the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007)* 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

*The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*

*A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*

*A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*

*A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*

*A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*

*These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

- 1 Is clause 4.3 of PLEP 2014 a development standard?
- 2 Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
  - (a) compliance is unreasonable or unnecessary; and
  - (b) there are sufficient environmental planning grounds to justify contravening the development standard
- 3 Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the zone?
- 4 Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

- 5 Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of PLEP 2014?

## 5.1 Request for variation

### 5.1.1 Is clause 4.3 of PLEP 2014 a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes a provision of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

Clause 4.3 of PLEP 2014 prescribes a height provision that seeks to control the height of certain development. Accordingly, clause 4.3 of PLEP 2014 is a development standard.

### 5.1.2 Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

Both the first approach is relevant in this instance, being that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard and because the standard has been virtually abandoned or destroyed by the Council’s own decisions in granting consent to non-conforming development within the vicinity of the site.

### **Consistency with objectives of the height of buildings standard**

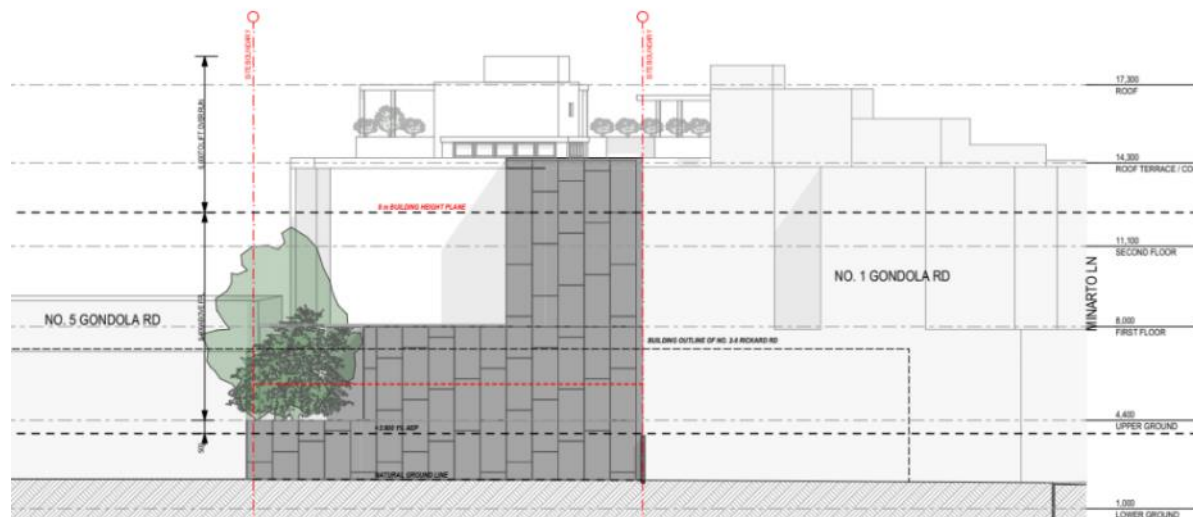
An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

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

Comment: The desired future character of an area is established by the relevant standards and controls that are applicable to the land. It is also reasonable to assume that the desired future character of the area is reflected by recent development approved and/or constructed pursuant to PLEP 2014 and P21 DCP, noting that in order to obtain development consent, the consent authority must have reached a point of satisfaction that the development was compatible with the desired future character of the locality.



In this respect, development consent DA2018/1210 issued with respect to 1 Gondola Road is entirely relevant, noting that the proposed development is maintained below the height of the adjoining development, as shown in Southern Elevation, an extract of which is provided in Figure 2, below.



**Figure 2:** Extract of Southern Elevation by Mackenzie Architects with approved outline of DA2018/1210 (left)

The three storey presentation of the building is also consistent with the 3 and 4 storey height and scale of other approved and/or constructed development in the vicinity of the site including the 3 storey shop top housing development at 2-8 Rickard Road (N0267/16), the 3 storey shop top housing development at 9-11 Gondola Road, the 3 storey shop top housing development at 10 Rickard Road and the four storey shop top housing development at 1473 Pittwater Road.

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

Comment: The findings of Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191 are relevant in this instance:

*There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.*

The three storey apparent size of the development is consistent with surrounding approved and/or constructed development at:

- 2-8 Rickard Road, North Narrabeen (Figure 3)
- 10 Rickard Road, North Narrabeen (Figure 4)

- 9-11 Gondola Road, North Narrabeen (Figures 5 and 6)
- 1 Gondola Road, North Narrabeen (Figure 7)
- 1473 Pittwater Road, North Narrabeen (Figure 8)



**Figure 3:** Extract of southern elevation of shop top housing development approved at 2-8 Rickard Road (N0276/16)



**Figure 4:** 3 storey shop top housing development at 10 Rickard Road





**Figure 5:** 3 storey shop top housing development at 9-11 Gondola Road



**Figure 6:** 3 storey shop top housing development at 9-11 Gondola Road (as seen from Verona Street)



**Figure 7:** 3 storey shop top housing development with roof top terrace at 1 Gondola Road



**Figure 8:** 4 storey shop top housing development at 1473 Pittwater Road

The four storey element of the proposal associated with the communal roof top area will not be readily perceived from the public domain and are entirely consistent with the development approved at 1 Gondola Road, North Narrabeen.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191, I have formed the considered opinion that most observers would not find the height or bulk of the proposed development offensive, jarring or unsympathetic in the streetscape context.

- (c) *to minimise any overshadowing of neighbouring properties,*

Comment: The height non-compliance does not give rise to any unreasonable impacts upon solar access of adjoining properties, as highlighted in the solar access diagrams accompanying the application. Whilst the proposed development will result in additional overshadowing of the approved development at 2-8 Rickard Road, each affected unit will retain in excess of 2 hours of direct sunlight between 9am and 3pm, consistent with the requirements of the ADG.

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

Comment: Upon review of the site and its surrounding context, there do not appear to be any view corridors obtained over the subject site. If any views were to be obtained towards the lake, such views would be obstructed as a result of the development approved on the adjoining site at 1 Gondola Road, that has approval to build to the same height as that proposed. It is unlikely that the height non-compliance will result in any adverse impacts upon views currently enjoyed by adjoining or nearby properties.

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

Comment: The primary driver of the proposed development is the high hazard flood affectation that affects the flat and low-lying site. The proposed development has been sensitively designed to balance the competing factors of developing in a flood plain, whilst also providing street activation with retail presenting to Gondola Road and high-quality residential development above.

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

Comment: The proposed development has been designed with a 3 storey dominant façade, consistent with surrounding and nearby more contemporary development. The roof terrace is setback from the street frontage and will not be readily perceived from the public domain. The façade of the development is well articulated, with a variety of materials utilised to ensure that the apparent size of the development is appropriately relieved, and landscaping is proposed in the front setback to soften and screen the built form. Overall, the proposed development has been designed to ensure that the visual impact of the development is appropriately minimised, with no adverse impacts upon the natural environment.

### **Consistency with zone objectives**

The subject property is zoned B2 Local Centre pursuant to PLEP 2014. The developments consistency with the stated objectives of the B2 zone is as follows:



- *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 proposed development provides 134.07m<sup>2</sup> of commercial floor space, contributing to the existing range of retail, business and community uses within the North Narrabeen Locality.

- *To encourage employment opportunities in accessible locations*

Comment: The proposed development will provide short-term employment opportunities during construction, and on-going employment opportunities associated with the commercial floor space and the management and maintenance of the building.

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

Comment: The subject site is located in an accessible location that is serviced by both Sydney Buses and Forest Coach Lines bus routes. The proximity of the site to public transport, in addition to local shops and restaurants in both the North Narrabeen and Narrabeen local centres, and nearby public reserves will actively encourage the use of public transport and walking/cycling in the locality.

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

Comment: The proposed development will contribute to the revitalisation of the North Narrabeen locality, which has been somewhat stagnant as a result of the flood hazard that affects the site. The proposal will positively contribute to the streetscape and enhance both the daytime and night-time economy of the small local centre.

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

Comment: The proposed development contributes to employment generation in the North Narrabeen Locality, both in the short and long term.

- *To provide an active day and evening economy*

Comment: Future occupants moving to and from the site will enliven the streetscape, and increase demand for local shops and services, both during the daytime and into the evening. The ground floor retail tenancy will also contribute to the activation of the local centre, serving as a continuation of the ground floor retail strip that is approved on the adjoining site to the east and that exists on the sites further to the west.

- *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 proposed shop top housing development and the incorporation of residential development on the site is compatible with existing and approved development surrounding the site.

The non-compliant component of the development, as it relates to building height, demonstrates consistency with objectives of the zone and the height of building standard objectives. Adopting the first option in *Wehbe*, strict compliance with the height of buildings standard has been demonstrated to be unreasonable and unnecessary in the circumstances of this application.

### 5.1.3 Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In *Initial Action* the Court found at [23]-[25] that:

*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.*

*The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

*The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

### **Sufficient environmental planning grounds**

In my opinion, there are sufficient environmental planning grounds to justify the variation, as outlined below.

#### **Ground 1 – Flood Affectation**

The site is affected by high hazard flooding. The nature of the flooding that occurs in this area is relevant, in that the water levels are likely to rise quickly, with flooding remaining over an extended period of time. Once flood waters reach a certain point, access through and around the area becomes cut off, and people cannot evacuate the site. As such, both occupants and visitors to the property may be caught unaware and may need to take shelter at the site (shelter in place) until the flood waters recede.

In accordance with the provisions of B3.11 of P21 DCP, Council requires such shelter to be located at or above the Probable Maximum Flood (PMF), which is higher than the FPL. To avoid further disparity between the height of the retail level and the street, and noting the likelihood of the PMF event, the ground floor retail tenancy has been designed at the FPL, with the proposed area of shelter located on the roof top terrace. The roof top area has been designed to provide protection from the elements and includes suitable amenities to ensure that people could comfortably remain on the site until it is safe to leave.

The proposed design solution provides for the safety of occupants and visitors to the building, consistent with Object (h) of the EP&A Act, which aims to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.

Support of the incorporation of a roof top area for shelter that has been designed in the same manner as that approved on the adjoining site to the east, 1 Gondola Road (DA2018/1210) is also consistent with Object (c) of the EP&A Act, in that it promotes orderly and economic development of the land and a consistency of decision making by Council.

### **Ground 1 – Contextually responsive building design**

Despite non-compliance with the 8.0m above the FPL building height development standard, the proposed development is consistent with and compatible with nearby 3-4 storey development (including those recently approved pursuant to PLEP 2014), as follows:

- 2-8 Rickard Road, North Narrabeen (Figure 3)
- 10 Rickard Road, North Narrabeen (Figure 4)
- 9-11 Gondola Road, North Narrabeen (Figures 5 and 6)
- 1 Gondola Road, North Narrabeen (Figure 7)
- 1473 Pittwater Road, North Narrabeen (Figure 8)

The continuation of the 3 storey façade to Gondola Road will ensure a consistency of built form throughout the North Narrabeen Local Centre as seen in a streetscape setting. The roof top terrace is of an almost identical height and scale as that approved pursuant to DA2018/1210 on the immediate adjoining property at 1 Gondola Road to the east.

Council's acceptance of the proposed height variation will ensure the orderly and economic development of the site, in so far as it will ensure conformity with the scale and character established by recent approvals throughout the locality, consistent with Objective 1.3(c) of the EP&A Act.

Overall, there are sufficient environmental planning grounds to justify contravening the development standard.

#### **5.1.4 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the B2 Local Centre zone**

The consent authority needs to be satisfied that the proposed development will be in the public interest. A development is said to be in the public interest if it is consistent with the objectives of the particular standard to be varied and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

*The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.*

*It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).*

As demonstrated in this request, the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest.

#### 5.1.5 Secretary's concurrence

The Local Planning Panels Direction issued by the Minister for Planning and Public Spaces, dated 30 June 2020, provides that local planning panels have the delegation to approve development that contravenes a development standard imposed by an environmental instrument by more than 10% or non-numerical development standards.

## 5.2 Conclusion

Pursuant to clause 4.6(4)(a) of PLEP 2014, the consent authority can be satisfied that this written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

- (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.*



As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

**Boston Blyth Fleming Pty Limited**



**Greg Boston**

B Urb & Reg Plan (UNE) MPIA

**Director**